Survey on the CRC Committee’s Concluding Observations on the last EU Countries’ Reports

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1.1. Origin and aims of the survey

On the occasion of its Semester of EU Presidency (from 1 January to 31 June 2006), the Federal Republic of Austria has decided to hold a L'Europe de l'Enfance meeting on the 2nd of May 2006 in Vienna. For this event, the Austrian Federal Ministry of Social Security, Generations and Consumer Protection has entrusted the ChildONEurope Secretariat with the mandate of carrying out the survey on the concluding observations of the Committee on the Rights of the Child (Committee) on the last national reports discussed by the 25 EU Member Countries, 2 EU Accession Countries (Bulgaria and Romania), and 2 Candidate Countries (Croatia and Turkey), considering its terms of reference and its relations with the L'Europe de l'Enfance Permanent Intergovernmental Group.

With regard to the contents of this survey carried out by the ChildONEurope Secretariat, the overall objective is to support the discussion about mainstream children's rights in the policies implemented at the national level within the 25 EU Member Countries and the 4 EU Accession and Candidate Countries on the basis of the Convention on the Rights of the Child (CRC). In this framework, the aim of the comparative analysis of the 25+4 Concluding observations is to identify the issues most frequently examined by the Committee, the points of strength and of weakness of the CRC implementation in the EU Countries' policies. This survey does not make a comparison of the national policies on the child's rights, but a comparison of the identified specific issues. This analysis aims, on the one hand, at sharing best practices on the identified points of strength and on the other at pointing out the issues on which the EU Countries can improve their intervention policies.

The survey results have been presented during the L'Europe de l'Enfance meeting that will be held in Vienna on 2 May 2006.

1.2. Methodology

It is important to point out that all the EU Countries (EU Members, Accession and Candidate Countries) ratified the CRC and that the Committee's Concluding Observations are the last step of the procedure of monitoring the CRC implementation, that includes first of all the presentation of the State party report, the eventual request for a list of issues and the reply to them, and then the discussion of the State party report, with the representatives of the State itself, and the preparation of the Concluding observations afterwards by the Committee.

In compliance with the mandate and the aims mentioned above, the survey was realised on the basis of the following steps:

- the collection of the Committee Concluding observations on the last national reports presented by the 25 EU Member Countries and 4 EU Accession and Candidate Countries. The national reports collected are the last periodical reports presented and discussed by the EU Countries with the Committee;
- the elaboration of a comparative analysis concerning the status of presentation and discussion of the national reports and of the Concluding observations of the Committee. The survey has mainly focused on the general measures of implementation of the CRC, dedicating particular attention to the national legal and institutional reforms ensuring the effective implementation of the principles and provisions of the CRC, such as the adoption of specific law reforms, the establishment of a permanent governmental institution for the coordination of national policies on childhood, the presence of an independent national monitoring institution, the characteristics of national strategies, the collection of child-related statistical data, the political national agenda for children;

1 Except for Ireland, whose the last periodical report will be discussed in September 2006.
• the analysis of the Concluding observations, identifying the common positive and critical points emerging more frequently from the Committee Concluding observations and also on the issues addressed by the Intergovernmental Group *L'Europe de l'Enfance*. The overall aim of the survey has been to identify the achievements reached by the 25 EU Member States and the 4 EU Accession and Candidate Countries and the obstacles and challenges, which remain to be addressed in the process of full implementation of the CRC;
• the comparison of those common positive and critical points emerging more frequently from the CRC Committee concluding observations following the structure of the CRC and taking into consideration the issues mentioned above;
• the elaboration of conclusions emerging from the comparison of the analysed positive and critical points.

1.3. The content of the survey

As the present survey is strictly connected with the Committee's activity, its content is organised following the structure of the CRC, in particular taking into consideration the different categories of the rights of the child indicated in the first part of the CRC as discussed by the Committee. The Committee concluding observations are generally composed of four parts:

A. Introduction
B. Follow-up measures undertaken and progress achieved by the State party
C. Factors and difficulties impeding the implementation of the CRC
D. Principal areas of concern and recommendations.

The present survey analysed in deep the fourth part regarding principal areas of concern and recommendations, composed of both positive and critical information and structured as follows:

General measures of implementation
a. Coordination and plan of action
b. Dissemination and training (art. 42)
c. Independent systems of monitoring
d. Collection of data

General principles
a. Non-discrimination (article 2)
b. Best interest of the child (article 3)
c. Right to life, survival and development (article 6)
d. Respect of the view of the child (article 12)

Civil rights and freedom
a. Right to identity (article 7)
b. Freedom of religion (article 14)
c. Access to appropriate information (article 17)
d. Corporal punishment and abuse (article 19)
e. Torture, degrading treatment and deprivation of liberty (article 37)

Education (articles 28 and 29)

Family environment
a. Parental guidance and the child's evolving capacities, parent's joint responsibilities and assistance by the State (articles 5 and 18)
b. Family reunification (article 10)
c. Violence, abuse and neglect (article 19)
d. Adoption, foster care and alternative care (articles 20 and 21)
Health
a. Disabilities (article 23)
b. Standard of health, adolescent health (article 24)
c. Standard of living (article 27)

Special measures of protection
a. Street children
b. Unaccompanied, refugee and asylum-seeking children (article 22)
c. Children of minority or indigenous peoples (article 30)
d. Economic exploitation (article 32)
e. Drug abuse (article 33)
f. Sexual exploitation, abuse and trafficking (article 34)
g. Administration of juvenile justice (articles 37, 39 and 40)

Each issue analysed in the survey is organised as follows:
1. the relevant CRC article/s as each analysed issue is linked to one or more CRC articles
2. a comment on the article/s of the CRC. This part of the survey presents the definitions and interpretation of the CRC principles and articles emerging from the documents adopted by the Committee, such as the General Comments and the General Days of Discussion as it is fundamental to understand the Committee’s approach and interpretation of the CRC principles. This part also contains references to other fundamental documents of UN agencies, in particular the UNICEF Implementation Handbook for the Convention on the Rights of the Child.
3. a comment on the Committee’s concluding observations. This is the key part of the survey that regards the analysis of the Concluding observations of the Committee. The attention is focused on the positive achievements, the Committee’s concerns and the recommendations on the most frequent specific issues taken into consideration by the Committee and followed by an explanation of the Committee’s approach to the issue addressed.

The survey includes also an executive summary focusing on the analysis of the Committee’s concluding observations and underlining the most frequent positive achievements and recommendations for each area analysed, following the structure of the Concluding observations.

Finally, the survey contains also a number of relevant annexed documents, in particular it is important to mention the Concluding observations addressed to the 25 EU Member Countries and 4 Accession / Candidate Countries divided by each issue analysed by the Committee and the General Comments of the Committee that are fundamental to understand the interpretation given by the Committee of the concepts and principles contained in the CRC.
2. General measures of implementation

2.1. Comment on Committee’s concluding observations related to coordination and national plans of action

The CRC Committee has addressed the issue of coordination and national plans of action in relation to 25 EU Member Countries, 2 Accession Countries and 2 Candidate Countries.

Concerning the issue of coordination of policies dealing with children at the national level, the Committee on the Right of the Child appreciated as positive achievements: the many efforts made to improve the national policy of coordination; the approval of a comprehensive national plan of action on young people's rights, incorporating the objectives and goals of the document “A World Fit for Children”, adopted by the General Assembly Special Session on Children in 2002; the existence of numerous plans of action and policies focusing on specific issues of concern to children; the establishment and review of the role of government bodies such as: youth divisions, inter-ministerial conferences for the protection of child rights and competent authorities to deal with the welfare of children at the national and local municipality levels and in charge of coordinating and monitoring the implementation of the CRC; the establishment of a council for children and a central committee responsible for monitoring the implementation of the CRC; the setting up of the National Observatory on Children and Adolescents which coordinates the policies and programmes with regard to children at the national, regional and local levels; the establishment of a Committee on the Rights of the Child within the Council for Human Rights; the setting up of a permanent commission for the child and family with an advisory capacity; the inclusion of State policies for the young generation with the mandate of evaluating, promoting and protecting the rights of the child; the multitude of actors involved in the implementation of the CRC; the reorganization of ministries and the creation of a division for the promotion of children's rights within the Ministry for the Family and Integration; the set of priorities and objectives to government policies concerning children with respect for their rights (i.e. child participation, the right of the child to be informed, drug abuse and violence against children); and making the ministers responsible for the coordination of policy on children and youth.

Nonetheless, in relation to the same issues the Committee has often expressed its concern and it should be said that in examining the Concluding Observation the Committee has almost invariably found it necessary to encourage further government coordination to ensure effective implementation: coordination among central government departments, among different provinces and regions, between central and other levels of government and between Government and civil society. The purpose of coordination, as defined in General Comment no. 5, is to ensure respect for all of the CRC's principles and standards for all children within the State jurisdiction; to ensure that the obligations inherent in ratification of or accession to the CRC are not only recognized by those large departments which have a substantial impact on children – education, health or welfare and so on – but right across Government, including for example departments concerned with finance, planning, employment and defence, and at all levels.

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1 Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Bulgaria, Croatia, Romania and Turkey.
2 Austria, Estonia, Lithuania, Netherlands, Spain, Turkey.
3 Austria, Cyprus, Denmark, Finland, Germany, Italy, Lithuania, Poland, Slovakia, Slovenia, Croatia.
4 Greece, Hungary, Lithuania, Luxembourg, Romania.
5 Belgium, Denmark, Germany, Ireland, Italy, Latvia, Lithuania, Malta, Portugal, United Kingdom.
6 Cyprus, Slovakia, Slovenia, Croatia.
7 Czech Republic, Estonia
8 Malta, Poland, Sweden.
The CRC favours a structured coordination system recommending to 12 EU Countries\(^9\) that they ensure the establishment of a single **permanent and effective coordination mechanism** on the rights of the child, that with an adequate mandate and resources could effectively coordinate the interventions fulfilling the principle set out in the CRC at the local, federal, departmental, regional and municipal level, also by effectively coordinating activities between central and local authorities.

From the Concluding Observation analysed the CRC Committee consistently underlined its concern in relation to the development of **effective and integrated system of policies**. On this basis it invited 7 EU Member Countries and 1 Candidate Country\(^10\) to strengthen coordination between the various government mechanisms involved in children’s rights, at both the national and local levels, with a view to developing a comprehensive policy on children and ensuring effective evaluation of the implementation of the Convention in the y.

On this aspect the Committee encourages States to pursue these objectives through the strengthening of the coordination within the institutions designated to promote and protect human rights in general and the rights of the child in particular, cooperating closely with non-governmental organizations and civil society. This kind of suggestion has been formulated by the Committee in relation to 7 EU Member Countries and 1 Candidate Country\(^11\). Moreover, still in relation to the need to strengthen coordination the Committee demanded an analysis of the effective ability to coordinate national ministries and government bodies designated to do so.

In addition the Committee manifested its concern in relation to the low budget allocations for coordination activity, suggesting to 13 EU Member Countries\(^12\) that they should allocate **sufficient financial and human resources** for the effective functioning of such a mechanism in order to allow the effective implementation of the coordination role.

However a coordination policy should be implemented along with the adoption of a national plan of action for an inclusive pro-active policy on children's rights. Thus the Committee requested 13 EU Member Countries and 1 Accession Country\(^13\) to prepare and implement a coherent and comprehensive right-based **national plan of action** for the implementation of the CRC. In particular in relation to the development and adoption of specific policies the Committee requested 3 EU Member Countries to pay special attention to children belonging to the most vulnerable groups (e.g. poor households, asylum-seekers), through an open, consultative and participatory process\(^14\) and through the involvement of and in cooperation with civil society at the central, regional and local level\(^15\). Again in relation to the development of a national plan of action in order to overcome the problem of a **fragmented approach** to the implementation of child rights, the Committee suggested to 8 EU Member Countries\(^16\) that they elaborate and address the possible divergences between the different action plans by putting them in a comprehensive national framework which covers all areas of the CRC and takes into account the outcome document of the 2002 United Nations General Assembly Special Session on Children, “A World Fit for Children”. Whereas in some other cases the Committee suggested to 3 EU Member Countries\(^17\) that they expedite the consideration of the national plan of action for its adoption and ensure the harmonization between the national plan of action and the plan for the implementation of the UNGASS outcome document held in May 2002, entitled “A World Fit for Children”.

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\(^9\) Austria, Belgium, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovenia, Netherlands, United Kingdom.

\(^10\) Cyprus, Italy, Malta, Poland, Portugal, Spain, Bulgaria, Croatia.

\(^11\) Czech Republic, Italy, Lithuania, Portugal, Slovakia, Sweden, Bulgaria, Croatia.

\(^12\) Austria, Belgium, Estonia, Finland, Hungary, Latvia, Lithuania, Netherlands, Poland, Slovenia, United Kingdom, Romania, Turkey.

\(^13\) Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Luxembourg, Slovakia, Slovenia, Romania.

\(^14\) Belgium, Netherlands, United Kingdom.

\(^15\) Czech Republic, Germany.

\(^16\) Denmark, Estonia, Finland, Hungary, Ireland, Lithuania, Luxembourg, Slovenia.

\(^17\) Italy, Netherlands, United Kingdom.
Another issue is the need to create a multi-sectoral platform and comprehensive strategies for developing policies and standards for the implementation of the CRC throughout the State party, as explicitly recommended to 3 EU Member Countries.

Concluding, the committee requested 2 EU Member Countries and 1 Candidate Country to continue and expand the use of child impact assessments in the formulation of budgets and policies and to effectively implement the National Action Programme for Children.

Concluding, the Committee in the CoS taken into consideration dedicated particular attention to the necessity of elaborating comprehensive strategies of intervention operating on two levels, on one hand through the coordination of the policies dealing with children at the national level and on the other hand with the elaboration of children’s rights-based national plans of action. The intention and the need to develop a comprehensive national strategy rooted in the CRC is strongly stressed in General Comment no. 5 on general measures of implementation of the CRC, in which the Committee states that “If Government as a whole and at all levels is to promote and respect the rights of the child, it needs to work on the basis of a unifying, comprehensive and rights-based national strategy, rooted in the Convention. The Committee commends the development of a comprehensive national strategy or national plan of action for children, built on the framework of the CRC. The Committee expects States parties to take account of the recommendations in its concluding observations on their periodic reports when developing and/or reviewing their national strategies. If such a strategy is to be effective, it needs to relate to the situation of all children, and to all the rights in the CRC. It will need to be developed through a process of consultation, including with children and young people and those living and working with them. As noted above (par. 12), meaningful consultation with children requires special child-sensitive materials and processes; it is not simply about extending to children access to adult processes”. As a consequence “Particular attention will need to be given to identifying and giving priority to marginalized and disadvantaged groups of children. The non-discrimination principle in the Convention requires that all the rights guaranteed by the Convention should be recognized for all children within the jurisdiction of States. As noted above (par. 12), the non-discrimination principle does not prevent the taking of special measures to diminish discrimination. [...] The comprehensive national strategy may be elaborated in sectoral national plans of action – for example for education and health – setting out specific goals, targeted implementation measures and allocation of financial and human resources. The strategy will inevitably set priorities, but it must not neglect or dilute in any way the detailed obligations which States parties have accepted under the Convention”.

2.2. CRC on dissemination and training

Article 42
States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Comment on article 42
Article 42 confirms the obligation that States Parties assume to make the CRC known “by appropriate and active means” to adults and children.

In its Guidelines for Initial and Periodic Reports, the Committee on the Rights of the Child has included the implications of article 42 under “General Measures of Implementation”, linking it to article 4. In addition, under article 44(6) the Committee emphasizes the importance of widely publicizing at country

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18 Estonia, Greece, Spain.
19 Belgium, Cyprus, Estonia, Croatia.
level States Parties' Initial and Periodic Reports, reports of discussions with the Committee and the Committee's Concluding Observations.

In its comments on Initial and Second Reports, the Committee has emphasized that dissemination:

- can achieve a variety of purposes:
- ensure the visibility of children;
- enhance respect for children;
- reaffirm the value of children’s fundamental rights;
- enhance democratic institutions;
- achieve national reconciliation;
- encourage the protection of the rights of children belonging to minority groups;
- change negative attitudes towards children;
- combat and eradicate existing prejudices against vulnerable groups of children and harmful cultural practices.

Comment on Committee’s concluding observations on dissemination and training

The CRC Committee has included the issue of dissemination and training on the CRC in the great majority of its concluding observations, namely for 23 EU Member Countries and for 4 EU Accession and Candidate Countries.

As regards the positive achievements of the EU States, the Committee has very often taken note of the efforts to make the principles and the provisions of the CRC widely known (for 12 EU Member Countries and 2 Accession and Candidate Countries), underlining in some cases the specific role of the various ministries, national centres on childhood, children's ombudsman, national agencies and NGOs.

The Committee has also underlined the activities carried out in order to make the CRC known to specific categories (e.g. police, social welfare services, teachers, health professionals) or to NGOs and the media and in cooperation with NGOs (for 3 EU Member Countries and 2 EU Accession Countries).

Other aspects for which the Committee has noted some progress for a few countries are:

- the efforts to make the principles and provisions of the CRC known in relation to the school and university system.
- the activities carried out to make available the previous report, a summary of records of the meetings and Concluding Observations.
- the translation of the convention and of the handbook in the national language and in the minorities’ languages.
- the production of special publications for disabled children.

However for the same issues the Committee has often expressed its concern recommending States to strengthen or further implement their activities in relation to the dissemination of the convention. In particular it has recommended to 14 EU Member Countries and 3 EU Accession and Candidate Countries that they continue or strengthen their efforts to make the CRC widely known and understood by adults as well as children and to organise a systematic awareness-raising campaign. In addition the Committee has specified for the vast majority of countries, namely 22 EU Member

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20 Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Bulgaria, Croatia, Romania and Turkey.

21 Austria, Cyprus, Czech Republic, Denmark, Germany, Greece, Latvia, Malta, Netherlands, Poland, Slovakia, Slovenia, Romania and Turkey.

22 France, Italy, Poland, Sweden.

23 Cyprus, Lithuania, Spain, Bulgaria, Romania.

24 Estonia, Italy, United Kingdom.

25 Belgium, Cyprus.

26 Lithuania, Slovenia.

27 Austria, Belgium, Czech Republic, Germany, Ireland, Italy, Lithuania, Malta, Netherlands, Poland, Slovakia, Slovenia, Spain, United Kingdom, Bulgaria, Croatia, Turkey.
Countries and 3 EU Accession and Candidate Countries\(^{28}\) that they should continue or strengthen systematic education and training programmes on the CRC addressed not only to children and parents but also to all professional groups working for and with children, such as judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers and health personnel.

It is obviously very important that the CRC is known by all those who work with children at different levels and in different areas. The Committee Guidelines for Periodic Reports also refer to incorporating the CRC in the “professional training curricula, codes of conduct or regulations”, while in a workshop held in 1999 together with the Office of the High Commissioner for Human Rights the Committee stated that “The Committee recommends that all efforts to provide training on the rights of the child be practical, systematic and integrated into regular professional training in order to maximize its impact and sustainability. Human rights training should use participatory methods, and equip professionals with skills and attitudes that enable them to interact with children and young people in a manner that respects their rights, dignity and self-respect”\(^{29}\).

For 8 EU Member Countries\(^{30}\) the Committee has also indicated the importance of dedicating specific attention, as regards the dissemination of the convention, to reaching vulnerable groups, such as immigrants, ethnic or linguistic minorities, asylum-seekers, refugees. Again for 8 countries (6 EU Member Countries and 2 EU Accession and Candidate Countries\(^{31}\) the Committee requested the incorporation of the CRC in the school curricula.

In a few cases the Committee has also recommended steps to strengthen its programme for the dissemination and implementation of the CRC including in minority languages\(^{32}\); to develop methods to promote the CRC, in particular at the local level, and to further support such activities carried out by NGOs\(^{33}\); to develop more creative methods to promote the CRC, including through audiovisual aids such as picture books and posters\(^{34}\); to develop child-friendly versions of the CRC\(^{35}\).

Concerning the methods for teaching children's rights, it is interesting to note what the Committee wrote in the occasion of the 1999 workshop: “The Committee recalls that dissemination and awareness-raising about the rights of the child are most effective when conceived as a process of social change, of interaction and dialogue rather than lecturing. Raising awareness should involve all sectors of society, including children and young people. Children, including adolescents, have the right to participate in raising awareness about their rights to the maximum extent of their evolving capacities”\(^{36}\).

### 2.3. Independent monitoring institutions

The CRC does not contain an explicit reference to the setting up of independent monitoring institutions, however the CRC Committee has dedicated General Comment n. 2 of 2002 specifically to this issue, thus demonstrating the special importance given to this subject. The General Comment states that: “Article 4 of the Convention on the Rights of the Child obliges States parties to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention”. Independent national human
rights institutions (NHRIs) are an important mechanism to promote and ensure the implementation of the CRC, and the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children’s rights [...]. The Committee issues this general comment in order to encourage States parties to establish an independent institution for the promotion and monitoring of the implementation of the Convention and to support them in this regard by elaborating the essential elements of such institutions and the activities which should be carried out by them”.

Comment on Committee’s concluding observations on independent monitoring institutions

The CRC Committee has made a reference to the issue of independent national human rights institutions in the Concluding Observations of the majority of EU States, namely 21 EU Member Countries and 4 EU Accession/Candidate Countries[37].

As regards the positive achievements, first of all the Committee has expressed its satisfaction about the establishment at the national level of the children’s rights commissioners, ombudsperson for children or national councils for children in the case of 7 EU Member Countries and 1 EU Accession/Candidate Country[38]. Secondly the Committee commented positively on the establishment of the children’s rights Commissioners or ombudsperson for children at the regional level in the case of 3 EU Member Countries[39], although expressing its concern about the absence of such an institution at the national level.

Where such institutions have not yet been created, the Committee appreciated the existence of a plan to set up a national independent monitoring body for children for 6 EU Member Countries[40]. The Committee also appreciated the existence of a national institution for the general protection of human rights such as public defender or mechanisms having the power to receive complaints for 6 EU Member Countries[41] and especially when such mechanisms explicitly also cover children’s rights[42].

As regards the Committee’s recommendations, the most frequent one, addressed to 13 EU Member Countries and 3 EU Accession/Candidate Countries[43], has been to establish independent human rights institutions at the national level, accessible to children and empowered to receive and investigate complaints of violations of child rights in a child-sensitive manner and to address them effectively, provided with the necessary human and financial resources or establish a specific section for children’s rights in the human rights protection institution.

When making such recommendation the Committee has often referred to its General Comment n. 2 that as previously stated, provides a clear indication of the characteristics that these independent national human rights institutions should have in general and in particular in the promotion and protection of the rights of the child in order to be really considered independent institutions.

The General Comment provides clear indications as regards the mandate and power, the establishment process, the resources, the pluralistic representation, the provision of remedies for breaches of children’s rights, the accessibility and participation, the recommended activities, the cooperation with the CRC Committee and other UN mechanisms, relations with NGOs, regional and international cooperation.

[37] Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovakia, Slovenia, Sweden, United Kingdom, Bulgaria, Croatia, Romania, Turkey.
[38] Denmark, Finland, Greece, Lithuania, Luxembourg, Poland, Sweden, Croatia.
[39] Belgium, Italy, United Kingdom.
[40] Italy, Latvia, Malta, Netherlands, Slovakia, Slovenia.
[41] Cyprus, Czech Republic, Estonia, Hungary, Ireland, Slovenia.
[42] Germany, Romania.
[43] Belgium, Cyprus, Czech Republic, Denmark, Estonia, Germany, Ireland, Italy, Latvia, Malta, Netherlands, Slovenia, United Kingdom, Bulgaria, Romania, Turkey.
As regards the **mandate and power**, the General Comment states that “NHRIs should, if possible, be constitutionally entrenched and must at least be legislatively mandated. It is the view of the Committee that their mandate should include as broad a scope as possible for promoting and protecting human rights, incorporating the CRC, its Optional Protocols and other relevant international human rights instruments”.

The Committee has then made a number of recommendation in order to strengthen the role of the existing independent human rights institutions for children. 

The most frequent recommendation in this respect, addressed to 5 EU Member Countries and 3 EU Accession/Candidate Countries, has been to support or strengthen with sufficient **human and financial resources** the office of the Ombudsman for Children or national mechanisms for the protection of children's rights. The Committee has recognized that the issue of resources is a crucial one by stating in its General Comment 2 that although this is a very sensitive issue, the Committee believes that “the mandate and powers of national institutions may be meaningless, or the exercise of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers”.

The Committee has also recommended: the expansion of the mandate of the Ombudsman for Children in particular to include the ability to **receive and investigate complaints** from children. In this regard General Comment 2 indicates that “NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children”.

Other recommendations addressed to a few countries in order to strengthen the role of the independent human rights institutions for children are the following:

- clearly define the role of the different bodies dealing with human rights and ensure proper **coordination** among them also between the national and the regional levels
- all the human rights institutions have formal **advisory functions with the respective legislative bodies** and they establish formal links with each other
- the annual report of the Ombudsman for Children be presented to, and discussed by, **Parliament** to organise **awareness-raising campaigns** to facilitate the effective use by children of the mechanism.

### 2.4. Data collection

**Comment on Committee concluding observations on data collection**

There isn’t a specific article of the CRC dedicated to data collection, however the Committee faced the issue in the General Comment n. 5 (2005) on the CRC general measures of implementation. In the document the Committee underlined that “Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation”. The Committee reminds States parties that data collection needs to extend over the whole period of childhood, up to the age of 18 years. It also needs to be coordinated throughout the jurisdiction, ensuring nationally applicable indicators. The Committee also underlined that “States should collaborate with appropriate research institutes and aim to build up a complete picture of progress towards implementation, with qualitative as well as quantitative studies. The reporting guidelines for periodic reports call for detailed disaggregated statistical and other

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44 Finland, Greece, Hungary, Luxembourg, Netherlands, Bulgaria, Croatia, Romania.
45 Finland, Sweden.
46 Greece, Italy, United Kingdom, Croatia.
47 Belgium, United Kingdom.
48 Finland, Sweden.
49 Malta, Turkey.
information covering all areas of the Convention. It is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children. Evaluation requires the development of indicators related to all rights guaranteed by the Convention”. The issue of data collection has been discussed by the Committee with all the EU Countries (25 EU Member Countries and 4 Accession / Candidate Countries)\textsuperscript{50}. The importance of data collection was underlined by the Committee in the Concluding observations of three EU Member Countries\textsuperscript{55}. The Committee considered data collection crucial for the monitoring and evaluation of progress achieved and impact assessment of policies with respect to children. In particular, the Committee considers that the availability of statistical data is essential in order to identify and combat direct and indirect discrimination as well as to devise and implement targeted positive action programmes and subsequent measures for monitoring progress achieved. Positive achievements made by several EU Countries (16 EU Member Countries and 2 Accession / Candidate Countries)\textsuperscript{52} were emphasized by the Committee. In particular, the specific issues about which the Committee expressed its appreciation are as follows: the conscious effort made to improve data collection (5 EU Member Countries and 1 Accession / Candidate Country)\textsuperscript{53}; the extensive quality and quantity of statistical data provided by EU Countries (12 EU Member Countries)\textsuperscript{54}, in the report and/or with the list of issues and in the written replies; the establishment of specific instruments, programmes or organisms dealing with the collection of statistical data (5 EU Member Countries and 1 EU Accession / Candidate Country)\textsuperscript{55} for example a data bank on children, a National Documentation and Analysis Centre for Children and Adolescents, a National Information Network, a list of indicators of statistics on children, a working group on statistics or simply by providing the competent authority with a computerised system at the national level, in order to improve the exchange of data, facilitate their comparison and analysis and harmonize the system in the autonomous communities or regions, or by annually publishing a report on children. In some cases the Committee underlined that the effort made to improve data collection was focused on specific themes (2 EU Member Countries and Accession / Candidate Countries)\textsuperscript{56}, such as asylum requests, juvenile delinquency, education, health or child welfare services. The Committee expressed its concerns about the previous concluding observations that need to be brought to the attention of some EU Countries and both concerns and recommendations were discussed with all EU Countries. The Committee was concerned with various issues. The most frequent regards the absence (5 EU Member Countries and 2 Accession / Candidate Countries)\textsuperscript{57} of a nationwide and comprehensive system of disaggregated data – or lack of disaggregated data (14 EU Member Countries and 1 Accession / Candidate Country)\textsuperscript{58} – incorporating all the territories of a Country and/or all the areas covered by the Convention, i.e. on age, on gender, on children belonging to minority groups among others and children in need of special protection, in particular on children living in rural areas, children in institutions, children with disabilities, street children, working children, unaccompanied and

\textsuperscript{50} Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Netherlands, United Kingdom, Bulgaria, Croatia, Romania, Turkey.

\textsuperscript{51} France, Hungary, Luxembourg.

\textsuperscript{52} Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Netherlands, United Kingdom, Bulgaria, Croatia, Romania, Turkey.

\textsuperscript{53} Austria, Belgium, Cyprus, Greece, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, United Kingdom, Romania, Turkey.

\textsuperscript{54} Austria, Belgium, Cyprus, Denmark, Estonia, Germany, Greece, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, United Kingdom, Romania, Turkey.

\textsuperscript{55} Cyprus, Greece, Italy, Lithuania, Luxembourg, Turkey.

\textsuperscript{56} Austria, Cyprus, Belgium, Denmark, Estonia, Germany, Malta, Netherlands, Poland, Portugal, Slovenia, United Kingdom.

\textsuperscript{57} Cyprus, Italy, Lithuania, Poland, United Kingdom, Turkey.

\textsuperscript{58} Belgium, Portugal, Romania.

\textsuperscript{59} Belgium, France, Greece, Slovakia, United Kingdom, Romania, Turkey.

\textsuperscript{60} Austria, Czech Republic, Denmark, Estonia, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovenia, Croatia.
separated children, asylum-seeking and refugee children, Roma children, domestic and inter-country adoptions, children with disabilities, children of economically or socially disadvantaged households, street children, children in conflict with the law, abortions, substance abuse and child abuse and neglect, including sexual abuse and exploitation, and victims of trafficking.

Another issue that the Committee noted with concern, is the lack of coordination and of regular collection, in particular with regard to the most vulnerable groups of children (4 EU Member Countries)39, i.e. because the data collected by individual ministries and other bodies are not integrated into a central data-collection mechanism.

The Committee’s other concerns are addressed to a few Countries for each point: the insufficient evaluation of data to devise policies and programmes; fragmentation or absence of information on data collection systems and indicators; data collection is still obtained on the basis of a family-centred approach rather than an approach in which the child is considered as an autonomous human being; there is a lack of coherence between the various bodies in charge of data collection in the various regions; the Committee also regretted that this has not yet been given sufficient attention.

In several cases the Committee noted with concern that the disaggregated data don’t cover all children up to the age of 18 years in general or in specific issues (4 EU Member Countries)40; in general the Committee notes that in one Country in certain instances statistics on the situation of children are being collected only for children up to the age of 15 and that in another Country the statistics appear to be disaggregated by age groups to 25 years; specifically the Committee noted that in one Country data with regard to children with disabilities are provided only up to age 15 or aren’t available for the total number of children with disabilities and that in another Country no data are available on child victims of abuse aged 15 to 18 years and the total number of child victims of sexual exploitation is not precise.

Concerning the recommendations made by the Committee to the EU Member Countries, various issues carried out were mentioned. The most frequent is the request to strengthen efforts to develop / continue to develop / to update / establish a (nationwide) system for a comprehensive collection of indicators and comparative disaggregated data on all persons under 18 years for all the Country’s territories and all areas covered by the CRC, with an emphasis on the most vulnerable groups mentioned below (14 EU Member Countries and 2 Accession / Candidate Countries)41. The differences between the recommendations made to those EU Countries are focused on the most vulnerable groups and /or children in need of special protection, because they are not always specified and they are not all mentioned in all the recommendations.

The Committee also recommended to EU Countries that they should use these indicators and / or data collected to monitor /assess progress and / or design / formulate laws, policies and programmes to implement the CRC (19 EU Member Countries and 4 Accession / Candidate Countries)42, in one case the Committee expressly emphasized the importance of regularly monitoring and evaluating progress in the implementation of international human rights standards, including the CRC, at the national and local levels.

International cooperation was also mentioned by the Committee, recommending that EU Countries (2 Accession / Candidate Countries)43 request international cooperation or seek technical assistance from UNICEF in this issue of data collection.

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39 Finland, Greece, Malta, Slovenia.
40 Ireland, Netherlands, Portugal, Sweden.
41 Austria, Belgium, Cyprus, Czech Republic, Finland, France, Germany, Hungary, Latvia, Lithuania, Netherlands, Portugal, Slovakia, United Kingdom, Bulgaria, Turkey.
42 Belgium, Cyprus, Czech Republic, Estonia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Bulgaria, Croatia, Romania, Turkey.
43 Bulgaria, Romania.
3. General principles

3.1. CRC on non discrimination

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Comment on article 2

The first paragraph of article 2, along with article 3(2) and article 4, sets out the fundamental obligations of States Parties in relation to the rights outlined in the remainder of the CRC – to “respect and ensure” all the rights in the Convention to all children in their jurisdiction without discrimination of any kind. “Non-discrimination” has been identified by the Committee as a general principle of fundamental importance for implementation of the whole Convention.

In General Comment no. 18, the Human Rights Committee proposes that the term “discrimination” should be understood to imply “any distinction, exclusion, restriction or preference which is based on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”. The non-discrimination principle does not bar affirmative action, the legitimate differentiation in treatment of individual children; a Human Rights Committee General Comment emphasizes that States will often have to take affirmative action to diminish or eliminate conditions that cause or help to perpetuate discrimination. In its Preamble, the CRC recognizes that “in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration…”. For this reason certain articles set out special provisions for children particularly prone to forms of discrimination, for example, disabled children (article 23), and refugee children (article 22). Because discrimination is at the root of various forms of child exploitation, other articles that protect the child call for action that involves challenging discrimination.

The Committee has asserted the fundamental importance of article 2 and raises the issue of non-discrimination in its consideration of each State Party report. The Committee has not, as at March 2006, issued any interpretative specific General Comment on article 2. However, in its first General Comment, issued in 2001, on the aims of education, the Committee states: “Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities”. It goes on to detail discriminatory practices which “are in direct contradiction with the requirements in article 29(1)(a) that education be directed to ‘the development of the child’s personality, talents and mental and physical abilities to their fullest potential’” (see article 29).

The language of article 2 itself and its interpretation by the Committee emphasize that the obligation of States Parties to prevent discrimination is an active one, requiring, like other aspects of implementation, a range of measures that include review, strategic planning, legislation, monitoring, awareness-raising, education and information campaigns, and evaluation of measures taken to reduce disparities. In terms

2 Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5.
of international law, the obligation “to respect” requires States “to refrain from any actions which would violate any of the rights of the child under the Convention [...]. The obligation ‘to ensure’ goes well beyond that of ‘to respect’, since it implies an affirmative obligation on the part of the State to take whatever measures are necessary to enable individuals to enjoy and exercise the relevant rights”

Moreover, the Committee in its General Comment no. 5 (2003) providing an interpretation of the wording “the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind” (article 2(1)) declares that “this non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes. It should be emphasized that the application of the non-discrimination principle of equal access to rights does not mean identical treatment. A general comment by the Human Rights Committee has underlined the importance of taking special measures in order to diminish or eliminate conditions that cause discrimination”

In relation to the second part of article 2 it is doubtful whether the very wide potential implications of this provision have been sufficiently considered during the preparation and consideration of reports by States Parties, because paragraph 1 of article 2 lists as grounds for discrimination “the child’s or his or her parent’s or legal guardian’s race, colour, sex...”, whereas paragraph 2 adds protection against “all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”. In fact, while paragraph 1 concerns discrimination only in relation to the enjoyment of rights in the CRC, paragraph 2 requires action against “all forms of discrimination”, and is not confined to the issues raised by the CRC. Thus, implementation requires States to ensure that any existing Constitution, relevant legislation, court decisions and administrative policy and practice comply with this principle.

Comment on Committee’s concluding observations on article 2

The Committee has addressed the issue of non-discrimination in its Concluding Observations on 24 EU Member Countries, 3 Accession /Candidate Countries.

In relation to the obligation of the States Parties to respect and ensure the rights set forth in the CRC and to prevent discrimination in an active manner, the Committee has constantly stressed the need for an active approach to implementation of the CRC principles without any kind of discrimination in the majority of the concluding observations analysed, taking into consideration the peculiarity of any singular national situations. Thus, the implementation of article 2 must be integrated into the implementation of all other articles – ensuring that all the rights mentioned are available to all children without discrimination of any kind.

In particular the Committee in its Guidelines for Periodic Reports asks whether non-discrimination is included as a binding principle in the Constitution or in domestic legislation specifically for children “and whether all the possible grounds for discrimination spelled out in article 2 of the Convention are reflected in such legal provisions”.

On the base of the fact that article 2 emphasizes that all the rights in the CRC must apply to all children in the State, including visitors, refugees, children of migrant workers and those in the State illegally. As

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3. General principles


Human Rights Committee, general comment No. 18 (1989), HRI/GEN/1/Rev.6, pp. 147 ss.

1 Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Croatia, Romania and Turkey.
mentioned above the ban on discrimination of any kind does not outlaw legitimate differentiation between children in implementation, for example, of the respect the “evolving capacities” of children and to give priority, “special consideration” or affirmative action to children living in exceptionally difficult conditions. In addition the CRC Preamble recognizes that “in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration”. Inevitably, the category of children living in exceptionally difficult conditions includes children with widely different problems requiring widely different remedies. On this basis the Guidelines for Periodic Reports seeks information on “the specific measures adopted to reduce economic, social and geographical disparities, including between rural and urban areas, to prevent discrimination against the most disadvantaged groups of children, including children belonging to minorities or indigenous communities, disabled children, children born out of wedlock, children who are non-nationals, migrants, displaced, refugees or asylum-seekers, and children who are living and/or working on the streets”.

The Guidelines also asks, in various articles, for information on special or specific measures adopted for disadvantaged children. The Committee has consistently commented on the need to identify the most vulnerable and disadvantaged children in a State, has expressed concern about their situation and has recommended action to ensure that such children enjoy their rights under the CRC. Other CRC articles highlight groups of children who may also suffer particular forms of discrimination, for example children without families (article 20), refugee children (article 22), disabled children (article 23), children of minorities or indigenous communities (article 30), children suffering economic and other exploitation (articles 32, 34, 36), children implicated in the juvenile justice system, children whose liberty is restricted (articles 37 and 40), and children in situations of armed conflict (article 38).

In particular, in relation to vulnerable groups of children, for 17 EU Member Countries and 1 Candidate Country the Committee, manifested its concern in the development and adoption of effective strategies to eliminate the existing forms of discrimination among children at the national level. In this domain the Committee demanded the adoption of a proactive and comprehensive strategy to eliminate discrimination suffered by any group of children and focusing on those belonging to vulnerable groups. For example, in some cases it requested States to take steps to eliminate negative stereotype of refugee and asylum-seeking and to address the root causes of de facto segregation in schools and localities and to ensure equal access to education, health and other services for children of migrant families, families living in poverty or in less developed areas, Roma children, foreign children in detention and children with disabilities.

Moreover, the Committee, still in relation to the necessity to adopt a proactive approach against discrimination, indicated explicitly to many States the necessity for 10 EU Member Countries to integrate into national legislation minimum standards in compliance with the CRC at local and national levels and recommended that they should increase their efforts to ensure the effective implementation of existing laws guaranteeing the principle of non-discrimination. These latter recommendations seem to aim to stress the Committee’s concern in relation to the effective implementation of this principle for all children, pointing out that the mention of this principle by the national legislation is not the final solution but it is only the starting point of the supported “active approach” against discrimination. Whereas, the Committee require the implementation of anti-discrimination laws and possibilities for children and their parents who have been victims of discrimination.

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6 Austria, Belgium, Czech Republic, Finland, Germany, Greece, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, United Kingdom and Croatia.
7 Belgium, Greece, Italy, Lithuania, Malta, Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden.
8 Austria, Belgium, Cyprus, Czech Republic, Estonia, France, Hungary, Luxembourg, Netherlands and Poland.
discrimination to seek recourse through the judicial system and it suggested to adopt and/or strengthen the efforts to criminalize and take appropriate penal sanctions against any act of racism, racial discrimination, xenophobia and related intolerance and specifically recommended the collection of disaggregated data to enable and facilitate the monitoring of discrimination against children.

In addition, the Committee emphasized for 7 EU Member Countries the importance of collecting disaggregated data in order to monitor the extent of discrimination. It recommended that States should monitor and evaluate the quality, accessibility and availability of the care services dedicated to children, study the effectiveness of the measures taken to counter all forms of discrimination and evaluate existing disparity in the enjoyment by children of their rights and on the basis of that evaluation take the necessary steps to prevent and combat discriminatory disparities.

The monitoring and evaluation activities seem to be essential for the realization of all rights within the CRC for all children, without discrimination. Thus the monitoring process and the indicators used must be sensitive to the various issues specifically mentioned in the article: race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. As the wording of article 2 indicates, the list is not exhaustive but merely illustrative, and States must consider other grounds that might cause discrimination. The Guidelines for Periodic Reports requests disaggregated data in many articles, for example by age, gender, region, rural/urban area, social and ethnic origin. The purpose is to ensure that States Parties have sufficient information to judge whether there is discrimination in implementing the article or provision concerned. The consideration of the implications of each and every article must include the consideration of possible discrimination against individual children or groups of children. Article 2 highlights the “double jeopardy” many children face, discriminated against not only on the grounds of their age and status but also on the grounds of their sex or race or disability.

Thus, the Committee has also suggested that strategies to combat discrimination should be evaluated: “...to each child within their jurisdiction...”

Still in order to prevent and combat negative social attitudes and eliminate negative stereotyping such as traditional roles of men and women in society the Committee invites 6 EU Member Countries to take all appropriate measures, such as comprehensive public education campaigns and recommended to 20 EU Member Countries and 1 Accession Country and 1 Candidate Country to include specific information on the measures undertaken by the State to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

The latter recommendation is formulated on the basis of the first General Comment of the Committee on the aims of education, in which it underlined the importance of education in combating discrimination, including racism: “Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29(1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena” (see education).

9 Greece.
10 Estonia and Italy.
11 Latvia, Lithuania, and Turkey.
12 Austria, Estonia, Germany, Italy, Slovakia, Spain, United Kingdom.
13 Belgium, Cyprus, Czech Republic, Estonia, Hungary and Italy.
14 Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden, United Kingdom, Croatia and Romania.
15 Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, p. 258.
3.2. CRC on best interest of the child

**Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

**Comment on article 3**

The concept of the “best interests” of children has been the subject of more academic analysis than any other concept included in the CRC. In many cases, its inclusion in national legislation pre-dates ratification of the CRC, and the concept is by no means new to international human rights instruments. The Committee has highlighted in the article 3(1), that the best interest of the child shall be a primary consideration in all actions concerning children, as one of the general principles of the CRC, alongside articles 2, 6 and 12. The principle was first seen in the 1959 Declaration of the Rights of the Child, which uses it in Principle 2: “The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration”. Interpretations of the best interests of children cannot trump or override any of the other rights guaranteed by other articles in the CRC. The concept acquires particular significance in situations where other more specific provisions of the CRC do not apply. Article 3(1) emphasizes that governments and public and private bodies must ascertain the impact on children of their actions, in order to ensure that the best interests of the child are a primary consideration, giving proper priority to children and building child-friendly societies.

Within the CRC itself, the concept is also evident in other articles, providing obligations to consider the best interests of individual children in particular situations in relation to:

- separation from parents: The child shall not be separated from his or her parents against his or her 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”; and States must respect the right of the child to maintain personal relations and direct contact with both parents on a regular basis “except if it is contrary to the child’s best interests” (article 9(1) and (3));
- parental responsibilities: Both parents have primary responsibility for the upbringing of their child and “the best interests of the child will be their basic concern” (article 18(1));
- deprivation of family environment: Children temporarily or permanently deprived of their family environment “or in whose own best interests cannot be allowed to remain in that environment”, are entitled to special protection and assistance (article 20);

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• adoption: States should ensure that “the best interests of the child shall be the paramount consideration” (article 21);
• restriction of liberty: Children who are deprived of liberty must be separated from adults “unless it is considered in the child’s best interest not to do so” (article 37(c));
• court hearings of penal matters involving a juvenile: Parents or legal guardians should be present “unless it is considered not to be in the best interest of the child” (article 40(2)(b)(iii)).

The Working Group drafting the CRC did not discuss any further definition of “best interests”, and the Committee has not as yet attempted to propose criteria by which the best interests of the child should be judged in general or in relation to particular circumstances, aside from emphasizing that the general values and principles of the CRC should be applied to the context in question.

The Committee has repeatedly stressed that the CRC should be considered as a whole and has emphasized its interrelationships, in particular between those articles it has elevated to the status of general principles (articles 2, 3, 6 and 12). Thus, the principles of non-discrimination, maximum survival and development, and respect for the views of the child must all be relevant to determining what are the best interests of a child in a particular situation, as well as to determining the best interests of children as a group. And consideration of best interests must embrace both short and long-term considerations for the child.

Any interpretation of best interests must be consistent with the spirit of the entire Convention – and in particular with its emphasis on the child as an individual with views and feelings of his or her own and the child as the subject of civil and political rights as well as special protections. States cannot interpret best interests in an overly culturally relativist way and cannot use their interpretation of “best interests” to deny rights now guaranteed to children by the Convention, for example to protection against traditional practices and violent punishments.

The wording of the first paragraph “...shall be a primary consideration” indicates that the best interests of the child will not always be the single, overriding factor to be considered; there may be competing or conflicting human rights interests, for example between individual children, between different groups of children and between children and adults. The child’s interests, however, must be the subject of active consideration. It needs to be demonstrated that children’s interests have been explored and taken into account as a primary consideration.

The wording of the principle indicates that its scope is very wide, going beyond State-initiated actions to cover private bodies too, and embracing all actions concerning children as a group. In its reporting Guidelines and in its examination of States Parties’ reports, the Committee has emphasized that consideration of the best interests of the child should be built into national plans and policies for children and into the workings of parliaments and governments, nationally and locally, including, in particular, in relation to budgeting and allocation of resources at all levels. The assessment of child impact and building the results into the development of law, policy and practice thus become an obligation (see article 4).

Where the phrase “best interests” is used elsewhere in the CRC (see above), the focus is on deciding appropriate action for individual children in particular circumstances and requires determination of the best interests of individual children. In such situations, the child’s interests are the paramount consideration (as stated explicitly in relation to adoption in article 21).

The Committee has emphasized that article 3(1) is fundamental to the overall duty to undertake all appropriate measures to implement the CRC for all children in article 4. For example, where a plan of action for children is proposed, the “best interests” principle should be fully integrated.

Integration of the principle must imply the development of mechanisms to assess the impact of government actions on children and to incorporate the results of the assessment in policy development (see article 4).

In relation to the vital issue of resource allocation, the best interests principle demands first that within the overall central government budget, and regional and local budgets, there must be an adequate allocation for children (see article 4). There must therefore be sufficient analyses of relevant budgets to
determine the proportion and amount allocated to children. In considering priorities in resource allocation, both between and within services at the national and local level, best interests must be a primary consideration. The non-discrimination principle is also important; but as emphasized in article 2, the non-discrimination principle allows for positive discrimination – that is, affirmative action – on behalf of particularly disadvantaged or vulnerable groups of children. Thus, the setting of priorities and targeting within resource allocation is vital to reducing discrimination in overall implementation.

The Committee has paid increasing attention to the importance of budget analysis in its examination of reports and in its discussions with representatives of States Parties. Its Guidelines for Periodic Reports seeks information on: the proportion of the budget devoted to social expenditure for children at all levels; budget trends; the “arrangements for budgetary analysis enabling the amount and proportion spent on children to be clearly identified”; and “the steps taken to ensure that all competent national, regional and local authorities are guided by the best interests of the child in their budgetary decisions and evaluate the priority given to children in their policymaking”.

Similarly, the impact on children of economic adjustment policies and budgetary cuts must be considered in the light of the best interests principle and other basic principles. This consideration is also highlighted in the Guidelines for Periodic Reports: “The measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector” (para. 20).

The Committee looks for processes which ensure that the best interests of children are considered in policy formulation, and it has promoted the concept of child impact assessment (see article 4). The second and third paragraphs of article 3 are also of great significance. Article 3(2) outlines an active overall obligation of States, ensuring the necessary protection and care for the child’s well-being in all circumstances, while respecting the rights and duties of parents. Together with article 2(1) and article 4, article 3(2) sets out the overall obligations of the State.

Article 3(3) requires that standards be established by “competent bodies” for all institutions, services and facilities for children, and that the State ensures that the standards are complied with. This paragraph demands that institutions, services and facilities be established for children, and that the State must ensure that the standards are complied with through appropriate monitoring. Other articles refer to particular services that States Parties should ensure are available; for example “for the care of children” (in article 18(2) and (3)), alternative care provided for children deprived of their family environment (article 20), care for disabled children (article 23), rehabilitative care (article 39) and institutional and other care related to the juvenile justice system (article 40).

The provision covers not only state-provided institutions, services and facilities but also all those “responsible” for the care or protection of children. In many countries, much of the non-family care of children is provided by voluntary or private bodies, and in some States policies of privatization of services are taking more institutions out of direct State control. Article 3(3) requires standards to be established for all such institutions, services and facilities by competent bodies.

Together with the non-discrimination principle in article 2, the standards must be consistent and conform to the rest of the Convention.

Comment on Committee’s concluding observations on article 3
The Committee has addressed the issue of the child’s best interest in the Concluding Observations on 11 EU Member Countries and 2 Accession Countries and 2 Candidate Countries. The attention of the Committee in these concluding observations is mainly focused on the principle set down in article 3(1) and 3(3). While appreciating the fact that various initiatives have
been developed in order to take into consideration the principles of the best interests of the child, that some Constitutional Courts have made a constitutional principle of the best interests of the child, that new legislative measures and programmes incorporating the principle of the best interests of the child have been adopted and that some national boards and institutions for the health and welfare of children and children’s parliaments have been established, it has, first of all, expressed its concern about the fact that the principle of the best interest of the child is not appropriately analysed with regard to various situations and contexts for 7 EU Member Countries. Thus, the Committee has requested a greater effort to appropriately analyse the principle of the best interests of the child in all those situations having an impact on children as single person or as a social group. In particular for 4 EU Member Countries the Committee demands that appropriate and efficient measures be taken in order to ensure that the principle of the best interests of the child forms the basis of the process and decisions in asylum cases involving children and requests the State to adopt this principle as a paramount consideration in all legislation and policy affecting children in the juvenile justice system and in immigration practices.

The Committee has consistently emphasized, during its monitoring activity, that article 3, together with other identified general principles in the CRC, should be reflected in legislation and integrated into all relevant decision-making. For example, the Committee has indicated that it expects the best interests principle to be written into legislation in a way that enables it to be invoked before the courts. When a best interests principle is already reflected in national legislation, it is generally in relation to decision-making about individual children, in which the child is the primary, or a primary, subject or object – for example in family proceedings following separation or divorce of parents, in adoption and in state intervention to protect children from ill-treatment. It is much less common to find the principle in legislation covering other “actions” that concern groups of children or all children but may not be specifically directed at children. The principle should apply, for example, to policy-making on employment, planning, transport and so on. Even within services whose major purpose is children’s development, for example education or health, the principle is often not written into the legislative framework.

Moreover in its General Comment no.5 of 2003 the Committee stresses that article 3(1) refers to actions undertaken by “public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”. Thus the principle requires active measures through Government, parliament and the judiciary. “Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children’s rights and interests are or will be affected by their decisions and actions – by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children”.

From the concluding observations the Committee’s concern also appears in relation to the integration into all the revisions made to legislation, judicial and administrative decisions and into projects, programmes and services which have an impact on all children for 4 EU Member Countries, 1 Accession Country and 2 Candidate Countries as provided by article 3 (3). Thus, the Committee demands a stronger integration of this principles in all the mentioned revisions and services dedicated to children and in some cases calls for the reinforcement of the research and educational programs for professionals dealing with children and the strengthening of the efforts to be made by the State in

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18 Germany and Malta.
19 Czech Republic, Finland, Hungary, Lithuania, Luxembourg, Sweden, United Kingdom, Croatia.
20 Czech Republic, Italy, Lithuania, Luxembourg, Malta, Sweden and United Kingdom.
21 Hungary, Lithuania, Sweden, United Kingdom.
22 Czech Republic, Finland, Germany, Lithuania, Croatia, Romania, Turkey.
order to ensure that the general principle of the best interest of the child is widely spread and understood.

The provision in article 3(3) does not contain an exhaustive list of the areas in which standards must be established but it does mention “particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

In addition, services and institutions providing care and protection must comply with all other provisions of the CRC, respecting, for example, the principles of non-discrimination and best interests and the right of children to have their views and other civil rights respected and to be protected from all forms of violence and exploitation (articles 2, 3, 12, 13, 14, 15, 16, 19, 32-37). In addition, article 25 sets out the right of a child who has been placed in care, under protection or treatment “to a periodic review of the treatment provided for the child and all other circumstances relevant to his or her placement”.

Concluding, the implementation of article 3(3) requires a comprehensive review of the legislative framework applying to all such institutions and services, whether run directly by the State, or by voluntary and private bodies. The review needs to cover all services – care, including foster care and day-care, health, education, penal institutions and so on. Consistent standards should be applied to all, with adequate independent inspection and monitoring.

3.3. CRC on right to life, survival and development

Article 6

*States Parties recognize that every child has the inherent right to life.*

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Comment on article 6

Article 6 is one of the articles designated by the Committee as a general principle, guaranteeing the child the fundamental right to life, upheld as a universal human rights principle in other instruments, and to survival and development to the maximum extent possible.

The concept of “survival and development” to the maximum extent possible is crucial to the implementation of the whole CRC. The Committee considers development as an holistic concept, and many articles of the Convention specifically refer to the goal of development. Other articles emphasize the key role of parents and the family for child development and the State’s obligation to support them. Protection from violence and exploitation is also vital to maximum survival and development.

As with the other identified general principles (articles 2, 3, and 12), the Committee has proposed that article 6 should be reflected in domestic legislation. The inherent right to life is upheld as a universal human rights principle in article 3 of the Universal Declaration of Human Rights: “Everyone has the right to life, liberty and security of person”.

Article 1 of the CRC deliberately leaves open the starting point of childhood, that is, whether it is conception, birth or sometime in between. Thus, the CRC leaves individual States to decide for themselves the conflicting rights and interests involved in issues such as abortion and family planning, and the Committee has therefore suggested that reservations to preserve State laws on abortion are unnecessary (see article 1).

Following the 1997 *General Discussion on the rights of children with disabilities*, throughout its monitoring activity the Committee invites States to review and amend laws affecting disabled

63 Czech Republic and Finland.

children which are not compatible with the principles and provisions of the Convention, for example legislation (i) which denies disabled children an equal right to life, survival and development (see article 23).

In its second paragraph, article 6 of the CRC goes beyond the fundamental right to life to promote survival and development “to the maximum extent possible”. The concept of “development” is not just about the preparation of the child for adulthood, it is about providing optimal conditions for childhood, for the child’s life now.

The Committee has emphasized “child development” as an holistic concept, embracing the whole Convention. In the Guidelines for Periodic Reports, it asks States to describe measures taken “to create an environment conducive to ensuring to the maximum extent possible the survival and development of the child, including physical, mental, spiritual, moral, psychological and social development, in a manner compatible with human dignity, and to prepare the child for an individual life in a free society” (par. 40).

Many of the obligations of the CRC, including in particular those related to health, adequate standard of living, education, and leisure and play (articles 24, 27, 28, 29 and 31) are relevant to ensuring the maximum development of the child, and individual articles expand on the concept of “development”, for instance, in article 27, States Parties recognize “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”. Among the aims of education set out in article 29 is “...The development of the child’s personality, talents and mental and physical abilities to their fullest potential...” and preparation of the child for “responsible life in a free society”. The CRC’s provisions protecting the child from violence and exploitation (in particular articles 19 and 32-39) are as vital to maximum survival and development as those on the provision of services. The CRC’s Preamble upholds the family as the “natural environment for the growth and well-being of all its members and particularly children” and recognizes 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”. Article 5 requires respect for the “evolving capacities of the child” – a key concept of overall development. Article 18 recognizes that parents or legal guardians have the “primary responsibility” for the upbringing and development of the child and requires the State to provide appropriate assistance and in article 20, special protection for those deprived of a family environment. Article 25 requires a periodic review of all children placed in care, under protection or treatment – an important safeguard for their maximum development. And in relation to disabled children, article 23 requires assistance to be provided “in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development”. The Committee expects implementation of all other articles to be carried out with a view to achieving the maximum survival and development of the child – a concept clearly in line with the principle of the best interests of the child.

Moreover in its General guidelines for periodic reports in relation to article 6 the Committee demanded that States Parties also provide information on the measures taken to ensure the registration of the deaths of children, the causes of death and, where appropriate, investigation and reporting on such deaths, as well as on the measures adopted to prevent children’s suicide and to monitor its incidence and to ensure the survival of children at all ages, including adolescents, and the prevention of risks to which that group may be particularly exposed (for example, sexually transmitted diseases, street violence). In addition the Committee asked States to provide relevant disaggregated data, including on the number of suicides among children (par. 41).

25 See also on this point Report on the sixteenth session, CRC/C/69, p. 51 ss.
26 CRC/C/58, 20 November 1996.
Comment on Committee’s concluding observations on article 6

Concerning the right to life, survival and development, the Committee has made a recommendation addressing this issue for a total of 6 EU Member Countries and 2 EU Accession Countries. According to the Manual on Human Rights Reporting, 1997, measures taken by States to implement article 6 of the Convention on the Rights of the Child may be “of a positive nature and thus designed to protect life, including by increasing life expectancy, diminishing infant and child mortality, combating diseases and rehabilitating health, providing adequate nutritious foods and clean drinking water. And they may further aim at preventing deprivation of life, namely by prohibiting and preventing death penalty, extra-legal, arbitrary or summary executions or any situation of enforced disappearance. States Parties should therefore refrain from any action that may intentionally take life away, as well as take steps to safeguard life.” Article 24 of the Convention on the Rights of the Child expands on the child’s right to health and health services, and specifically requires “appropriate measures [...] to diminish infant and child mortality” (article 24(2)(a)).

The same approach is present in the General Comment no. 5 (2003) on the general measures of implementation of the CRC, in which, referring to article 6 of the CRC the “Committee expected States to interpret “development” in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development. Implementation measures should be aimed at achieving the optimal development for all children”. While encouraged by the decline in infant mortality rates in some States, from the Concluding Observations analysed, it emerges that the Committee addressed the issues of the protection of children from death and injuries due to traffic and domestic accidents, outlining that the main cause of this problem is the lack of attention dedicated to this point at the national level and to the absence of a consolidated awareness of the children and of those in close contact with them. These aspects have been addressed in relation to 3 EU Member Countries and 1 EU Accession Country recommending that States continue and strengthen as much as possible the efforts to prevent these accidents, through a systematic enforcement of existing regulations and by ongoing awareness raising through educational campaigns.

In relation to these issues the Committee recommended the promotion of initiatives with the intention of diminishing the number and consequence of accidents involving children through, inter alia, legislation, standardization of toys and child care articles and training for professionals and families with children on the prevention of accidents, fulfilling the conclusions of the ad hoc Working Group of the Committee for the Prevention of Accidents, in which the problem of traffic accidents appears as an another common cause of preventable death, affecting children.

Moreover, the attention of the Committee seems to be more focused on the single national situations, for this reason in this field there is a concentration of two or three recommendations in relation to the same Country. These singular cases are referred to corporal punishments such as the use of plastic baton rounds as a means of riot control as it causes injuries to children and may jeopardize their lives, recommending the abolishing of the use of such instruments on children. This observation is realised on the basis of the fact that the obligation set in article 6 of the CRC aims to preserve the life of children and to promote survival and maximum development. This obligation is expanded upon in many other articles, such as: article 19, protection from all forms of violence; article 37, protection from torture and cruel, inhuman or degrading treatment or punishment; article 38, protection of children affected by armed conflict, and others. Throughout its monitoring activity the Committee has asserted the right to life, as well as other provisions, when expressing concern at violence against children by security forces, police and others.

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27 Czech Republic, Greece, Ireland, Portugal, Netherlands, United Kingdom, Croatia and Turkey.
29 Czech Republic, Greece, Portugal, Croatia.
30 Following the recommendation of the Committee against Torture (A/53/44, par. 77(d)).
Other observations are referred to the suicide rate among children, and the Committee recommends that the State party should study the possible causes of suicide among youths and the characteristics of those who appear to be most at risk and take all the necessary steps to provide additional support and interventional programmes which would reduce this tragic phenomenon. The *Guidelines for Periodic Reports* specifically asks for information on the rates and the prevention of suicide. The Committee has also noted that suicide rates may vary between different groups within a society in a discriminatory way, which also requires study.

Finally, the CRC referred to the practice of euthanasia also applicable to children aged 12 years or older and the respect of the required criteria explicitly set out in the national legal framework. In relation to this practice, the Committee requested the revision of the regulation and procedures for the euthanasia performed on children, strengthening the control and ensuring that the mental and psychological status of the child and parents or guardians requesting the termination of life are taken into consideration when determining whether to grant the request.

Another particular case for concern for the Committee, in relation to the protection of the right to life, is referred to the practice of “honour killing” whereby immediate family members kill women who are suspected of being unchaste and notes that often both victims and perpetrators are minors. In this case the Committee strongly recommends that States rapidly review the legislation with a view to addressing these crimes in an effective way and to eliminating all provisions allowing reductions of sentence, if the crime is committed for honour purposes. It also recommends the development and effective implementation of awareness raising and education campaigns, also involving religious and community leaders, to effectively combat discriminatory attitudes and harmful traditions affecting girls. The Committee has expressed serious concern at “honour killings” in line with the Commission on Human Rights resolutions 2000/31 and 2000/45, the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2000/3) and those of CEDAW, recommending that the State party take all necessary measures to ensure that there is no discriminatory treatment for crimes of honour and that they are promptly and thoroughly investigated and the criminals prosecuted. In addition, the Committee recommends that the State Party should undertake awareness-raising activities demonstrating that such practices are socially and morally unacceptable, and take steps that ensure that protective custody is replaced by other types of protection for women.

3.4. CRC on respect for the view of the child

**Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

**Comment on article 12**

The Committee asserted that article 12 is a general principle of fundamental importance to all aspects of implementation of the CRC and to the interpretation of all other articles. In its paragraph 1 it requires States to assure that any child capable of forming his/her own view has

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the right to express views freely in all matters affecting him or her and that the child’s views are given due weight in accordance with the age and maturity.

In paragraph 2, article 12 specifically provides the child with the right to be heard in any judicial and administrative proceedings affecting him or her, covering a very wide range of court hearings and also formal decision-making affecting the child in, for example, education, health, planning, the environment and so on (see juvenile justice).

The Committee has consistently emphasized that the child must be regarded as an active subject of rights and that a key purpose of the CRC is to emphasize that human rights extend to children. Article 12, together with the child’s right to freedom of expression (article 13), and other civil rights to freedom of thought, conscience and religion (article 14), and freedom of association (article 15) underline children’s status as individuals with fundamental human rights, and views and feelings of their own. The Committee has rejected what it has defined as “the charity mentality and paternalistic approaches” to children’s issues. Thus, within its monitoring activity the Committee invariably raises implementation of article 12 with States Parties and identifies traditional practices, culture and attitudes as possible obstacles.

The wording of the two paragraphs of article 12 do not provide a right to self-determination but deal with the involvement of children in decision-making process affecting their life. The references to the “evolving capacities” of the child, in articles 5 and 14 emphasize the need to respect the child’s developing capacity for decision-making.

Several other articles include references to children’s participation. Article 9(2) refers to the child’s right to be heard in relation to proceedings involving separation from his or her parent(s), during which “all interested parties shall be given an opportunity to participate in the proceedings and make their views known” (article 9) (see separation from parents). In relation to adoption proceedings, article 21(a) refers to “the informed consent” of the persons concerned (see adoption). Every child deprived of his or her liberty has the right under article 37 to challenge the legality of the deprivation before a court or other authority, suggesting a right to initiate court action rather than just to be heard (see juvenile justice). Whereas, article 40, in relation to children “alleged as, accused of, or recognized as having infringed the penal law,” emphasizes the juvenile’s right to an active role in the proceedings, but that he or she must not “be compelled to give testimony or to confess guilt” (article 40(2)(b)(iv)) (see juvenile justice).

The significance of article 12 of the CRC is that it not only requires that children should be assured the right to express their views freely, but also that they should be heard and that their views be given “due weight”. These principles are recognised as such also by the Universal Declaration of Human Rights that states: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” (article 19). And the International Covenant on Civil and Political Rights states: “Everyone shall have the right to hold opinions without interference” (article 19(i)).

Concluding, the CRC Committee through the adoption in 2003 of the General Comment no. 5 on General measures of implementation of the Convention on the Rights of the Child, affirmed that the principle of article 12 highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights and it applies equally to all measures adopted by States to implement the Convention.

"Opening government decision-making processes to children is a positive challenge which the Committee finds States are increasingly responding to. Given that few States as yet have reduced the voting age below 18, there is all the more reason to ensure respect for the views of unenfranchised children in Government and parliament. If consultation is to be meaningful, documents as well as processes need to be made accessible. But appearing to “listen” to children is relatively unchallenging; giving due weight to their views requires real change. Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children’s rights".
Comment on Committee’s concluding observations on article 12
Concerning the principle of respecting the view of the child, the Committee addressed this point for 21 EU Member Countries and 1 EU Accession Country and 2 Candidate Countries. Such a large number of observations shows the importance of this principle in the full implementation of the CRC for the Committee.

In relation to the principles set down in article 12 CRC and with the intention of underlining that the child has rights and is an active participant, in 1999 the Committee together with the Office of the High Commissioner for Human Rights, held a two-day workshop: “Tenth anniversary of the Convention on the Rights of the Child commemorative meeting: achievements and challenges”, on 30 September and 1 October 1999. On that occasion the Committee made detailed recommendations, stating: “Child rights must be viewed as the human rights of children. The experience of general human rights activities over recent decades should be analyzed and used to promote respect for the rights of the child, and to avoid the perseverance of the charity mentality and paternalistic approaches to children’s issues.”

The recommendations include: “The Committee will consider adopting, as a priority, a comprehensive general comment on child participation as envisaged in the Convention (and more particularly in article 12) bearing in mind that participation includes, but is not limited to, consultation and proactive initiatives by children themselves. The Committee reminds States Parties of the need to give adequate consideration to the requirements of these provisions. Such attention should include:

- taking appropriate measures to support the right of children to express their views;
- ensuring that schools, as well as other bodies providing services for children, establish permanent ways of consulting with children in all decisions concerning their functioning, the content of the curriculum or other activities;
- increased consideration for the creation of space, channels, structures and/or mechanisms to facilitate the expression by children of their views, in particular with regard to the formulation of public policies from local up to national level, with appropriate support from adults, including in particular support for training. This requires investment to institutionalize effective spaces and opportunities for children to express their views and to engage with adults, especially through schools, community organizations, NGOs, and the media;
- encouraging and facilitating the creation of structures and organizations run by and for children and youth...”

These recommendations seem to be the basis of the concluding observation formulated by the Committee, in which, first of all, while appreciating the efforts made by States parties to promote respect for the views of the child, the Committee expressed its concern about the low level of consideration and attention given to this essential principle by the civil society and the public and private institutions. Thus, it recommended to 10 EU Member Countries, 1 Accession Country and 2 Candidate Countries, to provide the reinforcement of awareness raising campaigns among the public in general as well as the education and training of professionals with a view to the implementation of this general principle in daily life, with the aim of changing the traditional perception of children as objects rather than subjects with rights. In a few cases the Committee explicitly stressed the necessity for skill-development and training programmes on children's rights, in a community setting for parents, teachers, professionals working with and for children, local officials, community leaders, administrative officials, the judiciary, Roman Catholic Church and other religious groups to encourage children to express their informed view, to have their view taken into account and to participate in matters affecting them.

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32 Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Sweden, United Kingdom, Croatia, Romania, Turkey.
33 Report on the twenty-second session, September/October 1999, CRC/C/90, par. 291 (a), (w), (x) and (y).
34 Austria, Cyprus, Estonia, France, Germany, Italy, Lithuania, Luxembourg, Poland, Slovakia, Croatia, Romania, Turkey.
35 Estonia and Slovakia.
36 Poland and Romania.
Article 12 states one of the fundamental values of the CRC and probably also one of its basic challenges. “In essence it affirms that the child is a fully-fledged person having the right to express views in all matters affecting him or her, and having those views heard and given due weight. Thus the child has the right to participate in the decision-making process affecting his or her life, as well as to influence decisions taken in his or her regard...” At the first sight it might be considered that article 12 is basically addressing the same reality as article 13 on freedom of expression and information. It is true that they are closely connected. But the fact they were both incorporated in the Convention and coexist in an autonomous manner, has to be interpreted as to mean that, while article 13 recognizes in a general way freedom of expression, article 12 should prevail in all those cases where the matters at stake affect the child, while stressing the right of the child to be heard and for the child's views to be taken into account.

For this reasons the Committee in its Concluding Observations recommended to 10 EU Member Countries and 1 Accession Country that efforts be made to continue to promote within the family, schools, administrative bodies and other institutions respect for the view of the children and to facilitate their participation in all matters affecting them. In some cases it requested the States to continue to enhance child participation and respect for the opinions of the child, including at national and local levels and in accordance with the age and maturity of the child and strengthen the effort, including in respect of legislation, to ensure that children's views are heard and taken into consideration in all judicial, administrative and other decisions affecting them and in accordance with the child's age and maturity. From the legal point of view, while welcoming the efforts made by the States amending, reviewing and harmonising the national legislation in order to reinforce the rights of the child to express his/her own opinions freely in all matters affecting her/him, the Committee expressed its concern in relation to the necessity that the revisions of the national legislation should expand children's opportunities to express their views and to be heard. The Committee stressed that it was essential to adopt provisions to ensure that article 12 of the CRC is fully implemented, and would be applicable to courts, administrative bodies, institutions, schools, childcare centres and in family matters affecting children and would guarantee the right to appeal against the decisions adopted, for 4 EU Member Countries. In relation to age, article 12(1) does not set any lower age limit on children’s right to express views freely. It is clear that children can and do form views from a very early age, and the CRC provides no support to those who would impose a lower age limit on the ascertainment or consideration of children's views. And it is important to note, for example, that ascertaining the views of some disabled children may require special consideration.

The Manual on Human Rights Reporting, 1997, states: “Pursuant to the provisions of this article, States Parties have a clear and precise obligation to assure to the child the right to have a say in situations that may affect him or her. The child should therefore not be envisaged as a passive human being or allowed to be deprived of such right of intervention, unless he or she would clearly be incapable of forming his or her views. This right should therefore be ensured and respected even in situations where the child would be able to form views and yet be unable to communicate them, or when the child is not yet fully mature or has not yet attained a particular older age, since his or her views are to be taken into consideration ‘in accordance with the age and maturity of the child’...” (Manual, p. 426).

There are no limits to the obligation of States Parties to assure the child the right to express views freely. In particular, this emphasis in article 12, that there is no area of traditional parental or adult authority in which children’s views have no place, aims to stress that article 12 implies no obligation on the child to express views. “Freely” implies without either coercion or constraint that: “The child has the right to express views freely. He or she should therefore not suffer any pressure, constraint or
influence that might prevent such expression or indeed even require it”\textsuperscript{41}. Moreover, the reference in article 12 to “all matters” shows that participatory rights are not limited to matters specifically dealt with under the CRC. As the \textit{Manual on Human Rights Reporting, 1997}, comments: “The right recognized in article 12 is to be assured in relation to all matters affecting the child. It should apply in all questions, even those that might not be specifically covered by the Convention, whenever those same questions have a particular interest for the child or may affect his or her life... The right of the child to express views therefore applies in relation to family matters, for instance in case of adoption, in school life, for instance when a decision of expulsion of the child is under consideration, or in relation to relevant events taking place at the community level, such as when a decision is taken on the location of playgrounds for children or the prevention of traffic accidents is being considered. The intention is therefore to ensure that the views of the child are a relevant factor in all decisions affecting him or her and to stress that no implementation system may be carried out and be effective without the intervention of children in the decisions affecting their lives”\textsuperscript{42}.

On the basis of this interpretation, in several cases the Committee requested the adoption of specific legislation governing procedure in courts and administrative proceedings ensuring that children capable of forming their own views have the right to express their own views and that due weight is given to them in accordance with the age and maturity of the child, for 4 EU Member Countries\textsuperscript{43}. In this way the Committee reiterated the active obligation, set out in the words of article 12, to listen to children’s views and to take them seriously. Again, they are in accordance with the concept of the evolving capacities of the child, introduced in article 5. In deciding how much weight to give to a child’s views in a particular matter, the twin criteria of age and maturity must be considered. Age on its own is not the criterion; the CRC rejects specific age barriers to the significant participation of children in decision-making.

Another issue on which the Committee manifested its own attention is related to the promotion of contexts in which the child can express freely his/her opinions, thus it invites States to 5 EU Member Countries\textsuperscript{44} to take the necessary steps to promote and facilitate the meaningful participation of children in society, continuing and increasing the efforts to support a children’s helpline, ensuring that all municipalities meet the requirements for active participation by children and young people, encouraging and supporting the establishment of youth centres and organizations, national youth councils through adequate democratic structures and financial resources. These suggestions from the Committee are essentially linked with the wording of article 12(2), which states that the child should be “provided the opportunity”, suggests an active obligation on the State to offer the child the opportunity to be heard, although, again, it is important to emphasize that there is no requirement that the child express views. The \textit{Manual on Human Rights Reporting, 1997} also emphasizes that the child’s right to intervene in judicial or administrative proceedings affecting him or her “should be interpreted in a broad manner so as to include all those situations where the proceedings may affect the child, both when he or she initiates them, for instance by introducing a complaint as a victim of ill treatment, and when the child intervenes as a party to the proceedings, for instance when a decision must be taken about the child’s place of residence in view of the separation of the child’s parents, or in the case of the change of the child’s name”\textsuperscript{45}. There is an increasingly recognized need to adapt courts and other formal decision making bodies so as to enable children to participate. In particular, the Committee suggests that for court hearings this could include innovations such as more informality in the physical design of the court and the clothing of the judges and lawyers, the videotaping of evidence, sight screens, separate waiting rooms and the special preparation of child witnesses (see juvenile justice).

\textsuperscript{42} \textit{Manual}, p. 426 and 427.
\textsuperscript{43} Belgium, Hungary, Italy and United Kingdom.
\textsuperscript{44} Austria, Belgium, Denmark, Estonia and Netherlands.
\textsuperscript{45} \textit{Manual}, p. 428.
4. Civil rights and freedom

4.1. CRC on right to identity

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Comment on article 7

Article 7 of the CRC provides for the following children’s rights:
- registration;
- to a name;
- to a nationality;
- to know and be cared for by their parents.

The first part of paragraph 1 of the article reflects the text of article 24 (2) and (3) of the International Covenant on Civil and Political Rights:

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

The Human Rights Committee’s General Comment on article 24 of the Covenant notes: “In the Committee’s opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child’s legal personality.”

The second part of paragraph 1 of article 7, as the Manual on Human Rights Reporting, 1997, notes, also contains a “new right” – the child’s right to know and be cared for by his or her parents. The right is qualified by the words “as far as possible”. It may not be possible to identify parents, and even when they are known, it may not be in the child’s best interests to be cared for by them. Article 7 should be read in conjunction with article 8 (preservation of identity, including nationality, name and family relations), article 9 (separation from parents), article 10 (family reunification) and article 20 (continuity in upbringing of children deprived of their family environment).

Comment on Committee’s concluding observations on article 7

The right to identity was addressed by the Committee to a large number of EU Countries (13 EU Member Countries and 3 Accession / Candidate Countries). Few positive achievements are pointed out by the Committee in article 7 to EU Countries (3 EU Member Countries and 2 Accession / Candidate Countries): special recent provisions adopted by the EU Countries in favour of the right to identity (2 EU Member Countries and 1 EU Accession / Candidate Country); appreciation of the efforts made by one EU Country to reform its legislation in accordance with the provisions and principles of the CRC; the proposal of the National Consultative Commission on Life Sciences and Health Ethics (CNE) which seems to allow for significant improvements in this regard.

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2 Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, p. 133.
3 Austria, Czech Republic, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands and Aruba, United Kingdom, Croatia, Romania, Turkey.
4 France, Luxembourg, United Kingdom, Croatia, Romania.
5 France, United Kingdom, Romania.
Birth registration and the fight against the statelessness of children are the most frequent issues considered by the Committee’s Concluding Observations and are strictly in connection with the CRC principles of non-discrimination (article 2) and of the best interest of the child (article 3). The Committee considers birth registration important for the following reasons:

1. It is the State’s first official acknowledgement of the child’s existence and it represents a recognition of each child’s individual importance to the State and of the child’s status under the law.

2. Birth registration is an essential element of national planning for children – providing the demographic basis on which effective strategies can be built. Without registration, for example, it is unlikely that countries can have accurate knowledge even of their child mortality rates, a key indicator for child survival strategies.

3. Third, registration is a means of securing children’s other rights – such as their identification following war, abandonment or abduction, enabling children to know their parentage (particularly if born out of wedlock), gaining them access to services and state benefits such as immunization, health care and school enrolment, and protection through legal age limits (for example in employment, recruitment to the armed services or in the juvenile justice system) and reducing the danger of trafficking in babies or of infanticide.

The Human Rights Committee’s General Comment notes: “The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant. Reports by States Parties should indicate in detail the measures that ensure the immediate registration of children born in their territory”.

Although the CRC does not specify what must be registered, other rights (to name and nationality, to know parentage, family and identity) imply that registration ought, as a minimum, to include:

- the child’s name at birth,
- the child’s sex,
- the child’s date of birth,
- where the child was born,
- the parents’ names and addresses,
- the parents’ nationality status.

On the issue of birth registration (4 EU Member Countries and 2 EU Accession Countries) the Committee recommends that the State should:

- strengthen its efforts to address the situation of birth registration in some local regions (including those of undocumented migrants) or overseas areas;
- ensure that birth certificates are issued for all children of refugees and asylum-seekers born in the territory of the State party;
- ensure that all children are registered at birth, also those persons who speak a language other than the language of this Country, including refugees and asylum-seekers, who have difficulty in registering names for their children in their native language, and are able to be registered under their full original name as chosen by themselves, their parents or other legal guardian;
- ensure birth registration of all children, in particular of Roma children;
- develop more widespread awareness among the population, including through public information campaigns, of the importance of immediate birth registration;

The attention of the Committee to birth registration is focused on the need to apply the principle to all children in the Countries, independently from the place and the group of origin (i.e. refugee, asylum-seekers and Roma children).

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6 Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, p. 133 and 134.
7 Germany, Greece, France, Netherlands, Romania, Turkey.
Specifically on the non-discrimination principle (article 2, CRC) linked to article 7, the Committee underlined the problem in relation to specific groups (4 EU Member Countries and 2 EU Accession Countries)* recommending or noting:

- the development of awareness-raising campaigns aimed at reducing discriminatory practices against the Roma population;
- the elimination of discrimination against children on account of their parents’ past opinions or activities;
- that States should fully apply the provisions of the national law to all refugee children below the age of 18 years and review their legislation and policies regarding Roma children and other children belonging to ethnic minorities seeking asylum in the State party, consider the recruitment of children as soldiers as a child-specific persecution to be accepted in the asylum procedure and ease refugee family reunification requirements and procedures;
- the right of some children, and particularly child members of some distinct ethnic, religious, linguistic and cultural groups such as the Roma, to birth registration;
- different types of access to citizenship, which mainly affect children from minority groups, especially Roma children;
- large number of stateless persons, in particular among the Roma.

The most vulnerable groups mentioned by the Committee are: refugees, asylum-seekers, Roma children, ethnic, religious, linguistic and cultural groups, minority groups.

Concerning citizenship, the Committee noted that some States confer limited forms of nationality on certain groups of children, i.e. the children of parents who are not themselves citizens. This appears also to be a form of discrimination. The “right to acquire a nationality” implies a right to all the benefits derived from nationality.

Nationality can be acquired either from parents (jus sanguinis) or from place of birth (jus soli). Islamic law favours nationality taken from parentage; some countries prohibit dual nationality, so a choice between nationalities may have to be made for children, and some countries have systems that accommodate both parentage and place of birth, sometimes with discriminatory effects. Another potentially discriminatory practice is when the child automatically takes the nationality of the father rather than the mother.

The words “the right to acquire a nationality” can be interpreted as being the right “from birth”.

Principle 3 of the Declaration of the Rights of the Child (1959) states simply “The child shall be entitled from his birth to a name and a nationality”), but in any event it must mean that stateless children should have the right to acquire the nationality of the country in which they have lived for a specified period. The latter provision is important given the growing numbers of stateless, often parentless, children who receive adequate protection from the country in which they live throughout their childhood but then discover that they are unlawful residents at the time of their majority.

Decisions about nationality are often made by parents at the time of the child’s birth. Older children, however, should be able to apply on their own behalf to change their nationality.

On the issue of citizenship of children (3 EU Member Countries and 1 EU Accession Country)*, the Committee recommends that States should:

- reduce the number of stateless children by, inter alia, expediting and improving the procedure of naturalization, improve the situation of non-citizens without legal residence permits by simplifying and shortening the procedures for applying for residence permits, carry out campaigns to encourage applications with a view to reducing the number of children who are stateless or illegal residents, ensure that all children residing in the territory of the Country enjoy all the rights under the Convention, irrespective of their citizenship or lack of it;
• ensure that all children born in a State Party are protected from statelessness, because if their parents are stateless persons who haven’t the right of permanent residence in the Country they do not automatically acquire citizenship;
• facilitate applications for citizenship and resolve the situation of stateless children.

Finally the Committee concurs with the recommendation of the Committee on the Elimination of Racial Discrimination to streamline the process of naturalization for all those who apply for citizenship, and, in particular, it encourages the State party to provide more information and support for the parents of non-citizen children to enable parents to apply for citizenship on behalf of their children and it remains concerned about the different types of access to citizenship, which mainly affect children from minority groups, especially Roma children.

Also regarding citizenship, the attention of the Committee is focused on the need to apply the right to nationality to all children in the Countries, independently from the group of origin (i.e. refugees, asylum-seekers and Roma children).

Another issue considered by the CRC Committee is the registration of the parents’ data. A few decades ago the definition of “parent” was fairly straightforward. There were the “biological” parents, sometimes known as the “natural” or “birth” parents, and there might also be the “psychological” or “caring” parents, such as adoptive or foster parents, who acted as the child’s primary caregiver throughout his or her infancy.

Notwithstanding these conceptual evolutions, a reasonable assumption is that, as far as the child’s right to know his or her parents is concerned, the definition of “parents” includes genetic parents (for medical reasons alone this knowledge is of increasing importance to the child) and birth parents, that is the mother who gave birth and the father who claimed paternity through partnership with the mother at the time of birth (or whatever the social definition of father is within the culture: the point being that such social definitions are important to children in terms of their identity). Moreover, a third category, the child’s psychological parents – those who cared for the child for significant periods during infancy and childhood – should also logically be included since these persons too are intimately linked to children’s identity and thus in their rights under article 8.

Concerning the registration of the parents’ data (4 EU Member States), the Committee stresses the following needs:
• to introduce and implement legal provisions and regulations for the separate registration of all relevant medical and other data, in particular the name and date of birth of the parent(s) preventing the use of the so-called “baby flaps”;
• to establish procedures for the inclusion of the name of the father on the birth certificates of children born of unmarried parents;
• to ensure that children born out of wedlock legally have from birth a mother and encourage recognition of these children by their fathers;
• to prevent and eliminate the practice of the so-called anonymous birth, as an alternative the necessary measures should be taken so that all information about the parent(s) are registered and filed.

In close connection with the parent’s data, we find the access to data information on which the Committee recommends not only that States should allow the child at an appropriate time to have access to his/her parent’s data (name and date of birth of the parent(s)) and to have the right to know, as far as possible, the identity of his or her parents (i.e. the right to conceal the identity of the mother if she so wishes is not in conformity with the provisions of the Convention), but also to ensure respect for the child’s right to know his or her parents’ identity, should it be an adopted child or a child born out of wedlock who has not been recognized by either of his or her parents. Furthermore the Committee is concerned that children born out of wedlock, adopted children, or children born in the context of medically assisted fertilization do not have the right to know the identity of their biological parents.

The final topic is dedicated to the signing and ratification of international Treaties. The Committee recommends to one EU Member Country that it should withdraw its reservation on article 7, paragraph
1, of the CRC; to another EU Member Country that it should accede to the Convention relating to the Status of Stateless Persons of 1954 as well as to the Convention on the Reduction of Statelessness of 1961 (1 EU Member Country and 1 Accession / Candidate Country)

, in view of ensuring protection to all stateless persons; to a third EU Member Country that it should ratify the European Convention on the Legal Status of Children Born out of Wedlock.

4.2. CRC on freedom of religion

**Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

**Comment on article 14**

Article 14 of the CRC confirms for the child the fundamental civil right to freedom of thought, conscience and religion, which has been recognized for “everyone” in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The second paragraph, in accordance with article 5 of the CRC, requires respect for the role of parents in providing direction to the child “in a manner consistent with the evolving capacities of the child”. Paragraph 3 indicates some, but very limited, cases in which restrictions to the child’s freedom to manifest his or her religion or belief are allowed.

The Guidelines for Periodic Reports require information on how this right is “recognized by law specifically in relation to children”. The reference to freedom of religion is also present in other articles of the CRC, namely: art. 30 that recognizes the right of a child who belongs to an ethnic, religious or linguistic minority or who is indigenous “to profess and practise his or her own religion ...” and art. 20 that requires the States to pay due regard to the child’s religious background when arranging alternative care.

The CRC does not define what freedom of religion includes, but in the human rights conventions a reference can be found in art. 18 of the **International Covenant on Civil and Political Rights**: “...This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

In its General Comment on article 18, the Human Rights Committee underlined that the terms “religion” and “belief” must be understood in a broad sense including theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief. Furthermore no one can be obliged to reveal his adherence to a religion or belief.

As regards the relation between the child’s right to freedom of religion and the parents’ direction to the child indicated in par. 2 of art. 14, the CRC differs from the International Covenant on Civil and Political Rights, that states in article 18, par. 4 “the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”, while art. 14 of the CRC refers to the right of the child him/her self to freedom of religion. The second

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**Estonia, Romania.**
paragraph refers to the direction of parents, but it is the child who exercises the right. Furthermore the
direction that parents can provide must be consistent with the child’s evolving capacities and must be
applied in conformity with the whole Convention. “Direction” cannot involve, for instance, any form of
physical or mental violence (article 19). In addition the child’s views must be taken seriously as
indicated in article 12 on the children’s rights to express their views.
The wording of article 14 and the Convention’s general principles certainly do not support the concept
of children automatically following their parent’s religion until the age of 18, although article 8
(preservation of identity), article 20 (preservation of religion when deprived of the family environment),
and article 30 (right to practice religion in the community with members of the child’s group) support
the children’s right to acquire their parents’ religion. The Guidelines for Periodic Reports ask for
information on any legal minimum age defined in legislation for choosing a religion or attending
religious school teaching.
Article 14 and article 20(3) of the CRC require that the right to freedom of religion must be maintained
also when children are separated from their families and are in alternative care. Article 20(3) states
that when considering alternative care for a child, “due regard shall be paid to the desirability of
continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic
background”. However inflexible laws requiring that the child should automatically be brought up in the
religion of his or her parent(s) are not consistent with article 14.

Comment on Committee’s concluding observations on article 14
The Committee has included comments on the right of freedom of religion in the case of 5 EU Member
Countries\(^{11}\). The focus has been in all cases on the discrimination that may arise from the teaching of
religion in public schools or from banning the wearing of religious symbols and clothing in public
schools.
In its Guidelines for Periodic Reports the Committee notes: “Information should also be provided on
measures to ensure respect for the child’s rights in relation to any religious teaching in public schools or
institutions, as well as any limitations to which this freedom may be subject in conformity with
article 14, paragraph 3” (par. 57).
Also the General Comment on article 18 of the Human Rights Committee is very helpful to understand
this point: “The Committee is of the view that article 18(4) permits public school instruction in subjects
such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty
of parents or legal guardians to ensure their children receive a religious and moral education in
conformity with their own convictions, set forth in article 18(4), is related to the guarantees of the
freedom to teach a religion or belief stated in article 18(1). The Committee notes that public education
that includes instruction in a particular religion or belief is inconsistent with article 18(4) unless
provision is made for non discriminatory exemptions or alternatives that would accommodate the
wishes of parents and guardians”\(^{12}\).
Some States have set an age at which any control of the child’s manifestation of religion transfers from
parents to the child, although the concept of “evolving capacities” in article 5 and article 14 appears to
demand more flexibility.
Another form of discrimination associated with school religion may arise when States provide funding
for schooling in certain religions but not others.
In its Concluding Observations, the Committee while appreciating the presence of provisions in the
Constitution or the enactment of laws that guarantee freedom of religion and prohibit discrimination on
the basis of faith\(^{13}\), is concerned about the discrimination or marginalization that may arise from the

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\(^{11}\) France, Germany, Greece, Italy and Poland.

\(^{12}\) Human Rights Committee, General Comment 22, 1993, HRI/GC/1/Rev.5, p. 145.

\(^{13}\) France, Germany.
teaching of religion in public schools. In particular the Committee has recommended for two EU Member Countries\(^4\) the enactment of the regulation allowing children not to attend religion classes or to attend alternative courses, by publicising the regulation stating that religion instruction in state schools is not compulsory, as this may not be known especially to foreign parents or by giving all children attending state schools the real alternative to attend other classes, such as ethics classes instead of religion with parental direction provided in a manner consistent with the child’s evolving capacities.

The prohibition of discrimination on grounds of religion is stated in Article 2 that at par. 2 also requires States to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child’s parents, legal guardians or family members.

Another issue dealt with by the Committee in the Concluding Observations of 2 EU Member Countries\(^5\) is the ban on wearing religious symbols and clothing in state schools applying to students and or to teachers. This subject has been the core of the political debate in various EU States as it touches upon the issue of how to ensure the secular character of western democracies, that are increasingly multicultural, without infringing individuals’ human rights.

The Committee has expressed its concern that the legislation prohibiting the wearing of religious symbols and clothing in state schools may neglect the principle of the best interests of the child and the right of the child to access to education. As a consequence the Committee recommends the State parties, when evaluating the effects of the legislation, use the enjoyment of children’s rights as a crucial criteria in the evaluation process and also consider alternative means, including mediation, of ensuring secular character of state schools, while guaranteeing that individual rights are not infringed upon and that children are not excluded or marginalized from the school system and other settings as a result of such legislation.

As regards the possible banning of religious dress when applying to teachers, the Committee has noted that this does not contribute to the child’s understanding of the right to freedom of religion or to the development of an attitude of tolerance as promoted in the aims of education in article 29 of the Convention. As a consequence the Committee recommends to take educational and other measures aimed at children, parents and others to develop a culture of understanding and tolerance, particularly in the area of freedom of religion, conscience and thought by, inter alia, avoiding measures which single out a particular religious group.

4.3. Children’s access to appropriate information

**Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children’s books;

\(^4\) Greece, Italy, Poland.

\(^5\) France, Germany.
(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Comment on article 17

Article 17 is particularly focused on the role of the mass media but includes a general obligation on States Parties to ensure that the child has access to information and material from diverse sources, in particular those aimed at promoting well-being and physical and mental health. This right is therefore linked to the right to freedom of expression (article 13), and to maximum development (article 6).

The media must be encouraged to disseminate positive material of benefit to the child and in line with the detailed aims for education set out in article 29. The media should also be accessible to the child, promoting and respecting the participatory rights to respect of the views of children (article 12).

The Committee has dedicated to the issue of “the child and the media” a General Discussion in which it has stressed the importance of the media and their different roles in relation to children's rights and development by stating that: “The Committee on the Rights of the Child believes that the media – both written and audiovisual – are highly important in the efforts to make reality [of] the principles and standards of the Convention. The media in many countries have already contributed greatly to creating an awareness of the Convention and its content. The media could also play a pivotal role in monitoring the actual implementation of the rights of the child...”.

The Committee also highlighted the importance of children having access to the media by stating that the media can be an important instrument at the disposal of children to express themselves in accordance with the principle indicated by the CRC in article 12 that the views of children must be heard and given due respect and with the rights to freedom of expression, thought, conscience and religion set forth in art. 13 and 14. Children should not only be considered as media consumers but also subjects taking an active role in the media. In this respect the Committee has noted that “there have been experiments in several countries to develop child-oriented media; some daily newspapers have special pages for children and radio and television programmes also devote special segments for the young audience. Further efforts are however needed” (Report on the eleventh session, January 1996, CRC/C/50, Annex IX, pp. 80-81).

As a consequence the Committee proposed that States should give “increased consideration to the creation of space, channels, structures and/or mechanisms to facilitate the expression by children of their views, in particular with regard to the formulation of public policies from local up to national level, with appropriate support from adults, including in particular support regarding training. This requires investment to institutionalise effective spaces and opportunities for children to express their views and to engage with adults, especially through schools, community organisations, NGOs, and the media...”.

The Committee also highlighted the importance of ensuring the right of children with special needs to have access to appropriate information. In particular it stated that ensuring that disabled children have equal access to information through the media may require special and additional arrangements (see article 23) while as regards children whose liberty is restricted it affirmed that special consideration may need to be given to children’s access to the media in any institutional placement and in other special circumstances.

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Comment on Committee’s concluding observations on article 17

Concerning the right of access to appropriate information, the CRC Committee has addressed this point for 10 EU Member Countries and 1 EU Accession / Candidate Country. Even if article 17 is focused on children’s access to information and only deals with the possible dangers of the contents of such information in the last paragraph (17e), this is the point to which the Committee has most frequently addressed its attention.

In relation to this point in its General Discussion report on “The child and the media,” the Committee highlighted the potential negative effects on children’s development, including physical and mental health, of the showing of violence through the mass media. In particular the Committee expressed its concern for programmes containing brutal violence and pornography and reported on the on-going discussion in a number of countries about how to protect children from violence in the mass media. This problem has often been addressed with voluntary agreements that have had a varied impact. Article 17 itself recommends that appropriate guidelines be developed ‘for the protection of the child from information and material injurious to his or her well-being’. The Committee reported that such guidelines have been developed in some countries, with varied results. The Committee also recommended constructive agreements with media companies to protect children against harmful influences, comprehensive plans to empower parents in the media market, training of journalists, and specific guidelines for reporting on child abuse.

In its Concluding Observations to EU States, the Committee highlighted the possible dangers deriving from the use of the media, Internet and videogames, in particular regarding violence, pornography, child pornography and racism and the consequent obligation by the States to protect children from such injurious information.

While appreciating the measures undertaken by almost all States analysed in this field, such as legislative acts, amendments of the Penal Code, Media Council to study children’s use of Internet, consultative guidelines for children use of the Internet, the Committee recommends that they should be further strengthened.

Recommendations concerning this aspect have been addressed to all the States taken into consideration and they range from a general request to strengthen the measures to protect children to some more specific issues. In some cases the request to approve or better implement the relevant legislation is put forward. In other cases the focus is on the involvement of parents and children through specific programmes to raise their awareness (for example: the request to provide parental education and raise the awareness of children and develop programmes and strategies to use mobile technology, media advertisements and the Internet as means for raising awareness among both children and parents).

A second subject addressed by the Committee, although concerning only 1 EU Member Country and 1 EU Candidate Country, regards paragraphs a) and c), in particular the production of programmes and books for children and their dissemination in the country particularly in rural areas and the dissemination of information and material of social and cultural benefit to the child.

In relation to article 17 a) in its first General Comment, on the aims of education, the Committee noted that on the one hand the media have a central role in the promotion of the values and aims set forth in

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48 Austria, Denmark, Finland, France, Germany, Greece, Hungary, Lithuania, Luxembourg, Sweden and Croatia.
50 Austria, Finland, Germany, Lithuania.
51 Luxembourg.
52 Denmark.
53 Austria, Hungary, Sweden, Croatia.
54 France and Germany.
55 Austria and Germany.
56 Finland, Lithuania, Luxembourg.
57 Lithuania, Croatia.
article 29(1) and on the other hand they should ensure that “their activities do not undermine the efforts of others to promote those objectives”. Governments are therefore “obligated by the Convention, pursuant to article 17(a), to take all appropriate steps to ‘encourage the mass media to disseminate information and material of social and cultural benefit to the child’”.

Finally the Committee focused its attention, also concerning only 1 EU Member Country and 1 EU Candidate Country, on the issue of minorities and cultural diversity (paragraph d) of art. 17), in particular by expressing the recommendation to make additional efforts to ensure that all children and their families have access to essential information regarding their rights, giving particular attention to isolated groups and those who do not communicate easily in the national language and to promote the development and accessibility of information reflecting the cultural diversity of the population.

Similarly in another case the Committee recommended that children should be given access to diversity of cultural, national and international sources, particularly taking into account the linguistic and other needs of children who belong to a minority group.

4.4. CRC on corporal punishment and abuse

**Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Comment on article 19**

The wording of article 19 goes beyond children's rights to protection from what is arbitrarily defined as physical, emotional and sexual “abuse” in different societies, and beyond the protection, guaranteed under article 37, from torture and cruel, inhuman or degrading treatment or punishment, in fact, article 19 requires children's protection from “all forms of physical or mental violence”. Article 19 asserts children's equal human right to respect for their dignity and physical and personal integrity. As a principle, it is linked to the right to life and to maximum survival and development guaranteed under article 6. There are legal and/or administrative definitions of child abuse – physical, emotional and sexual. However, the inclusion of these words and of additional articles expanding on sexual and other forms of exploitation (in particular article 32, economic exploitation; article 34, sexual exploitation; the new Optional Protocol to the Convention on the sale of children, child prostitution and child pornography; and article 36, other forms of exploitation, emphasizes the intention of the drafters of the Convention to make the protection implied by article 19 comprehensive.

In particular, article 34 emphasizes the international nature of certain kinds of sexual exploitation of children, requiring States to take all appropriate “national, bilateral and multilateral measures to prevent:

- the inducement or coercion of a child to engage in any unlawful sexual activity;

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29 Greece, Croatia.
the exploitative use of children in prostitution or other unlawful sexual practices;
the exploitative use of children in pornographic performances and materials”. The Optional Protocol on the sale of children, child prostitution and child pornography builds on these definitions and commits States which ratify it to further measures. Article 19 requires States to take a variety of measures – legislative, administrative, social and educational – to protect children from all forms of violence. Paragraph 2 sets out possible protective measures, acknowledging social and educational measures for the protection of the child from violence, abuse and exploitation.

Only in the last few decades has the prevalence of deliberate violence against children by parents and other caregivers been widely acknowledged along with the growing awareness of violence against children in their homes, in institutions and in the community. Whereas a more recent “discovery” seems to be the widespread sexual abuse of children in the family and in institutions, and also organized sexual abuse, including “sex tourism” and other forms of sexual exploitation (the obligation to protect children from sexual exploitation is further expanded in article 34, and in the new Optional Protocol on the sale of children, child prostitution and child pornography). Beside the growing knowledge of the prevalence of violence against children through research there has been a growing awareness of its dangers and of the links between childhood experience of violence and violent and other anti-social behaviour in childhood and later life.

The second paragraph of article 19 provides a non-exhaustive list of measures that States should take to protect children and to prevent violence. In particular its wording sets out “... procedures for the establishment of social programmes to provide ... support for the child and for those who have the care of the child, as well as for other forms of prevention...” These words emphasize the relevance of social conditions to the protection of children from violence and, in particular, to the protection from neglect and negligent treatment, and they link article 19 with other relevant provisions in the Convention on the Rights of the Child, including the overall duty in article 4 (to implement measures “to the maximum extent of available resources”), article 18 (the obligation of States Parties to render appropriate assistance to parents in the performance of their child-rearing responsibilities, and to ensure the development of institutions, facilities and services for the care of children), article 26 (the right of children to benefit from social security) and article 27 (the right of the child to an adequate standard of living).

The Committee decided to devote two days of General Discussion to violence against children, in 2000, the General Discussion focused on “State violence against children”, and in 2001 on “Violence against children, within the family and in schools”. Following each General Discussion, the Committee adopted detailed recommendations. One key recommendation proposed that the Secretary-General of the United Nations should be requested, through the General Assembly, to carry out an in-depth international study on violence against children. The proposal was adopted by the General Assembly in November 2001, and the study is due to go ahead in 2006.

Many articles need to be considered in the light of article 19. Thus, for example, parents’ responsibility to provide “appropriate direction and guidance” to children in exercising their rights under article 5, (see intra-family violence) and the requirement of article 28(2) that school discipline is administered in accordance with the child’s human dignity and in conformity with the Convention, must both respect the obligation to protect children from “all forms of physical or mental violence”.

The scope of article 19 includes what happens within the family home (bearing in mind the Convention’s wide definition of the family; and within other “caring” situations – foster care and day care, schools, all institutional settings and so forth. The requirement in article 3(3) for consistent standards and supervision for all institutions, services and facilities is relevant to the prevention of violence against children. Other articles in the Convention cover in more detail the child’s right to protection from forms of violence and exploitation that may take place in these settings or to protection in the wider society, for example:

- protection of children from traditional practices prejudicial to health (article 24(3);
• sexual exploitation and sexual abuse including “organized” abuse and involvement of children in prostitution and pornography (article 34 and Optional Protocol);
• protection of children from sale, trafficking and abduction (article 35);
• other forms of exploitation (article 36);
• protection from torture and other cruel, inhuman or degrading treatment or punishment (article 37);
• effects of armed conflict on children (article 38).

Comment on Committee’s concluding observations on article 19
The Committee has addressed the issue of corporal punishment in its Concluding Observations for 20 EU Member Countries and 4 Accession / Candidate Countries. In accordance with article 19(1) the States parties are obliged to take all the appropriate legislative, administrative, social and educational measures to protect the child from “all forms of physical or mental violence”. Throughout its monitoring activity the Committee commented on many different forms of violence. In relation in particular to legislation, the Committee has criticized provisions that permit corporal punishment of children, however light. “Mental violence” includes humiliation, harassment, verbal abuse, the effects of isolation and other practices that cause or may result in psychological harm.

First of all, from the legal point of view the Committee appreciates that corporal punishment has been prohibited by law in all settings, including in the family and within various other legal instruments to fight against domestic violence, but it underlines that in other cases the prohibition of corporal punishment by law is set down especially in schools and it is not prohibited in the family, whereas in others there is a distinction between “corporal punishments” used as a means of correction of children and those performed with excessive violence, authorising the first and referring to them as “reasonable chastisement”. As a consequence, in relation to 12 UE Member Countries and 1 Accession Country the Committee suggested taking all the necessary legislative measures to extend the prohibition of corporal punishment on children explicitly in the family, in schools and in all other institutions. Besides, in the cases in which there is a legal ban on all form of ill-treatments in all the possible contexts, the Committee requested the adoption of an effective enforcement of the ban on corporal punishment in schools and other institutions for 2 EU Member Countries and 1 EU Candidate Country and demanded that 3 EU Member Countries adopt legislative measures to remove the “reasonable chastisement”, prohibit all forms of corporal punishment in the family and in any other contexts not fully covered by existing legislation. In particular on this last point in a concluding statement to the General Discussion on “The role of the family in the promotion of the rights of the child”, organized as the Committee’s contribution to the International Year of the Family in October 1994, a Committee member stated that: “As for corporal punishment, few countries have clear laws on this question. Certain States have tried to distinguish between the correction of children and excessive violence. In reality the dividing line between the two is artificial. It is very easy to pass from one stage to the other. It is also a question of principle. If it is not permissible to beat an adult, why should it be permissible to do so to a child? One of the contributions of the Convention is to call attention to the contradictions in our attitudes and cultures.”

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These observations are based on the fact that the CRC, as indicated by the Committee, requires a review of national legislation to ensure that no level of violence against children is condoned. In particular, the Committee has emphasized that corporal punishment, however light, in the family, or in schools and other institutions, or in the penal system is incompatible with the Convention.

In the recommendations following its General Discussion on “State violence against children” (September 2000), the Committee recommended that: “… States Parties review all relevant legislation to ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures), for punishment or disciplining within the child justice system, or in any other context. The Committee recommends that such legislation incorporate appropriate sanctions for violations and the provision of rehabilitation for victims”39. It reiterated this with its General Discussion on “Violence against children, within the family and in schools” (September 2001), in which the Committee advised “States Parties, as a matter of urgency, to enact or repeal their legislation in order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention and in particular articles 19, 28 and 37(a) and taking into account articles 2, 3, 6 and 12 as well as 4, 5, 9, 18, 24, 27, 29 and 39”40.

In addition in the first General Comment adopted by the Committee, on the aims of education, the Committee recalls that “Children do not lose their human rights by virtue of passing through the school gates. Thus, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12(1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28(2) and promotes non violence in schools. The Committee has repeatedly made clear in its Concluding Observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline. Compliance with the values recognized in article 29(1) clearly requires that schools be child-friendly in the fullest sense of that term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights”41.

For these reasons even if the Committee appreciated the efforts made by State parties to undertake initiatives aiming to change the public attitude and approach to corporal punishment42, it invited 10 EU Member Countries and 1 Candidate Country43 to continue to carry out public education campaigns about the negative consequences of corporal punishment and promote positive, non-violent forms of discipline as an alternative to corporal punishment. Moreover it demanded that they conduct awareness raising campaigns and promote alternative forms of disciplines in particular in the family context for 4 EU Member Countries and 2 Accession / Candidate Countries44 and “promote positive participatory and non-violent forms of discipline and respect for children’s equal rights to human dignity and physical integrity, involving children and parents and all those who work with and for them” in particular for 3 EU Member Countries45.

The Committee has stressed that in the field of corporal violence and abuse, the purpose of these educational campaigns is educational rather than punitive and that such reforms tend to lead to less rather than more prosecutions of parents, because of the change in attitudes that they promote.

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41 Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, pp. 256 and 257.
42 Belgium, Cyprus, Czech Republic, Estonia, Poland and Romania.
43 Belgium, Cyprus, Estonia, Latvia, Lithuania, Malta, Netherlands, Poland, Slovenia, United Kingdom and Turkey.
44 Cyprus, France, Greece, Spain, Croatia and Romania.
45 Hungary, Luxembourg and United Kingdom.
Throughout its monitoring activity on the implementation of the CRC the Committee has realised that in most, if not all States, the law does explicitly protect children from serious physical assaults, defined as child abuse or child cruelty. But in many countries, either criminal or civil (family) law, or both, includes specific confirmation of parents’, and some other caregivers’ and teachers’ rights to use violent forms of punishment, often with the stipulation that such punishment must be “reasonable” or “moderate”. Thus, for the Committee a legal reform clearly prohibiting all forms of corporal punishment seems to be crucial – in the family, in other forms of care, in schools and in the penal system – coupled with education campaigns in positive disciplines to support parents, teachers and others.

From the Concluding Observations analysed another point of concern is represented by the practices of abuse and corporal punishments of children in institutions. In this regard the Committee adopted detailed recommendations for 8 EU Member Countries and 2 Accession and Candidate Countries demanding for the adoption of appropriate measures to prevent and combat corporal punishment in institutions and to enforce the existing legal provisions on this matter. These recommendation on violence against children in institutions are elaborated following its General Discussion day in 2000 on State violence against children, referring to article 3(3), which requires that “institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision”. In relation to protection from violence, there should be clear standards established in the legislation:

- prohibiting corporal punishment and any other inhuman or degrading treatment or punishment, the rules should specify the prohibition of any forms of inhuman or degrading discipline or treatment known to be commonly used;
- requiring clear policies for the prevention of any forms of violence by children against children in institutions;
- ensuring there are clear and well-publicized procedures to enable children to seek confidential advice and to make representations and complaints about their treatment to an independent body with appropriate powers of investigation and recommendation/action. Such procedures should ensure that where necessary children have access to independent advocates or representatives who can advise them and/or act on their behalf; special arrangements may be required to safeguard disabled children (see Standard Rules on the Equalization of Opportunities for Persons with Disabilities, rule 9(4)) and very young children.

In relation to schools, article 28(2) requires that “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.” As the Committee has stressed, in its General Comment on the aims of education (see article 29), this includes conformity with article 19, and the protection of children from “all forms of physical or mental violence”. Physical punishment and other humiliating punishments amounting to mental violence are thus outlawed.

On the basis of the second paragraph of article 19 (2), while appreciating the creation of specific social programmes and services, the Committee seems to strongly promote preventive and protective measures based on the identification of the phenomenon – because of the common denial by adult societies of the extent of violence against children – and better organised reporting systems. Thus, the Committee demanded the initiation of comprehensive studies for 4 EU Member Countries on the nature and the magnitude of the phenomenon, on child bullying in schools, on violence at school, in order to assess the extent, the scope and nature of these practices and on the basis of this information adopt measures and policies aimed at changing attitudes. The Committee also urged

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46 Belgium, Czech Republic, Estonia, France, Hungary, Latvia, Poland, Bulgaria, Romania and Turkey.
47 Estonia and Poland.
48 Cyprus, Estonia, Germany and Lithuania.
States to develop mandatory reporting systems for professionals working with children who detect the use of corporal punishment in the family for 2 EU Member Countries and 1 Accession Country – up to now from the Concluding observation a system like this one seems to be present only in 1 EU Member Country – and the Committee asked States to establish effective procedures and mechanisms to receive, monitor and investigate complaints, and to intervene where necessary for 2 EU Member Countries.

In many countries there are legal obligations to report instances, and/or suspicion of child abuse to appropriate social authorities and/or the police. In some societies, these duties apply to certain professions (for example, only social workers, teachers, doctors and other health workers); in others, they apply to members of the public as well. The Committee’s Guidelines for Periodic Reports (par. 89) asks for information on “The existence of any system of mandatory reporting for professional groups working with and for children (for example teachers, medical doctors)”. The Committee underlined that the State should ensure that the abused child is not victimised in the legal proceedings and that his/her privacy is protected.

The implication of referral is that the investigation and treatment of violence against children is an issue requiring specialized, trained responses. In systems that require the reporting of child abuse, referral to particular agencies is normally specified, and in many countries there are now detailed administrative procedures for inter-agency collaboration (between social services, education, health, police and prosecution authorities, and including voluntary and private agencies). Thus, the Committee demanded the implementation of a stronger reporting system through effective training of teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of cases of ill-treatment for 2 EU Member Countries. Such procedures for referral should be implemented in conformity with the Convention, and in particular with article 12.

The Committee has noted the traditional attitudes and fears that can deter reporting by both women and children and has proposed awareness-raising and training for those who receive such reports. The State should clearly have formal duties, exercised through one or more agencies, to investigate reported instances or allegations of violence against children, in conformity with the Convention’s principles. The Guidelines for Periodic Reports ask: “Whether complaints procedures have been foreseen and the child can lodge complaints, either directly or through a representative, as well as remedies available (for example, compensation)” (par. 88). In addition, the Guidelines ask for information under article 1 (definition of the child) on “the minimum legal age defined by national legislation” for “lodging complaints and seeking redress before a court or other relevant authority without parental consent” (par. 24). The CRC does not support the setting of a particular minimum age for this purpose; the Committee’s intention is to identify any limitations on children’s access to redress. Finally, a last issue, raised by the Committee in the formulation of the Concluding Observations, is related to the recovery and reintegration of child victims of corporal punishment. In particular these activities should be realised by specialized operators requiring appropriate training and interdisciplinary cooperation.

In addition to the child’s rights to health care and relevant services, two other articles of the Convention are relevant:

- the right to periodic review of care and treatment guaranteed by article 25: “States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided for the child and all other circumstances relevant to his or her placement”;

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49 Austria, Portugal and Romania.
50 Belgium and Estonia.
51 Belgium and Estonia.
52 Belgium and Estonia.

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the obligation to provide rehabilitation for victims, under article 39: “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”.

In relation to this point the Committee requested 4 EU Member Countries and 2 Accession Country to provide specific care, recovery and reintegration centres dedicated to child victims of abuse and corporal punishment for full physical and psychological rehabilitation and reintegration of child victims. In particular only in two cases the Committee explicitly recommended the provision of counselling and care, recovery and reintegration programmes for child victims as well as for perpetrators.

4.5. CRC on torture, degrading treatment and deprivation of liberty

**Article 37**

States Parties shall ensure that:
(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

**Comment on article 37**

Article 37 provides the child with the right to be protected from:
- torture;
- other cruel, inhuman or degrading treatment or punishment;
- capital punishment;
- life imprisonment without possibility of release;
- unlawful or arbitrary deprivation of liberty.

The article also indicates the conditions for any arrest, detention or imprisonment of the child, which shall be:
- in conformity with the law
- used only as a measure of last resort; and
- for the shortest possible time.

53 Belgium, Czech Republic, Estonia, Netherlands, Croatia, Romania.
54 Czech Republic and Estonia.
Finally the article provides further conditions for the treatment of any child deprived of liberty:

- to be treated with humanity and respect for the inherent dignity of the human person;
- in a manner which takes into account the needs of persons of his or her age;
- to be separated from adults unless it is considered in the child’s best interest not to do so;
- to maintain contact with his or her family, through correspondence and visits, save in exceptional circumstances;
- to have the right to prompt access to legal and other appropriate assistance;
- to have the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority;
- to have the right to a prompt decision on such action.

Article 37, together with article 40 (administration of juvenile justice) and article 39 (rehabilitation and reintegration), represent the CRC’s specific provisions relating to children in trouble with the law, however the prohibition of torture and cruel, inhuman or degrading treatment or punishment is an absolute provision that requires the State to protect children wherever they are.

In addition the provisions relating to the restriction of liberty do not just cover children in trouble with the law as in many States restriction of the liberty of children is permitted for reasons not related to criminal offences, e.g. for “welfare”, mental health and in relation to asylum-seeking and immigration.

Finally article 39 provides an obligation to promote the recovery and reintegration of child victims of torture and other cruel, inhuman or degrading treatment or punishment.

The CRC does not indicate which acts can be considered as torture, but a definition can be found in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions” (article 1).

On various occasions the Committee has referred to the United Nations rules and guidelines relating to juvenile justice (the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the “Beijing Rules”; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and the United Nations Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines) as fundamental instruments providing guidance on the implementation of article 37.

The Committee has stated that the Convention, and these rules and guidelines taken together “call for the adoption of a child-oriented system, that recognizes the child as a subject of fundamental rights and freedoms and stresses the need for all actions concerning children to be guided by the best interests of the child as a primary consideration” (Report on the ninth session, May/June 1995, CRC/C/43, Annex VIII, p. 64).

In relation to article 37, as well as article 19 and 28(2), the Committee has also addressed the issue of corporal punishment affirming that any corporal punishment of children, however light, is incompatible with the CRC and calling for a clear prohibition of all corporal punishment – in the family, in other forms of care, in schools and in the penal system. The Committee has in particular criticized legal provisions that attempt to distinguish between acceptable and unacceptable forms of corporal punishment. In this regard it is interesting to note that other UN human rights bodies, in particular the Human Rights Committee (see General Comment 7), the Committee against torture (Report of the Committee against Torture, General Assembly Official Records, fiftieth session, Supplement No.44, (A/50/44), par. 169 and 177) and the Commission on Human Rights, have declared that corporal punishment, including corporal punishment of children, can amount to cruel, inhuman or degrading treatment or even to torture. (E/CN.4/RES/2001/62, par. 5).
Article 37 also stresses that children deprived of their liberty should not lose their fundamental rights, and that their treatment must take account of their age and child development.

The Committee has noted the importance of registering all children deprived of their liberty, and the Guidelines for Periodic Reports ask for detailed information on the numbers of children deprived of liberty “unlawfully, arbitrarily and within the law”, the reasons and periods of deprivation of liberty, and that data should be disaggregated (par. 141).

Comment on Committee’s concluding observations on article 37

The Committee has addressed the issue of torture, degrading treatment and deprivation of liberty in its Concluding Observations on 8 EU Member Countries and 4 EU Accession Countries.

In such Concluding Observations the Committee has addressed first of all the issue of the prohibition of torture and cruel, inhuman or degrading treatment or punishment set forth in par. a) of article 37 as an absolute prohibition.

It must be noted that this CRC provision emphasizes that such prohibition already recognized for everyone in the Universal Declaration of Human Rights (article 5) and the International Covenant on Civil and Political Rights (article 7), and also in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, applies equally to children.

As indicated in the Manual on Human Rights Reporting, 1997, it should also be underlined that this prohibition applies to all children in all circumstances and wherever they are, including within family life or in the school system.

As regards the Concluding Observations to EU States concerning the prohibition of torture set out in paragraph a) of article 37, the Committee has first of all expressed concern about allegations of instances of ill-treatment by law enforcement officers against children for 5 EU Member Countries and 3 EU Accession Countries, in a few cases with particular regard to foreign and Roma children.

The Committee, while appreciating the adoption of specific legislative provisions prohibiting torture and ill-treatment and the efforts undertaken by some States in this respect, has in a few cases requested the approval or implementation of specific legislative acts prohibiting torture and ill-treatment.

In this proposal it is important to note that the Committee requires article 37(a) to be reflected in national legislation as applying to children. In addition in its Guidelines for Periodic Reports, the Committee requests information on “whether torture or other cruel, inhuman or degrading treatment or punishment of children is punished by the criminal law” (par. 61).

The Committee has also requested a greater effort in the investigation of all allegations of torture and ill-treatment, including when committed in social institutes, for 1 EU Member Country and 3 EU Accession Countries, requesting that the investigations be carried out by an independent authority and that those responsible be identified and brought before a competent tribunal that will apply legal sanctions and that the prevailing culture of impunity for such acts should be challenged.

In relation with the above point the Committee has also requested to provide care, recovery, reintegration and compensation for victims of torture.

As regards the conditions for detention set out in paragraph b) of article 37, the Committee has addressed the issue in its Concluding Observations to 5 EU Member Countries and 1 EU Accession

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54 Czech Republic, Cyprus, France, Hungary, Italy, Luxembourg, Slovakia, United Kingdom, Bulgaria, Croatia, Romania, Turkey.
55 Czech Republic, Cyprus, Hungary, Italy, United Kingdom, Bulgaria, Romania, Turkey.
56 France, Italy, Czech Republic.
57 Czech Republic, Cyprus, Luxembourg.
58 Italy, Romania.
59 Czech Republic, Croatia, Romania, Turkey.
60 Hungary, Bulgaria, Romania and Turkey.
61 Survey on the Committee’s Concluding Observations on the last EU Countries’ Reports – June 2006
Country. On this point it is important to recall first of all that the Committee has adopted the definition of **restriction of liberty** present in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty: “The deprivation of liberty means any form of detention or imprisonment or the placement of a person in another public or private custodial setting from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority” (see *Guidelines for Periodic Reports*, par. 137, note).

During its examination of States Parties’ Initial Reports, the Committee found there are various modalities, in various systems, in which the restrictions to children’s liberty can be carried out in welfare, health, and immigration as well as penal systems.

On this same point the Committee pointed out that the provisions limiting restriction of liberty under article 37 also apply to **asylum-seekers and refugee children**, while the policy of the United Nations High Commissioner for Refugees on this point is that refugee children should not be detained. Art. 37 b) should also be read in conjunction with article 40 which emphasizes that the overall aim of the juvenile justice system should be that of promoting the child’s sense of dignity and worth and his or her reintegration, and the particular desirability of avoiding, when appropriate, resorting to judicial proceedings and of promoting alternatives to institutional care.

In its *Guidelines for Periodic Reports*, the Committee asks for information under article 1 (definition of the child) on any **legal minimum age** defined in national legislation for the deprivation of liberty, “including by arrest, detention and imprisonment, inter alia in the areas of administration of justice, asylum seeking and placement of children in welfare and health institutions” (par. 24). The Committee has further emphasized that a **minimum age for any restriction of liberty should be defined in the legislation**.

Furthermore the Committee has stated that the deprivation of liberty for **children in need of protection** must not be used and that **mentally ill children** should never be detained in prison.

In its Concluding Observations to EU States, the Committee focused its attention on the issue of **abuse and maltreatment** of children occurring during arrest and detention asking the countries to include in their next periodic report information on this subject and specifically on procedures for notification of custody of minors and for ensuring the right to immediate access to a lawyer and to a doctor of their choice as well as on the **length of pre-trial detention**. The Committee also stressed that deprivation of liberty should always be envisaged as the **very last resort** and for the **shortest possible period of time**. In this regard it should be noted that article 37(d) provides the right to challenge the legality of any deprivation of liberty before a court or other appropriate body “and to a prompt decision on any such action”.

The Committee has also requested the establishment of child-sensitive mechanisms for receiving **complaints** against law enforcement officials regarding ill-treatment during arrest, questioning and police custody and within detention centres.

This recommendation had already been formulated in the *Guidelines for Periodic Reports* (see par. 61), in particular with reference to children in institutions, as well as in the Committee’s first General Discussion on “Violence against children” concerning children’s access to complaints procedures (Report on the twenty-fifth session, September/October 2000, CRC/C/100, p. 134).

In the report of its General Discussion on the “Administration of juvenile justice”, the Committee also noted the importance of periodic visits and independent monitoring of institutions. Another issue about which the Committee has expressed its concern in the case of 2 EU Member Countries is **solitary confinement** not only in custody but also in education, health and welfare institutions, asking for the implementation of alternative disciplinary sanctions in order to avoid as much as possible the use of solitary confinement and to reduce its length and to improve its conditions...
by providing persons under 18 with access to an outdoor area for at least one hour a day and giving them access to some kind of recreational facilities.

In this regard it is worth noting that the Human Rights Committee, in its General Comment on article 7 of the International Covenant on Civil and Political Rights, affirms that “prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7” (Human Rights Committee, General Comment 20, 1992, HRI/GEN/1/Rev.5, p. 139). As a consequence, placing a child in isolation or solitary confinement raises a further issue under article 37(a) of the Convention, in addition to the issues relating to the restriction of liberty involved.

The Committee has also asked for the enforcement, or, when appropriate, review of existing legislation, to prevent children being held incommunicado.

The Committee has further identified for 2 EU Member Countries the need to protect minorities from racially motivated attacks\(^{66}\) by enacting appropriate legislation, to realise preventive programmes, develop clear guidelines and instructions for police and prosecuting authorities to assist them in identifying such crimes, and ensure timely and effective investigation, and prosecution including cases of police misconduct.

Finally the Committee has underlined the importance of providing appropriate training on children’s rights to the police, law enforcement personnel and to those responsible for administering juvenile justice\(^{67}\). This is a very frequent recommendation formulated by the Committee that regards the training of all those involved in any form of restriction of liberty of children in the principles of the CRC and all the relevant United Nations rules and guidelines as a crucial element to ensure that the juvenile system of justice complies with the rights of the child.

\(^{66}\) Czech Republic, Slovakia.

\(^{67}\) Cyprus, Italy, Turkey.
5. Education

5.1. CRC on education

**Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
   (a) Make primary education compulsory and available free to all;
   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
   (d) Make educational and vocational information and guidance available and accessible to all children;
   (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

**Comment on article 28**

Article 28 of the CRC establishes the right of the child to education. It recognises that education is essential for all children and that the right must be achieved “on the basis of equal opportunity”, reflecting that many children around the world, also in Europe, suffer discrimination in access to education, for example children in rural areas, girls, children refugees and asylum-seekers, Roma and disabled children.

Unfortunately education is not always free of charge and not all States are able to meet the educational needs of their children; often the right will need to be achieved “progressively”. Nevertheless article 28 provides the fundamental basis:

- a. free, compulsory primary education for all;
- b. different forms of secondary education and vocational guidance “available and accessible” to all;
- c. higher education must be accessible “on the basis of capacity”.

The article 28 also underlines that States must take measures to reduce school drop-out rates, to ensure that school discipline respects the rights of the child and to encourage international cooperation on education, as an instrument for social, cultural and economic development.

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Article 29

1. States Parties agree that the education of the child shall be directed to:
   (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;
   (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
   (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
   (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
   (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Comment on article 29

Article 29 (1) concerns the aim of education with a consensus of world opinion and is the subject of the Committee’s General Comment n. 1. This document does not detail the tools of learning (literacy, numeracy, factual knowledge, problem solving and so on) but addresses learning’s basic means: “to provide the child with life skills, to strengthen the child’s capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence”. The rights of individuals and groups to organize their own forms of education are safeguarded by Article 29 (2), so long as these accomplish the aims of education as set out in the article and any official minimum standards.

It is important to recall article 26 of the Universal Declaration of Human Rights that provides: “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace”.

Comment on Committee’s concluding observations on articles 28 and 29

The right to education was expressed by the Committee to almost all EU Countries (24 EU Member Countries and 4 Accession / Candidate Countries). Various positive achievements were underlined by the Committee in relation to EU Countries (19 EU Member Countries and 2 EU Accession / Candidate Countries) and they regard the access and the right.

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2 Committee on the Rights of the Child, General Comment 1, 2001, HRI/GC/1/Rev.1, par. 2.
3 Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Bulgaria, Croatia, Romania, Turkey.
4 Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovakia, Slovenia, Sweden, United Kingdom, Bulgaria, Romania.
to education, the age of free compulsory schooling, integration and equality, the enrolment rate, bullying in school, the training of teachers, the dropout rate and financial resources and free textbooks. It is clear that the basic right to education of children is enshrined in the first paragraph of article 28 of the CRC. Subparagraphs (a) to (e), which detail particular duties for States Parties in this respect, are governed by the initial statement, which provides that States Parties shall achieve the right to education “progressively and on the basis of equal opportunity”.

All States parties, independently of their level of economic development, must plan for progressive provision of education, respectively to guarantee that primary education will be accessible to all children and that higher education will be available to all young people on the basis of capacity and in line with article 4, they must ensure that this is done “to the maximum extent of available resources”. “On the basis of equal opportunity” underlines the general principle of article 2 on non-discrimination. The principal obstacle to equality of opportunity in education is usually the lack of resources, also in terms of a low government budget applied to education so that education is not made available to all members of the population, nor is there due consideration of families’ poverty so that children have to be withheld or withdrawn from education. Governments can adopt strategies to help such families. The recognition of right to education is the most frequent positive achievement noted by the Committee (5 EU Member Countries) followed by the age of free compulsory schooling (5 EU Member Countries), all the other issues are mentioned in the Committee’s concluding observations addressed to a maximum of one or two EU Countries.

During the drafting of the CRC there was some discussion about the word “free” (which had already appeared in other related treaties). Subparagraph (a) does, however, clearly state that “free” education at the primary stage is a measure that States Parties are obliged to secure for all children, not just low-income children or other categories of children.

In particular, the Committee pointed out the effort made or the measures taken by State parties in the following issues:

**Access to education** (2 EU Member Countries), focusing its attention on the progress towards access to and the quality of education and introducing multicultural teaching, or refugee and asylum-seeking children having free access to the school system and the competent Ministry appointing intercultural mediators in order to facilitate the integration of foreigners in the educational system;

**Right to education** (5 EU Member Countries), focusing its attention on the greater importance given to education, the inclusion in the school curriculum of the CRC and of human rights education, or the acknowledgment by the State party that there are challenges facing the right to education;

**Age of free compulsory schooling**, focusing its attention on the provision of (or the effort to provide) free compulsory schooling through the age of 18 or 16 years, or including universal free pre-schools for children aged 4-5, from 8 to 10 years or until 10 years;

**Integration and equality** (2 EU Member Countries), the Committee underlined that the school is considered a place of integration and equality, in particular in certain areas, or that all young people, irrespective of their ethnic background, enjoy equal opportunities in the national education system;

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4 The definition of “education”, as specified in the Implementation Handbook for the Convention on the Rights of the Child, of Unicef, is not limited to instruction delivered within schools (though subparagraph (e), on “school” drop-outs, and article 29(2), on private “educational institutions”, imply that this will normally be the case). Article 28 mentions “vocational education”, “the elimination of ... illiteracy” and “access to scientific and technical knowledge”; the broad aims of education are set out in article 29, but the CRC does not attempt to define the detail of a basic curriculum.

7 Cyprus, Estonia, Finland, Malta, Slovenia.

8 France, Hungary, Italy, Sweden, Slovakia.

9 Greece, Luxembourg.

10 Cyprus, Estonia, Finland, Malta, Slovenia.

11 Cyprus, Malta.

12 Finland, Slovenia.

13 France, Ireland.
Enrolment rate (2 EU Member Countries)\(^{14}\), in particular considering the extension of primary education from eight to nine years and the increase in the enrolment rate in secondary education registered in the reporting period, or the high enrolment rate, the increase in pre-primary education as well as international cooperation in this area and the attention given to the Standard Rules for the Equalization of Opportunities for Persons with Disabilities; 

Children with disabilities and vulnerable groups, underlining the development of post- secondary education, guarantees for minority groups and integrating children with disabilities into mainstream education, secondary school for Roma children established on the initiative of the Roma people themselves; 

Bullying in school (2 EU Member Countries)\(^{15}\), to combat bullying in school, or to tackle violence and bullying in schools, including the requirement that every school has to develop an action plan against bullying and violence; 

Training teachers, in particular the various programmes to improve teacher training; 

Financial resources and free textbooks (2 EU Member Countries and 1 Accession / Candidate Country)\(^{16}\), regarding the increase in the education budget and the measures adopted by the State party to raise standards of literacy and numeracy through initiatives, as well as the development of broad citizenship programmes and the development of regional legislation to reflect article 12 of the CRC; initiatives to launch special programmes and provide free textbooks and school materials, as well as meals to encourage school enrolment and attendance; the new initiatives to provide textbooks for children from poor families and provide all schools with computers. 

Dropout rates, specifically to prevent and assist school dropouts and the intention of expanding bilingual education to secondary schools in overseas areas. 

The phenomenon of children dropping out of school is worldwide. Poverty may be the driving motivation in many societies – the child may need to work or the expense of education may be the disincentive. But even in developing countries, children drop out of school for other reasons, for example, because the curriculum is too dull, difficult or irrelevant; because the teaching is poor or not delivered in the child’s first language; because school discipline is over-punitive and disrespectful of dignity; because learning disabilities have not been identified and the child has not been helped. Compelling children to repeat years has been found to be both extraordinarily wasteful of resources and likely to cause children to drop out of school. Subparagraph (e) is therefore extremely important because it extends the State’s responsibilities beyond simply channeling sufficient resources into schools and passing laws compelling children to attend those schools – States must also take steps to ensure that what happens in school is sufficiently useful and attractive to keep children there. The Committee has taken a keen interest in States’ implementation of this obligation, not least because the children with the highest school drop-out rates tend to come from the groups generally discriminated against in education – namely girls, children from rural areas, children from minority groups, children in difficult circumstances and children with disabilities. The Committee has encouraged countries to give priority to a variety of measures combating the school drop-out phenomenon, including comprehensive policy reviews. 

Particular groups within populations are also liable to suffer discrimination in educational opportunities, such as children of minority cultures, indigenous peoples, gypsies, immigrants, refugees and children caught up in armed conflict. Failure to take up educational opportunities can sometimes be attributed to the group itself, i.e. because they speak a minority language or pursue a nomadic lifestyle, but such forms of indirect discrimination are unacceptable to the Committee. All children, no matter how seriously disabled they are, are entitled to education that maximizes their

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\(^{14}\) Cyprus, Slovenia. 

\(^{15}\) Denmark, Finland. 

\(^{16}\) Poland, United Kingdom, Romania.
potential. Any law or practice that limits this right, i.e. by deeming certain children uneducable” or by entitling them to “health treatment” rather than “education”, breaches articles 2 and 28. Moreover, the education of disabled children should be provided “in a manner conducive to the child’s achieving the fullest possible social integration” (article 23(3)) which means that disabled children should, wherever possible, be educated in mainstream schools alongside children without disabilities.

Furthermore, the most frequent recommendation (11 EU Member and 3 EU Accession / Candidate Countries)\(^{17}\) regards the quality and aim of education. In particular the Committee recommended to promote or improve the quality of education, as underlined in articles 28 and 29 of the CRC and General Comment n. 1 on the aim of education; the Committee also stated to one of those Countries that the quality and aim of education has to be implemented in all the areas of the Country, and the State has to create a wider awareness and understanding of the principles and provisions of the CRC.

The Committee also recommends the importance of ensuring that human rights education (12 EU Member Countries and 3 EU Accession / Candidate Countries)\(^{18}\), in particular in one case, including children’s rights, is integrated or developed into the school curricula, or of developing a systematic information campaign on children’s rights for children and adults alike.

Another frequent recommendation concerns training activities (8 EU Member Countries and 4 EU Accession / Candidate Countries)\(^{19}\), in particular, for each of the Countries mentioned above, the Committee recommends that they should: continue, strengthen or implement educational teacher training programmes focused on human rights, including children’s rights; that training activities should be conducted for professional groups working with and for children, such as judges, lawyers, law enforcement personnel, including police officers, immigration officers, health professionals, teachers, social and community workers, and personnel working in child-care institutions. Through the children involved in the education system, the Committee pointed out various recommendations focused on access to education, participation of children, minority groups, disabled children and special schools, bullying in school, dropping out. Those issues are almost the same of those mentioned for the positive achievements.

The Committee recommends to EU Countries (9 EU Member Countries and 2 EU Accession Countries)\(^{20}\) that they should ensure access to education. In particular the Committee recommends that they: ensure the implementation of the new measures taken to increase participation in pre-school education; the availability and accessibility of free primary education for all children in the EU Country – giving particular attention to children in rural communities, children from Roma and other distinct ethnic, religious, linguistic or cultural groups, as well as children from disadvantaged backgrounds such as refugees, illegal migrants, particularly unaccompanied minors, good quality education, including in their own language – including through the use of information campaigns targeting parents and local authorities; ensure that all children are able to gain full academic credit for their school attendance; ensure that children throughout the Country have the right to be heard before exclusion and to appeal against temporary and permanent exclusion, and ensure that children who are excluded continue to have access to full-time education.

Children’s participation is another issue taken into consideration by the Committee (4 EU Member Countries and 1 EU Accession / Candidate Country)\(^{21}\) in the context of the right to education. The Committee recommends that the State party should “ensure the participation of children in the initiatives aimed at reducing bullying and support the participation of children in decision-making
processes concerning school life, or adopt teaching methods that encourage child-centred learning and more active participation by children”. Children with disabilities, in rural areas, belonging to minority groups and in special schools, are the focus of the Committee in many Concluding observations (16 EU Member Countries and 1 EU Accession / Candidate Country). The Committee made to each EU Country, one of the following recommendations: it should encourage the State party to strengthen its efforts to include children’s physical, mental or emotional needs, wherever possible in mainstream schools; continue to strengthen its efforts to professionalize the pre-school assessment of children and ensure, as far as possible, that children of Roma origin or other children belonging to disadvantaged groups are not assigned to special schools, and strengthen efforts to bridge the racial disparity in education, giving special attention to promoting education of ethnic minorities; further enhance the system of education for national minorities and take all the appropriate measures to implement the national law for mother-tongue instruction for students whose mother tongue is not that of the Country, providing also for the teaching of their culture and history; encourage and support increases in the numbers of children from distinct ethnic, religious, linguistic or cultural groups attending secondary school. The Committee encouraged the States to take the following issues into consideration: the poor quality of education in many schools that teach in languages other than the Country’s language, including the use of outdated textbooks and late term starting dates; the estimated very high illiteracy rates among Roma children; the small proportion of children from distinct ethnic, religious, linguistic or cultural groups who attend secondary school and that some children, particularly from these groups, are accepted in school only as auditors and not permitted to gain academic credit for their studies. States were encouraged to expand the practice of recruiting secondary teachers who speak languages other than the Country’s language to cover all relevant schools and major languages; take all necessary steps to put an end to the practice of placing children with learning disabilities and/or behavioural problems in facilities for mentally and physically disabled children and consider all possible measures through which foreign children and children of asylum-seekers can be granted equal access to the same standard of services in the field of education, and ensure that language does not become an obstacle in education. The Committee recommends any initiative, including support classes, to help children to learn the needed languages; ensure that children in rural areas have equal opportunities for a quality education which provides them with the skills to enter the labour market or university-level education based on their merit, by:

- seeking innovative means for promoting the cognitive, social and emotional development of children;
- ensuring that rural areas and poorer communities are provided with additional funds to allow them to provide the same quality of education and level of extracurricular programmes as urban schools;
- ensuring that students from poor families or those in rural areas have access to scholarships or other forms of financial support that allow them to attend general secondary schools in preparation for university.

The Committee encourages each State to provide particular support for low-income families with a view to increasing the enrolment levels of their children in educational facilities and take steps to raise the number of persons going on to higher education, giving due attention to reducing gender disparities; examine to what extent the current situation of the Roma language in the education system, with respect to both law and practice, meets the demands of the Roma population and their children and consider, as appropriate, further measures aimed at ensuring education or instruction in the Roma language; ensure that the education system and the media in particular foster positive attitudes towards minorities and intercultural dialogue between the minorities and the majority, including children; pursue its efforts to ensure that all children enjoy the right to education, including children without a resident permit, and

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57 Survey on the Committee’s Concluding Observations on the last EU Countries’ Reports – June 2006
“children in hiding” and that variations in results and differences between schools and regions are eradicated; ensure that affordable and quality early childhood education is available for all children and in certain areas expedite the adoption of a national law on compulsory education and ensure that it is enforced, including for children of undocumented migrants; in the same areas ensure that sufficient teaching materials are available in the local language for primary and secondary students; give particular attention to children belonging to the most vulnerable groups (i.e. minority groups, children living in poverty, etc.) and implement the National Programme for Roma, providing it with adequate human and financial resources and with periodic evaluation of its progress; take the necessary measures to integrate children with disabilities in the mainstream education system, including vocational education, and in society; further develop services for children with learning difficulties, considering there are a lack of adequate services and that decentralized education may lead to some disparities in the implementation of the CRC.

Another issue analysed by the Committee in many COs is bullying in school (7 EU Member Countries and 1 EU Accession / Candidate Country). Attention is focused on the measures to be taken or strengthened to combat bullying, in particular the Committee recommends that appropriate measures be taken to: promote and prevent a non-violent environment in schools, especially towards children with disabilities and children with disabled parents, with the full involvement of children, including by carrying out periodic surveys amongst students, staff and parents about the quality of peer relations being fostered by the school.

The problem of dropping out is also faced by the Committee (10 EU Members and 3 EU Accession / Candidate Countries). The Committee’s recommendation is to: take all necessary measures to prevent dropping out, to encourage children to stay in school, particularly during the period of compulsory education, and to address the high dropout rate in secondary education; study the causes of the high repetition, dropping out and non-attendance rates and undertake effective actions to address these problems on the basis of the findings of the study and promote activities that may reduce the number of dropouts and evaluate the effectiveness of those activities (possible reasons for dropping out include: lack of security from bullying, overcrowded classrooms, poor school environment as a result of diminished extra-curricular activities, overburdened teachers and closure of schools in rural areas for economic reasons); reduce the drop-out rates that are considered by the Committee high overall and very high among rural, Roma children and migrant families.

The issue of financial resources is also pointed out by the Committee (5 EU Member States and 2 EU Accession / Candidate Countries). In particular the Committee recommends that EU Countries should: increase educational reforms with sufficient preparation and support schools in this regard with extra funding, and introduce a process for quality evaluation of the new programmes; increase the level of public expenditures for compulsory education; take appropriate measures and provide incentives to facilitate the establishment of additional integrated schools in a specific region to meet the demand of a significant number of parents; increase funds to reduce the number of shifts in schools; take steps to strengthen education infrastructure and resources, also with a view to reducing disparities between urban and rural areas.

Finally, as underlined by the Committee, the decentralization of education is positively evaluated, but in some areas this system may create disparities in the implementation of the right to education.

23 Denmark, Estonia, Finland, Greece, Lithuania, Spain, United Kingdom, Romania.
24 Estonia, Greece, Finland, Italy, Latvia, Lithuania, Malta, Netherlands, Slovenia, Spain, Bulgaria, Romania, Turkey.
25 Czech Republic, France, Greece, Portugal, United Kingdom, Croatia, Romania.
6. Family environment

The CRC Preamble affirms that the family is “the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children” 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”.

In addition the protection of the family unit is one of the key principles of the CRC that dedicates various articles to the family as well as to alternative care of children. In particular art. 5 and art. 18 provide a framework for the relationship between the child, his or her parents and the State, while art. 20 focuses on the rights of children deprived of their family environment and art. 21 on the regulation of the institute of adoption.

The Committee has also dedicated a General Discussion to “The role of the family in the promotion of the rights of the child” stating that “Traditionally, the child has been seen as a dependent, invisible and passive family member. Only recently has he or she become ‘visible’ and, furthermore, the movement is growing to give him or her the space to be heard and respected. Dialogue, negotiation, participation have come to the forefront of common action for children. The family becomes in turn the ideal framework for the first stage of the democratic experience for each and all of its individual members, including children”.¹

6.1.a. CRC on parental guidance and the child’s evolving capacities

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Comment on article 5²

Article 5 of the CRC provides a flexible definition of “family” and introduces two key concepts: parental “responsibilities” and the “evolving capacities” of the child. The article also clearly expresses a vision of the child as having active rights, emphasizing the exercise “by the child” of his or her rights.

The parents’ primary responsibility in their children’s upbringing is recognized also in other parts of the CRC that place strict limits on State intervention and any separation of children from their parents (articles 3(2), 7, 9, 10, 18) while one of the aims of education is the development of respect for the child’s parents (article 29).

The first important aspect to note emerging from article 5 is that it provides a flexible understanding of the concept of family that reflects the wide variety of kinship and community arrangements within which children are brought up around the world. This concept has been better specified during the Committee General Discussion on “The role of the family in the promotion of the rights of the child” which stated that “When considering the family environment, the CRC reflects different family structures arising from various cultural patterns and emerging familial relationships. In this regard, the CRC refers to the extended family and the community and it applies to situations of nuclear family, separated parents, single-parent family, common-law family and adoptive family”.³

¹ Report on the seventh session, September/October 1994, CRC/C/34, par. 183 ss.
In this respect consideration should also be given to General Recommendation 21 of the Committee on the Elimination of Discrimination against Women calling for the “prohibition of bigamy and polygamy and the protection of the rights of children”\(^4\). Article 5 introduces the concept of “parental responsibilities” while art. 18 requires States parties to “use their best endeavours” to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. However the CRC does not provide a definition of “parental responsibilities”, although it appears clearly from the whole CRC that such responsibilities must be exercised to support the enjoyment by the child of the rights recognised in the CRC.

In addition the Committee Guidelines for Periodic Reports ask for information on “the consideration given by law to parental responsibility, including the recognition of the common responsibilities of both parents in the upbringing and development of the child and that the best interests of the child will be their basic concern.” States are also required to “indicate how the principles of non-discrimination, respect for the views of the child and the development of the child to the maximum extent, as provided for by the Convention, are taken into account.” The implication is that the concept of parental responsibilities should be reflected and defined in the law, using the framework of the CRC. Article 5 further specifies that parental guidance must not be understood as being unlimited, rather it must be exercised “in a manner consistent with the evolving capacities of the child” and must be “appropriate”. The concept of the “evolving capacities of the child” is a key concept in the CRC that aims to acknowledge that children’s development towards independent adulthood must be respected and promoted throughout childhood. The use of this concept has also avoided the need for the CRC to set arbitrary age limits or definitions of maturity tied to particular issues. Article 5 must also be read in conjunction with article 19 providing that in no circumstances must parental guidance be exercised using physical or mental violence and the Committee has consistently upheld the view that corporal punishment is not consistent with the CRC.

6.1.b. CRC on parent’s joint responsibilities and assistance from the State

**Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Comment on article 18

Article 18 regulates the balance of responsibilities between the child’s parents and the State, and particularly addresses support for parents in the performance of their responsibilities. The article must be read in conjunction with article 5 as well as articles 3(2) and 27 (the State’s responsibility to assist parents in securing that children have adequate protection and care and an adequate standard of living).

These four articles of the CRC, taken together, make clear that parents have primary responsibility for securing the best interests of the child as their “basic concern”, but that this responsibility is circumscribed by the child’s rights under the Convention and may be shared with others such as members of the wider family. The State must take appropriate steps to assist parents in fulfilling their responsibilities. If parents cannot, the State must intervene to ensure that the child’s rights and needs are met.

Protection of the family by the State had already been provided by the International Covenant on Economic, Social and Cultural Rights that in article 10 states “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”.

Article 18 explicitly recognizes the common responsibilities of both parents for the upbringing and development of the child. This article clearly goes beyond financial responsibility, calling for both parents to play an active part in their child’s upbringing.

The Committee has underlined the importance of this principle recognizing that most societies have only recently acknowledged that fathers, as well as mothers, can and should undertake the day-to-day care of their children, and that mothers, as well as fathers, have financial responsibilities and legal rights in relation to children.

This principle had already been recognised by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that in article 5 requires States to declare “…the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases”. The principle of common responsibilities applies also in the case of fathers of children born out of wedlock. The Committee has often expressed its concern at the large number of single-parent families: a concern that does not relate to the state of marriage but to the need of children to have both parents actively involved in their upbringing and to the greater likelihood of poverty for children in one-parent families. Again the principle of common responsibilities should also apply when parents separate, as explicitly recognised in article 9 of the CRC stating “…the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests”. This implies that unless it is proved to the contrary, the continued involvement of both parents in the child’s life is in his or her best interests.

Comment on Committee’s concluding observations on articles 5 and 18

The Committee has devoted much attention to the subject of family environment, both as regards the principle of parental guidance and the protection owed to families by the State (art. 5 and 18) and to the issue of alternative care and adoption (art. 20 and 21).

As regards the first point (parental guidance and the protection owed to families by the State), the Committee has issued relevant Concluding Observations for 10 EU Member Countries and 4 EU Accession Countries⁴.

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⁶ Cyprus, Czech Republic, Finland, Germany, Greece, Ireland, Luxembourg, Netherlands, Portugal, Slovenia, Bulgaria, Croatia and Turkey.
The Committee has commented positively on a number of initiatives undertaken by the States in this field, first of all at a legislative level, such as laws and plans of action on family policy and against poverty and social exclusion aiming at setting up a global policy on the family and/or at tackling the issue of child poverty or specific laws or legislative amendments on child benefits, parental leave and shared parental custody. The Committee has further appreciated the creation of specific centres to support families by providing counselling and parental education. Notwithstanding these positive achievements, the Committee has expressed its concern about the following issues:

- insufficiency of support by the State to families in terms of parental education and counselling
- insufficiency of support by the State to families as regards economic support and furnishing of child-care services
- inadequate respect for the principle that the child should maintain contact with both parents also in case of separation or divorce.

The first point has been addressed by the Committee in the Concluding Observations of 3 EU Member Countries and 4 EU Accession Countries.

The Committee has underlined the need to prepare parents for their responsibilities and in its Guidelines for Periodic Reports has asked for information on parental education programmes and on counselling for parents, and how knowledge about child development and the evolving capacities of the child are conveyed to parents and others responsible for children. The Guidelines also request information on any evaluation of the effectiveness of such educational measures.

The States have been invited to provide effective counselling and community-base programmes for families, to support parental education programmes, in particular for parents of disadvantaged children and also with a view to prevent abandonment and institutionalisation as well as to help families to provide appropriate direction and guidance in the exercise by the child of the rights recognized in the CRC in a manner consistent with his/her evolving capacities and by encouraging the perception of the child as an holder of rights. The Committee has also focused on the importance of improving the quality of professional support and counselling for families through the availability of qualified staff and resources.

As regards the second point on the economic support and furnishing of child-care services, the Committee has addressed this issue in its Concluding Observations for 4 EU Member Countries and 2 EU Accession Countries.

The Committee has indicated that the economic support from the State referred to in art. 18 is obviously appropriate when parents are unable to undertake their child-rearing responsibilities, whether or not this is their fault. For instance it has requested States to adopt a family policy that includes social security for the child and the family, housing and social services; that every effort be made to the maximum extent of the available resources to support families in their child-rearing responsibilities, to reduce the number of persons living in poverty and to ensure access for all children and parents to financial assistance.

However the Committee has made clear that the protection referred to in article 18 should not be interpreted according to a narrow definition, rather it should be understood as including the State responsibility to assist all parents by “ensuring the development of institutions, facilities and services for the care of children”. In addition States are required to ensure “that children of working parents have the right to benefit from child-care services and facilities for which they are eligible”.

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6. Family environment

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1 Czech Republic, Portugal, Croatia, Romania.
2 Germany, Slovenia.
3 Cyprus, Turkey.
4 Cyprus, Czech Republic, Netherlands, Bulgaria, Croatia, Romania, Turkey.
5 Cyprus, Netherlands, Bulgaria, Romania, Turkey.
6 Czech Republic, Croatia.
7 Czech Republic, Greece, Netherlands, Portugal, Romania.
In relation to this last point the Committee has requested the provision of maternity and paternity leave as well as services for the conciliation of working and family life and child-care services\textsuperscript{14}. Finally the Committee has recommended States to guarantee the principle that the child should maintain contact with both parents including in case of separation or divorce\textsuperscript{15} and that disputes for the custody of children are resolved in appropriate time and in the best interest of the child\textsuperscript{16}.

6.2. CRC on family reunification

\textbf{Article 10}

1. In accordance with the obligations of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by the States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

\textbf{Comment on article 10}\textsuperscript{17}

Article 10 of the CRC concerns the issue of “family reunification" of children who are, or whose parents are, involved in entering or leaving a country.

The article requires States to deal with family reunification “in a positive, humane and expeditious manner” and to allow parents and children to visit each other if they live in different States. It is clear that article 10 applies in particular to migrant and refugee families and therefore it should be read in conjunction with article 22 regulating the rights of refugee children.

It is important to note that while the family unit is a fundamental principle of the CRC, the wording of article 10 is weaker than that of article 9 indicating that family reunification is not expressly guaranteed, although a reference to article 9(i) is made, rather States are obliged to consider applications for the purpose of family reunification in “a positive, humane and expeditious manner”. This is certainly a reflection of the worries that emerged during the preparatory process by the richer countries concerned at the prospect of mass migrations.

The point of view of wealthier States continues to be very much the same since, as a consequence of the fact that many of them have increasingly closed their borders to labour migration, family reunion has become the main legal entitlement for the settlement of immigrants. This, in turn, has led to restrictions in family reunification procedures. Some countries require nationality status before such rights can be secured. Most countries require applicants to prove that

\textsuperscript{14} Czech Republic, Netherlands, Portugal.

\textsuperscript{15} Cyprus, Czech Republic, Ireland, Slovenia.

\textsuperscript{16} Finland, Germany, Greece.

there are sufficient resources to support the immigrant's family members without recourse to public funds. Other countries have stricter conditions for foreigners who themselves entered the country for family reunion when they were children.

Article 10 does not directly address the right of children or their parents to “remain” for the purposes of family reunification, bringing in the whole question of the deportation of parents. However, by implication, since a deported parent would at once be in a position to wish to re-enter the country, these cases can be assumed to be covered by this article.

The provision requiring that applications for family reunification do not cause “adverse consequences” for any member of the family relates to those countries where applications to enter or leave have resulted in the applicant or the applicant’s family being persecuted or discriminated against which is obviously a violation of human rights in all circumstances.

As regards the right (save in exceptional circumstances) to maintain, on a regular basis, personal relations and direct **contacts with both parents** when the parents reside in different States, it is important to note that the Hague Convention on the Civil Aspects of International Child Abduction (1980) allows parents to enforce court orders for access (contact) in the Hague Convention States. However only a third of the world’s countries have ratified or acceded to the Hague Convention and not all parents with access problems in foreign countries have court orders. In such circumstances art 10 of the CRC should ensure that States give favourable consideration both to applications for access and applications for entry and exit in order to exercise access.

In relation to the obligations set forth in this article the Committee has requested States to ratify the relevant international treaties on refugees as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families that in article 44 declares that States should take measures “which they consider appropriate and which are within their powers to facilitate the reunion of migrant workers with their spouses, or with any persons having a relationship with them, which in accordance with the law is the equivalent of marriage, as well as their dependent or single children”.

**Comment on Committee’s concluding observations on article 10**

The Committee has issued Concluding Observations specifically referring to art. 10 of the CRC in relation with **5 EU Member Countries**. In all cases the Committee has requested States to undertake all necessary measures to ensure that family reunification procedures fully comply with article 10 of the CRC or that they are dealt in a “positive, humane and expeditious manner”.

Regarding this expression used in art. 10 of the CRC it is important to note the following.

The word “**positive**” was chosen among various proposals and although probably representing the stronger option among those proposed, it does not assume that the State must agree with that application.

The word “**humane**” qualifies and strengthens the word “positive”. Furthermore the qualification humane must be read as referring not only to the decision, but also to the procedure that leads to the decision.

It is essential that immigration processes respect the dignity of the applicants, including the child’s dignity. Treatment in detention centres, for instance, can often be inhumane, as well as the investigations carried out by the authorities to authenticate the applications. The Committee has stressed the link between article 10 and article 37 (deprivation of liberty), pointing out that even where

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6 This part is based on the Concluding Observations referring to the area of “Family environment” and should therefore be read in conjunction with the part on the Concluding Observations relating to article 22 on refugee children.

18 Austria, Denmark, Estonia, France, Spain.

19 Austria, Denmark.

21 Estonia, France, Spain.
applicant children are housed in comfortable surroundings, such as hotels, they are still deprived of their liberty and their particular needs are not necessarily taken into account. In addition children should not be subjected to investigations that could harm their health (such as bone X-rays to identify their age) or psychological well-being (such as traumatizing interrogations), nor should they be subjected to medical tests without their, or as appropriate, their parents’ consent.

In this regard in its Concluding Observations the Committee has expressed its concern about the fact that family reunification procedures may be restricted through the quota system and that the age limit has been lowered from 18 to 15 years²².

Finally the word “expeditious” refers to the requirement that all judicial and administrative processes concerning children have to be carried out as quickly as possible. Delay and uncertainty can be extremely prejudicial to children’s healthy development, even more than in the case of adults.

On the contrary the Committee has noted with concern in its Concluding Observations the length of family reunification procedures and/or the delay in the issuance of the necessary visa and travel documents²³.

6.3. CRC on family environment – violence, abuse and neglect

The issue of child abuse, violence and neglect is treated in different parts of the Committee’s Concluding Observations, namely in the part on civil rights and freedoms and in that on the family environment.

**Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Comment on article 19²⁴**

Article 19 has already been commented on in the chapter on civil rights and freedom, but in relation to child abuse in the family environment it is important to focus on the concept of *neglect* which is mentioned in the article.

Neglect may be deliberate or it may be caused by the inability of the parent/family/community/ State to provide appropriately for the child. Child neglect may take different forms and may change also on the basis of the social and economic evolutions. For example, an issue of some concern for some countries with highly developed economies and social systems is the neglect of very young children by their *working parents*. The State’s overall obligation to ensure to the maximum extent possible the survival and development of the child (article 6), and its specific obligations to provide appropriate

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²² Austria, Denmark.
²³ Austria, France, Spain.
assistance to parents (article 18) together with rights to health care (article 24), to benefit from social security (article 26), to an adequate standard of living (article 27) and to education (article 28) are all particularly relevant to the prevention of neglect.

Reference to “negligent treatment” also raises the issue of accidents to children (also raised in article 24(2)(e). While the primary responsibility may be that of parents, state actions are also required to prevent many types of accidents. Article 3(2) gives States an over-arching obligation to provide care and protection necessary for the well-being of the child.

The Committee also dedicated a General Day of Discussion to the subject of “Violence against Children, within the Family and in Schools” in which it gave a number of indications as regards review of domestic legislation, prevention and training, monitoring and complaint mechanisms, coordination and resources and the role of civil society.

Article 39
States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Comment on article 39
In addition to art. 19 on the protection of children from abuse (see part on child abuse), article 39 requests State parties to take all appropriate measures to promote recovery and reintegration of a child victim, among others, of any form of neglect, exploitation and abuse.

Such recovery and reintegration must take place in an environment that fosters the health, self-respect and dignity of the child. The general principles of the Convention on the Rights of the Child require that such measures must be available without discrimination to all child victims; the best interests of the child must be a primary consideration; the maximum survival and development of the child must be ensured; and the views of the child should be respected – for example in planning and implementing programmes.

This principle is also set forth in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted in 2000, that requires States Parties to adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the Protocol, including measures for their rehabilitation.

Comment on the Committee’s concluding observations on articles 19 and 39
The issue of child abuse is certainly one of the most amply treated in the Committee’s Concluding observations, in particular under the chapter of civil rights and freedom (see the relevant part) and of family environment.

As regards the issue of violence, abuse and neglect in the framework of the family environment, it has been addressed by the Committee in the Concluding Observations of 21 EU Member Countries and 4 EU Accession / Candidate countries.

The Committee has acknowledged that in recent years many States parties have addressed the issue of child abuse noting its seriousness and introducing different initiatives in order to prevent and fight this phenomenon.

66 Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia, Spain, United Kingdom, Bulgaria, Croatia, Romania, Turkey.
In particular various laws have been adopted or amended in order to ensure the protection of the child’s moral, physical and sexual integrity or to prevent domestic violence, to combat trafficking in persons and sexual exploitation of children, to allow the police to remove an alleged perpetrator of child abuse or other forms of family violence from the home, to allow medical personnel to report cases of abuse and ill-treatment without being subject to disciplinary sanctions, to include the obligation for medical personnel to report suspected cases of child abuse or to allow doctors, teachers and other suitable professionals to lodge complaints of alleged sexual abuse or exploitation of children. The Committee has also positively noted the adoption of specific national plans of action to prevent and combat child abuse in a number of countries, the setting up of specific mechanisms to deal with the phenomenon, such as national commissions and special units, and also the police, the setting up of help lines to receive complaints, the carrying out of comprehensive studies to improve the understanding of the nature and scope of child neglect and abuse, the carrying out of awareness raising campaigns, and the efforts undertaken by NGOs.

Finally the Committee has acknowledged with appreciation the written replies from some States to the questionnaire requested for the UN Secretary-General’s ongoing in-depth study on the question of violence against children recommending that State party use the outcome of this regional consultation as a tool to take action, in partnership with civil society, to ensure the protection of every child from all forms of physical, sexual or mental violence, and to gain momentum for concrete and, where appropriate, time bound actions to prevent and respond to such violence and abuse.

While recognizing these positive achievements, the Committee has indicated that still further initiatives at legislative and other levels need to be taken in order to prevent and combat the phenomenon of child abuse, violence and neglect inside the family. The measure most recommended by the Committee has been to run public campaigns to prevent and combat all forms of child abuse, also with the participation of children (for 12 EU Member Countries and 2 EU Accession / Candidate Countries).

The second most frequent recommendation, addressed to 6 EU Member Countries and 2 EU Accession / Candidate Countries, has been to undertake a comprehensive study on violence and sexual abuse in order to assess and better understand the extent, scope and nature of these practices and to facilitate the elaboration of policies and programmes to combat them.

As regards prevention the Committee has further recommended specific parenting programmes for families at risk of abusing children.

The Committee has also devoted much attention to the issue of the investigation and prosecution of cases of child abuse by recommending States to:

- establish child-friendly procedures and mechanisms to receive, monitor and investigate complaints (for 6 EU Member Countries and 1 EU Accession/Candidate Country), also by supporting help-lines and focusing on the early detection of child abuse cases;
- provide for the care, full physical and psychological recovery and reintegration of the child victims of abuse (for 10 EU Member Countries and 2 EU Accession/Candidate Countries).

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26 Austria, Belgium, Germany, Italy, United Kingdom, Croatia.
27 Denmark, France, Latvia, Lithuania.
28 Italy, Slovakia, United Kingdom.
29 Denmark, Malta, Slovakia.
30 Denmark, Hungary, Lithuania.
31 A/RES/56/138.
32 Denmark, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Malta, Slovenia, Spain, United Kingdom, Croatia, Romania.
33 Germany, Hungary, Italy, Latvia, Luxembourg, Spain, Croatia, Turkey.
34 Denmark, Greece.
35 Belgium, Luxembourg, Malta, Slovakia, Slovenia, United Kingdom, Romania.
36 Denmark, Finland, Hungary, Lithuania, Slovakia.
37 Denmark, Hungary.
38 Austria, Belgium, Denmark, France, Finland, Hungary, Lithuania, Malta, Slovenia, Spain, Romania, Turkey.
• develop or strengthen the **reporting** system, also through full support for confidential centres for abused children, and train teachers, law enforcement officials, care workers, judges and health professionals, and children themselves, in the identification, reporting and management of cases of ill-treatment (for 8 EU Member Countries and 1 Accession/Candidate Country);
• ensure appropriate **training** of the personnel involved both in the prosecution process and in the recovery process;
• **prosecute** cases of ill-treatment, ensuring that the **abused child is not victimized** in legal proceedings and his/her privacy is protected.

Finally in a few cases the Committee has recommended that States:
• provide programmes for the abusers and perpetrators;
• implement, improve or better evaluate the data collection for the cases child abuse;
• monitor and evaluate the work of preventing and fighting child abuse in the existing structures;
• guarantee adequate human and financial resources for the implementation of the relevant laws and policies on child abuse.

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**6.4.a. CRC on alternative care for children deprived of their family environment**

**Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.

**Comment on article 20**

Article 20 concerns children who are **temporarily or permanently unable to live with their families**, either because of circumstances such as death, abandonment or displacement, or because the State has determined that they must be removed for their best interests.

The article states that such children are entitled to special protection and assistance, thus indicating that the State has an obligation to protect children that cannot be cared for by their parents.

The article lists different methods of alternative care, but all of them must ensure the child’s rights under the Convention and, in particular, give due regard to the desirability of **continuity of upbringing** including ethnicity, religion, culture and language (see also article 8 and article 30).

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39 Belgium, Finland, Greece, Hungary, Latvia, Lithuania, Slovakia, United Kingdom, Romania.
40 Finland, Slovenia, Spain, Portugal, Romania, Turkey.
41 Belgium, Greece, Slovakia, Slovenia, United Kingdom.
42 Austria, Greece.
43 Greece, Portugal, Slovakia, Spain.
44 Germany, Hungary, Italy, Portugal, Romania.
45 Cyprus, Lithuania, Netherlands.
A first important point to notice in the wording of article 20 is that it refers to the family and not to parents, thus implying that in case the child is deprived of his/her parents or it is in his/her best interest to be removed from them, the State will first have to seek to place the child in the wider family before looking for other alternatives.

Article 20 then lists the forms of alternative care: foster care, adoption and, if necessary, placement in suitable institutions for the care of children. The order in which they are listed suggests a hierarchy of options: first, family relatives; second, substitute family through fostering or adoption; and third, an appropriate institution.

In its Day of General Discussion on Children without parental care held in 2005 the Committee recommended “that States Parties develop the use of alternative measures in order to avoid long-term placement of children in institutions that do not provide the type of setting children need, not only for survival, but also for development, including psychological, mental, spiritual, moral, and social development, in a manner compatible with human dignity and to prepare the child for individual live in a free society, in accordance with article 6.2 of the Convention”.

This is also confirmed by the 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally which states: “When care by the child’s own parents is unavailable or inappropriate, care by relatives of the child’s parents, by another substitute – foster or adoptive – family or, if necessary, by an appropriate institution should be considered”.

The same Declaration also indicates the conditions and standards for foster placement, inter alia: persons responsible for foster placement or adoption procedures should have appropriate training; foster placement of children should be regulated by law; foster family care, though temporary in nature, may continue, if necessary, until adulthood but should not preclude either prior return to the child’s own parents or adoption; a competent authority or agency should be responsible for supervision to ensure the welfare of the child”.

The placement of children in institutions is regarded as the last option, but when it takes place the State must take measures to ensure that they are provided with well-trained staff, that the children’s needs are met and their quality of life is good and that they are protected from abuse.

In its General Discussion on “State violence against children” the Committee has recommended that for children placed in institutions, consideration be given to the following:

(a) Small institutions caring for children in home-type settings often have a better record of caring for children;

(b) Smaller institutional settings, or the delivery of care and assistance to children and support to their families can be less costly and preferable for the full enjoyment of the human rights of children than institutionalization in large, sometimes impersonal institutions;

(c) A lesser number of better trained professionals can deliver more appropriate care to children than a large number of poorly trained or untrained workers;

(d) Efforts should be made to ensure contact between the child and his or her family (when appropriate) and to avoid the isolation of children in institutions”

The Committee has further recommended that “States Parties make every effort to ensure, in recruiting staff to care for children in all types of institutions, that due attention is given to the need to ensure the capacity of staff to make effective use of non-violent methods of discipline. Institutions should adopt anti-bullying and anti-violence strategies and policies, and provide training for staff in their implementation”.

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6.4.b. CRC on adoption

**Article 21**

States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that intercountry adoption may be considered as an alternative means of child care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin;

(c) Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

**Comment on article 21**

Article 21 addresses the rights of children who are adopted – in those countries which permit adoption – establishing the **paramountcy of children’s best interests** in all adoption arrangements and detailing minimum requirements for adoption procedures. Moreover it states that intercountry adoption is only to be considered if the child cannot be suitably placed in his or her own country. The need of all children for a family and for a sense of security and permanency in their relationship is recognized in the CRC’s Preamble that states “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”.

However the CRC remains **neutral about the desirability of adoption** even within the child’s country of origin, although adoption is mentioned in article 20 as one of the possible forms of alternative care. The assumption in the CRC is that the children’s psychological need for permanency and individual attachments can be met without the formality of adoption, but what is also clear is that where adoption is permitted it should be properly regulated by the State to safeguard children’s rights.

The reference to **“competent authorities”** must be understood as including the judicial and professional authorities charged with vetting the viability of the placement in terms of the best interests of the child, and with ensuring that proper consents have been obtained and all relevant information considered.

As regards the requirement of the **determination** “on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal

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“guardians” it is clear that an adoption can only take place if parents are unwilling or are deemed by judicial process to be unable to discharge this responsibility and any legislation that permits adoptions under less stringent conditions would probably amount to a breach of both children’s and parents’ rights under the Convention. The CRC further specifies the requirement of the informed consent to the adoption because of cases in which children have been wrongfully removed from their parents. These safeguards do however mean that the “paramountcy” of children’s best interests in adoption is in one sense circumscribed by the legal necessities of satisfying legal grounds and gaining necessary consents. If the procedures are not followed then an adoption must not proceed, regardless of the child’s best interests.

In the concept of the child’s best interests the principle of the consideration of the child’s views should also be considered. Although the Convention does not explicitly mention this point in the requirements relating to consent, a proper consideration of it is certainly to be considered implicit and in accordance with art. 12. As regards the institute of intercountry adoption, the wording of article 20 clearly indicates that this is to be considered as a solution of last resort. States have a clear obligation to take active measures to ensure that all possible efforts have been made to provide suitable care for the child in his or her country of origin. This principle is in accordance with article 20(3) requiring due regard to be paid to “the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background”; with article 7, upholding the child’s rights to know and be cared for by parents, and with article 8, the child’s right to preserve identity. In addition it is confirmed by the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which is the most important international treaty in this regard and which establishes the “subsidiarity principle” that an intercountry adoption should only take place “after possibilities for placement of the child within the State of origin have been given due consideration”.

Respect for this principle and the regulation of intercountry adoption is crucial in order to prevent an improper use of this institute, such as when it is arranged on a commercial basis or by illicit means or even in situations of grave violations of children rights as in the cases of trafficking of children for sexual exploitation or slavery. This has also been recognized in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography that requires States to take measures to criminalize as an extraditable offence any sort of trafficking in children, including: “improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable internal legal instruments on adoption”.

The CRC, as well as the Hague Convention, also state that intercountry adoption should not result in “improper financial gain”. While payments by adoptive couples may be made in good faith and without harm to the child, a system that puts a price on a child’s head is likely to encourage criminality, corruption and exploitation. Also article 35 requires States Parties to take measures to prevent the sale of children for any purpose. The CRC further specifies that “the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption”. This implies that “every international adoption must be authorized as being in the best interests of the child by competent authorities of the child’s State, on the basis of proper investigation and information and with proper consents (with counselling, if necessary) having been obtained.

Comment on the Committee’s concluding observations on articles 20 and 21

The Committee has very frequently focused on the issue of the alternative care for children deprived of their family environment addressing it in its Concluding Observations for 19 EU Member Countries and 4 EU Accession/Candidate Countries50.

50 Cyprus, Czech Republic, Denmark, Estonia, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Bulgaria, Croatia, Romania, Turkey.
The Committee has appreciated the adoption of specific laws or plans of action to care for the needs of children deprived of their family environment \(^5^1\) and for expansion of the foster care system; however it has frequently expressed its concern at the large and /or increasing number of children placed in institutions or in out-of-home care and about the fact that among these children the percentage of foreign ethnic children is higher than that of children from the country as well as the fact that many of these children come from vulnerable or poor families.

The Committee has further commented negatively on:

- the absence of a regular periodic review of placements;
- the insufficient contact between children placed in out-of-home care and their parents when this is in their interests;
- the absence of complaint mechanisms in institutions;
- the fact that children’s views are not taken into consideration when deciding their placement and in its organization.

As a consequence the Committee has first of all recommended the States to strengthen their efforts to support children and their parents in order to avoid as much as possible the placement in out-of-home care especially for the cases that are due to economic or social problems.\(^3^2\)

As regards the institutes the Committee has requested States:

- to strengthen their efforts to prevent and reduce the recourse to institutionalisation\(^3^3\);
- to ensure that children are placed in institutions only as a measure of last resort\(^3^4\);
- and for the shortest time possible\(^3^5\);
- that the conditions of institutes are improved\(^3^6\);
- that children raised in institutions, live in small groups and are individually cared for\(^3^7\).

As regards foster care, the Committee has often recommended (10 EU Member Countries and 4 EU Accession/Candidate Countries\(^5^8\)) to increase the availability of foster care, family-type foster homes and other family-based alternative care by providing greater financial assistance and increasing the counselling and support mechanisms for foster families.

The Committee has further focused its attention on the issue of the periodic review of placements in accordance with article 25 of the CRC that states that children placed by “competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement”. Continuous monitoring has indeed proved crucial in assessing the decisions taken on the basis of the principle of the child’s best interests and in preventing abuses.

The Committee has therefore recommended to 6 EU Member Countries and 2 EU Accession/Candidate Countries\(^6^9\) to undertake a periodic review of placement.

For 7 EU Member Countries and 1 EU Accession/Candidate Country\(^6^0\) the Committee has recommended guaranteeing the contact between the children placed in out-of-home care and their parents.

Another issue to which the Committee has paid special attention is that of the participation by children in the process of their placement in alternative care, by recommending that States (7 EU Member Countries and 1 EU Accession/Candidate Country\(^6^1\)) take into account children’s views in any decision.
regarding their placement as well as promoting their active participation in the life and organization of the institutes.

Finally in a few cases the Committee has recommended States to provide adequate follow-up and reintegration support and services for children leaving institutional care and to invest in the training of social workers.

As regards the institute of adoption, the Committee has issued Concluding Observations for 9 EU Member Countries and 3 EU Accession/Candidate Countries.

The Committee has focused its attention on the legislative guarantees for the adoption procedure especially as provided by the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993 which is the principal international treaty regulating intercountry adoption. This Convention was specifically drafted to provide detailed, legally binding international standards, an agreed system of supervision and channels of communication and effective relationships between the authorities in the countries of origin and of destination of the adopted children. Its first objective, set out in article 1, is “to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law”.

The Committee has paid much attention to the application of the Hague Convention by welcoming its ratification. On the other hand it has recommended that those States that haven’t done it yet should ratify the Convention or ensure that their legislation complies with the principle of the Hague Convention. Furthermore the Committee has requested some destination countries in the adoption procedure to promote ratification of the Hague Convention by, or to conclude bilateral agreements with, the States of origin of the children adopted by the nationals of that country.

It must be underlined that in recent years the Hague Convention is becoming more and more the point of reference for the organization of intercountry adoption and it has been ratified by the vast majority of EU Member Countries and EU Accession and Candidate Countries.

The Committee has further recommended that States ensure that sufficient human and other resources are made available for the effective implementation and monitoring of the legislation.

Finally in a few cases the Committee has addressed the issue of domestic adoption by requesting States to harmonize proceedings and costs of domestic adoption among authorized agencies throughout the State party; to ensure that it is carried out in full compliance with the best interests of the child and the appropriate legal guarantees and procedures spelled out in the Convention and requesting that the State encourage the practice of national adoption so that the recourse to intercountry adoption becomes a measure of last resort.

62 Czech Republic, Lithuania.
63 Hungary, Lithuania, Poland, Romania.
64 Cyprus, France, Germany, Hungary, Italy, Latvia, Malta, Slovakia, Slovenia, Croatia, Romania, Turkey.
65 Cyprus, Hungary, Italy.
66 Hungary, Latvia, Malta, Slovakia, Slovenia, Croatia, Romania.
67 Germany, Italy.
68 As of April 2006 the Hague Convention on Intercountry Adoption has been ratified by Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Bulgaria, Romania, Turkey.
69 France, Hungary, Romania.
70 France, Italy, Croatia, Romania.
7. Health

7.1. CRC on children with disabilities

**Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

**Comment on article 23**

The growing understanding and acknowledgement of the links between disability and human rights is reflected by the inclusion in the CRC of a specific article on the rights of “the disabled child” (article 23) and the inclusion of disability as a specific ground for protection against discrimination under article 2. On the base of article 2, States are required to ensure and respect all the rights set forth in the CRC to disabled children within their jurisdiction. Besides article 23 provides further standards on realizing the rights of disabled children and the Committee has often underlined, in its overall comments on implementation, the importance of respecting the child as a “subject of rights”. This principle had been reemphasized by article 23 from the point of view of the disabled child, who should be provided with conditions for living that “promote self-reliance” and facilitate “active participation in the community”.

Paragraphs 2 and 3 set out the right of the disabled child to “special care”, again stressing that assistance should be designed to ensure “effective access” to various services, “in a manner conducive to the child’s achieving the fullest possible social integration and individual development...” and the services “shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child”.

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Paragraph 4 promotes international cooperation to improve the capabilities and skills of States Parties. In support of these provisions in 1993 the General Assembly adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, (resolution 48/96). This is the first detailed instrument reaffirming rights for all disabled people, it refers in its Preamble to the CRC stating that it “prohibits discrimination on the basis of disability and requires special measures to ensure the rights of children with disabilities”.

During its monitoring activity the Committee frequently urges States Parties to comply with the Standard Rules and in October 1997 it held a day of General Discussion on “The rights of children with disabilities”, adopting detailed recommendations. As a result of this General Discussion day the Committee decided to constitute a working group to follow this up and since then the Committee has consistently focused on the situation of disabled children in its examination of States Parties’ reports and drawn the attention of States to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities and to its own recommendations.

It has placed a particular emphasis on the importance of including disabled children in the mainstream education system. And in the light of the aforementioned documents the Committee recommended that the State Parties make further efforts to integrate children with disabilities into educational and recreational programmes currently used by children without disabilities.

Elaborated by an ad hoc open-ended Working Group of government experts within the Commission for Social Development, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities were adopted by the United Nations General Assembly at its forty-eighth session on 20 December 1993. The Rules uphold the principle of equal rights – “that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation”.

The Introduction to the Rules emphasizes: “Persons with disabilities are members of society and have the right to remain within their local communities. They should receive the support they need within the ordinary structure of education, health, employment and social services”.

Most of the Standard Rules are relevant to disabled children, because various rules refer directly to children. For example: Rule 1. Awareness-raising: “Awareness-raising should be an important part of the education of children with disabilities and in rehabilitation programmes... Awareness-raising should be part of the education of all children and should be a component of teacher-training courses and training of all professionals”.

Rule 2. Medical care: “States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society [...] States should ensure that medical, paramedical and related personnel are adequately trained so that they do not give inappropriate advice to parents, thus restricting options for their children...”.

The introduction to the Standard Rules distinguishes between “disability” and “handicap” as follows: “The term ‘disability’ summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature. “The term ‘handicap’ means the loss or limitation of opportunities to take part in the life of the community on an equal level with others. It describes the encounter between the person with a disability and the environment. The purpose of this term is to emphasize the focus on the shortcomings in the environment and in many organized activities in society, for example information, communication and education, which prevent persons with disabilities from participating on equal terms.”

The introduction goes on to explain: “The use of the two terms ‘disability’ and ‘handicap’ [...] should be seen in the light of modern disability history. During the 1970s there was a strong reaction among representatives of persons with disabilities and professionals in the field of disability against the terminology of the time. The terms ‘disability’ and ‘handicap’ were often used in an unclear and
confusing way, which gave poor guidance for policy-making and for political action. The terminology reflected a medical and diagnostic approach, which ignored the imperfections and deficiencies of the surrounding society”.

Using a medical rather than a social definition of disability has been an important factor in building the concept of disabled people as “different”, and has resulted in the provision of specialized solutions that emphasize the differences rather than integrating them.

**Comment on the Committee’s concluding observations on article 19**

The Committee addressed the issue of children with disabilities in its Concluding Observations for 19 EU Member Countries, 1 Accession Country and 1 Candidate Country. Concerning children with disabilities, including mental health diseases, the Committee appreciated: the many efforts made in this field; the adoption of a national plan to equalize opportunities for citizens with mental health disabilities; the growing number of children with disabilities who are integrated into mainstream education and the recent involvement of children with disabilities and their families in policy making, especially in relation to the Ministry of Education's special education department; the establishment of national policy on special education for children with disabilities; the progress made in modifying access to streets, buses, trains and some buildings for persons with disabilities, through the removal of some structural obstacles in education, employment and rehabilitation; the measures taken to strengthen the mental health care services; the establishment of child psychiatric units in country hospitals; the adoption of the comprehensive scheme of services and cash benefits available to families of children with disabilities, as well as to non-governmental organizations working in this area; the amendments of relevant laws to improve the implementation of the rights of children with disabilities; and the adoption of the one-to-one mentoring system and the multidisciplinary approach to detecting and managing mental health problems.

Whereas the Committee remained particularly concerned about the **low level of implementation** of the principles and recommendations set down by the *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* and the Committee's recommendations adopted during the General Discussion day on *The rights of the children with disabilities*, 6 October 1997. In particular the Committee addressed its concerns on this point to 7 EU Member Countries and 1 Accession Country demanding the fulfilment of the principles set down in the two documents just mentioned in relation to the different contexts for the full protection of children with disabilities.

In addition the Committee dedicated consistent attention to the issue of **mental health diseases** considered as a “partial disabilities” for 7 EU Member Countries recommending that: an increase in the research be undertaken on the diagnosis and the treatment of ADHD (Attention Deficit Hyperactivity Disorder) and ADD (Attention Deficient Disorder), “including possible negative effects on the psychological well-being of children, and that other forms of management and treatment should be used as much as possible to address these behavioural disorders”; to pursue further efforts to ensure the implementation of integrated mental health programmes; and to make available the necessary resources and assistance for these activities.

From the Concluding Observations examined an aspect that also deserves attention is the fact that in several cases at the national and local level there are no policies for children with disabilities and, as a

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1. Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Sweden, United Kingdom, Romania and Turkey.
2. Czech Republic, France, Greece, Italy, Portugal, Netherlands.
3. Malta, Sweden, United Kingdom and Turkey.
4. Greece and Turkey.
5. General Assembly Resolution 48/96.
6. Czech Republic, Denmark, Estonia, Finland, Hungary, Lithuania, Netherlands and Romania.
7. Denmark, Estonia, Ireland, Luxembourg, Sweden and United Kingdom.
consequence, the best interest of the child is not always respected. On the basis of this observation the Committee requested to 7 EU Member Countries and 1 Candidate Country\(^9\) to provide policies aimed at encouraging the integration of children with disabilities into the regular educational system and inclusion in society also by providing special training for teachers and making school more accessible. Again in relation to this issue the Committee specifically requested 2 EU Member Countries and 1 Accession Country\(^{10}\) to review the existing policies and practices in relation to children with disabilities taking into due account the Standard Rules on Equalization of Opportunities for Persons with Disabilities and the General Discussion on children with disabilities. In particular, these policies and programmes should be realised, as stressed by the Committee in relation to 2 EU Member Countries\(^{11}\), in order to facilitate the active participation in the community of children with disabilities. Similar to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, article 23(1) affirms the equal rights of disabled children and thus the importance of active participation, which is reflected in the other paragraph of the article.

In a report to the Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities in February 1996, the Committee on the Rights of the Child summarized the general concerns that arose from its examination of States Parties’ reports: “The Committee has examined the situation of disabled children in the light of article 23 of the Convention, especially focusing on the rights of mentally and physically disabled children, with a view to ensuring their active participation in the community and respect for their dignity and the promotion of their self-reliance”.

Paragraphs 2 and 3 of article 23 acknowledge the need for positive action to equalize opportunities for disabled children. The words “subject to available resources” reflect the general principle found in article 4, and similar provisions in articles 26 and 27. Assistance must be requested and must be appropriate to the child’s condition and to the circumstances of parents or others caring for the child. It should be provided free “whenever possible, taking into account the financial resources of the parents and others caring for the child”.

The purpose of the assistance is to ensure that the child has “effective access” to a range of services (detailed below) in a manner “conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development”.

To reach this aim, as stressed in the aforementioned report to the Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, a first matter of concern is that some societies are not sufficiently sensitive to the needs and the situation of disabled children, moreover in the light of article 2 of the CRC, the Committee is preoccupied by the widespread discriminatory attitudes towards those children. Thus, it recommended for 3 EU Member Countries, 1 Accession Country and 1 Candidate Country\(^{12}\) that they ensure that the needs of the child with disabilities are duly taken into account in policies and programmes dealing with them, also at the local level and to give due attention to interventions aimed at combating negative social attitudes toward children with disabilities. Thus, strategies and educational programmes, along with the adequate dissemination of information and awareness-raising campaigns to combat discrimination, should be undertaken to avoid certain prejudices which affect disabled children negatively, as recommended by the Committee to 5 EU countries and 1 acceding country\(^{13}\). The Committee seems to recognize the prevalence of certain negative attitudes which hamper the implementation of the rights of disabled children with regard to article 23, such as isolation from the rest of society.

\(^9\) Denmark, Estonia. Latvia, Lithuania, Malta, Netherlands, Portugal and Turkey.
\(^{10}\) Estonia, France and Romania.
\(^{11}\) Ireland and Poland.
\(^{12}\) Denmark, Estonia, Finland, Romania and Turkey.
\(^{13}\) Greece, Hungary, Malta, Netherlands, Slovakia and Romania.
Moreover, the **promotion of their rights** should be further advanced through, for instance, support to parents’ organizations and to community-based services and a sustained programme for moving children from institutions to a good family environment. On this point the CRC Committee invited 4 EU Member Countries and 1 Accession Country¹⁴ to undertake all the necessary campaigns which focus on prevention, inclusive education, family care and the promotion of the rights of the child with disabilities and 4 EU Member Countries and 1 Accession Country¹⁵ to expand community-based rehabilitation programmes, including parent support groups.

The Committee is also negatively impressed by the fact that some disabled children do not have **adequate access to health and social care services** and it expressed concern over the small number of disabled children enrolled in schools, which might reflect insufficient attention to their specific needs. More protection should be offered to them, including the possibility, through education, of integrating properly into society and participating actively in family life. Efforts for the early detection of the incidence of handicap should be made. This implies for the Committee, as requested directly to 2 EU Member Countries and 1 Accession Country¹⁶ to ensure the necessary professional disability specialists and adequate financial resources and through the provision of adequate support, supervision and training to persons working with these children as recommended to 2 EU Member Countries¹⁷.

Another issue of concern for the Committee is the need to promote the **full participation** of these children **in their family life**. Thus the Committee urged 4 EU Member Countries and 1 Candidate Country¹⁸ to strengthen community-based programmes to enable them to stay at home with their family and requested 5 EU Member Countries¹⁹ to provide an alternative to the institutionalization of disabled children.

In relation to articles 9, 18 and 21 of the Convention in particular, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, States should promote the full participation of persons with disabilities in family life, which may require special information, counselling and support measures: “They should promote their right to personal integrity and ensure that laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood. Persons with disabilities should be enabled to live with their families. States should encourage the inclusion in family counselling of appropriate modules regarding disability and its effects on family life. Respite-care and attendant-care services should be made available to families which include a person with disabilities. States should remove all unnecessary obstacles to persons who want to foster or adopt a child or adult with disabilities...” (rule 9).

However, all these kinds of intervention need the allocation of adequate financial and human resources, thus the **“budgetary reductions”** have also affected disabled children who are particularly disadvantaged in their access to adequate health and educational facilities. The Committee urges countries to take all the necessary steps to minimize the negative impact of the structural adjustment policies on the situation of disabled children. The Committee recognizes, in the light of article 4, the priority of allocating the maximum available resources to protect these children, on this basis the Committee requested 5 EU Member Countries and 1 Candidate Country²⁰ to allocate the necessary resources for programmes and facilities for all children with disabilities, especially for those living in rural areas.

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¹⁴ Estonia, France, Greece, Hungary and Romania.
¹⁵ France, Hungary, Latria, Slovakia and Romania.
¹⁶ Estonia, France and Romania.
¹⁷ Estonia and Greece.
¹⁸ Czech Republic, Estonia, Latvia, Lithuania and Turkey.
¹⁹ Czech Republic, Estonia, Greece, Malta and Slovakia.
²⁰ Czech Republic, Hungary, Latvia, Lithuania, Poland and Turkey.
7.2. CRC on basic health, health care, health services and welfare

**Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
   (a) To diminish infant and child mortality;
   (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
   (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
   (d) To ensure appropriate pre-natal and post-natal health care for mothers;
   (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
   (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

**Comment on article 24**

The CRC non-discrimination principle (article 2) requires Countries to recognize the right of all children without discrimination to “the highest attainable standard of health” as well as to “facilities for the treatment of illness and rehabilitation of health”. And States Parties must strive to ensure “that no child is deprived of his or her right of access to such health care services”.

Paragraph 2 provides a non-exclusive list of appropriate measures that States must take in pursuing full implementation of the right, including “to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care”. The holistic nature of the CRC and the Committee’s interpretation stress the obvious connections between realizing the child’s health rights and the child’s right to an adequate standard of living (article 27) and to education (article 28) as well as to protection from all forms of physical or mental violence (article 19). Respect for the views of the child needs to be built into health care and into the design of health services, and respect for evolving capacities (article 5, page 85) underlines the need for full consideration of adolescent health issues.

Article 24, paragraph 3, requires action to abolish traditional practices “prejudicial to the health of children”, drafted because of particular concern over female genital mutilation and requiring a review of all potentially harmful practices.
Paragraph 4 asserts the international importance of Human Rights and of the two International Covenants – on Civil and Political Rights and on Economic, Social and Cultural Rights – and of the formulation of definitions and principles by international organizations, in particular the World Health Organization (WHO) and UNICEF.

The broad definition of health adopted by the WHO in its Constitution – a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity – emphasizes again the holistic nature of the CRC and the links to the broad definition of child development that the Convention promotes. Healthy development of the child is of basic importance.

**Comment on the Committee’s concluding observations on article 24**

The Committee has requested a large number of European Countries (21 EU Member Countries and 4 EU Accession / Candidate Countries)\textsuperscript{21} to pay attention to the issue of health care, health services and welfare. Some positive achievements were expressed by the Committee to EU Countries (15 EU Member Countries and 3 EU Accession / Candidate Countries)\textsuperscript{22} in relation to the following specific issues: the recent adoption of law reforms at national level or national Plans of Action or Programmes or Strategies on health or to fight poverty (8 EU Member Countries and 3 EU Accession / Candidate Countries)\textsuperscript{23}; the recent decline of the infant mortality rate or initiatives taken to reduce it (6 EU Member Countries)\textsuperscript{24}; the information related to the protection of mother, infant and school-age children (3 EU Countries)\textsuperscript{25}.

Concerning the Committee’s recommendations on standards of health the analysis follows the chronological order of the specific issues as presented by article 24 of the CRC. First of all the Committee has recommended that States ensure or facilitate the adequate and equal access of all children, without discrimination, to health care and services (9 EU Member Countries and 2 EU Accession / Candidate Country)\textsuperscript{26}, with special attention to children from ethnic and minority groups, especially Roma children, or marginalized vulnerable groups (2 EU Member Countries and 1 EU Accession / Candidate Country)\textsuperscript{27}.

Concerning health care and services on other specific issues, the Committee has requested a few European Countries (3 EU Member Countries and 1 EU Accession / Candidate Country)\textsuperscript{28} to increase investment in public health care facilities or financial allocations for health services in rural areas or provide adequate antenatal and post-natal health-care services or establish more childcare services to meet the needs of working parents.

Regarding other specific issues of basic health, the Committee has expressed its concern and adopted many recommendations. The Committee expressed its concern for malnutrition and obesity, in particular it has recommended to few European Countries that they should pay attention to malnutrition or reduce and prevent malnutrition in some areas of the Country (4 EU Member Countries and 1 EU Accession / Candidate Country)\textsuperscript{29}, and to address the issue of overweight and obesity or to strengthen efforts to prevent and combat it (3 EU Member Countries)\textsuperscript{30}.

\textsuperscript{21} Cyprus, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Bulgaria, Croatia, Romania, Turkey.

\textsuperscript{22} Cyprus, Czech Republic, Denmark, France, Germany, Greece, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Austria, Bulgaria, Croatia, Romania, Turkey.

\textsuperscript{23} Denmark, Germany, Greece, Italy, Latvia, Lithuania, Poland, Slovenia, Spain, Sweden, Croatia, Romania, Turkey.

\textsuperscript{24} Czech Republic, Denmark, France, Germany, Greece, Italy, Latvia, Lithuania, Netherlands, Poland, Slovakia, Slovenia, Sweden, United Kingdom, Croatia, Romania, Turkey.

\textsuperscript{25} Czech Republic, Denmark, France, Germany, Greece, Italy, Latvia, Lithuania, Malta.

\textsuperscript{26} Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Bulgaria, Croatia, Romania, Turkey.

\textsuperscript{27} Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Slovakia, Slovenia, Sweden, United Kingdom, Croatia, Romania, Turkey.

\textsuperscript{28} France, Lithuania, Sweden.

\textsuperscript{29} Czech Republic, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Bulgaria, Croatia, Romania.

\textsuperscript{30} Czech Republic, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Bulgaria, Croatia, Romania.
In the light of article 24 of the CRC, the Committee has recommended to two European Countries (2 EU Member Countries) that they address the problem of possible effects of environmental pollution or take all appropriate measures to prevent and combat the dangers and risks to the health of children posed by this issue.

The Committee has also recommended that some EU Countries (5 EU Member Countries and 2 EU Accession / Candidate Countries) promote breastfeeding practices. This issue contains two aspects about the promotion of breastfeeding: the need for positive information, education and promotion of its advantages, and the need to challenge the negative impact of the commercial marketing of substitutes. The Committee has recommended to a few European Countries (2 EU Member Countries and 1 EU Accession and 1 Candidate Countries) that they strengthen their efforts to raise awareness about accident prevention through public information campaigns.

The issue of female genital mutilation was also taken into consideration by the Committee, that has recommended to a few European Countries (3 EU Member Countries) that they prohibit this practice or undertake a study on the extent and nature of the phenomenon and organize an information and awareness campaign taking into account the results of the study, to prevent this practice.

HIV/AIDS is also included in the Committee's recommendations to some European Countries (2 EU Member Countries and 1 EU Accession / Candidate Country) under basic health, taking into consideration the Committee's General Comment n.3 on the issue. Children and adolescents are at the heart of the problem and the Committee's General Comment n.3 has underlined the following objectives:

- To identify further and strengthen understanding of all the human rights of children in the context of HIV/AIDS;
- To promote the realization of the human rights of children in the context of HIV/AIDS, as guaranteed under the CRC;
- To identify measures and good practices to increase the level of implementation by States of the rights related to the prevention of HIV/AIDS and the support, care and protection of children infected with or affected by this pandemic;
- To contribute to the formulation and promotion of child-oriented plans of action, strategies, laws, polices and programmes to combat the spread and mitigate the impact of HIV/AIDS at the national and international levels.

Concerning the health of adolescents, HIV/AIDS is discussed in the specific paragraph below. The Committee has recommended to several Countries that they should strengthen their HIV/AIDS prevention programmes, including safe sex education programmes, or take due account of the International Guidelines on HIV/AIDS and Human Rights or take all necessary measures to reduce mother-to-child transmission of HIV/AIDS, including the use of antiretroviral drugs for pregnant mothers who are HIV-positive.

The Committee has recommended to a few European Countries that they should pay attention to immunization programmes (1 EU Member Country and 2 EU Accession Candidate Countries). Immunization is one particular aspect of preventive health care and the Committee has encouraged them to look to international cooperation for the full and efficient implementation of those kinds of programmes.

Regarding resources (human and financial), the Committee has recommended to some EU Countries that they should allocate appropriate resources and develop comprehensive policies and programmes.
to improve the health situation of all children, without discrimination (4 EU Member Countries and 2 EU Accession / Candidate Countries)\(^3\), including the training of sufficient numbers of health-care professionals, provision of adequate salaries for health-care workers, and investments in health-care infrastructure, especially in the most disadvantaged areas (1 EU Member Country and 1 EU Accession / Candidate Country)\(^3\).

7.3. Adolescents’ health

Comment on Committee’s concluding observations on adolescents’ health (article 24)

The Committee has requested that attention be paid to adolescents’ health, inter alia taking into account General Comment No. 4 (2003) on adolescent health and development in the context of the CRC, to a large number of EU Countries (23 EU Member Countries and 2 EU Accession and 2 Candidate Countries)\(^3\). Following the definition of a child (art. 1 of the CRC), adolescents up to 18 years old are holders of all the rights enshrined in the CRC; they are entitled to special protection measures and, according to their evolving capacities, they can progressively exercise their rights (art. 5).

As underlined in General Comment n. 4 regarding adolescents, the Committee notes with concern that in implementing their obligations under the CRC, States parties have not given sufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development. This has motivated the Committee to adopt General Comment n. 4 in order to raise awareness and provide States parties with guidance and support in their efforts to guarantee the respect for, protection and fulfilment of the rights of adolescents, also through the formulation of specific strategies and policies.

The Committee understands the concepts of “health and development” more broadly than being strictly limited to the provisions defined in articles 6 (right to life, survival and development) and 24 (right to health) of the CRC. One of the aims of this general comment is precisely to identify the main human rights that need to be promoted and protected in order to ensure that adolescents do enjoy the highest attainable standard of health, develop in a well-balanced manner, and are adequately prepared to enter adulthood and assume a constructive role in their communities and in society at large.

The Committee has appreciated the efforts / progress made by EU Countries (9 EU Member Countries and 1 EU Accession / Candidate Country)\(^3\) on the issue of health problems faced by adolescents, in particular about drug abuse\(^3\), tobacco\(^3\) use and alcohol abuse\(^3\) (see also the paragraph on drug and alcohol abuse), about cases of sexually transmitted diseases (STDs) and HIV/AIDS\(^3\), and about health and sex education in schools\(^3\).

A specific issue regarding adolescents that the Committee has discussed with some EU Countries is suicide (12 EU Member Countries and 2 EU Accession / Candidate Countries)\(^4\). In some cases the Committee has just expressed its concern for the high suicide rate or incidence in the Country (9 EU

\(^{37}\) Czech Republic, France, Latvia, Lithuania, Romania, Turkey.

\(^{38}\) France, Romania.

\(^{39}\) Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Bulgaria, Croatia, Romania, Turkey.

\(^{40}\) Austria, Cyprus, Estonia, Finland, France, Lithuania, Portugal, Sweden, United Kingdom, Croatia.

\(^{41}\) Austria, Ireland, Sweden, Croatia.

\(^{42}\) Austria, France, Estonia, Sweden.

\(^{43}\) Austria, Estonia, Sweden.

\(^{44}\) Austria, Estonia.

\(^{45}\) Cyprus, Finland, Sweden.

\(^{46}\) Austria, Estonia, Finland, France, Germany, Hungary, Ireland, Lithuania, Luxembourg, United Kingdom, Slovenia, Sweden, Bulgaria, Romania.

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Member Countries and 2 EU Accession / Candidate Countries). In other cases it has also recommended that the State should undertake or intensify its measures to prevent suicide among adolescents, i.e. with specific programmes (6 EU Member Countries and 1 EU Accession / Candidate Country), or undertake a comprehensive study or use the results of a comprehensive study undertaken on suicide among youth to enable the authorities to understand this phenomenon and take appropriate measures to reduce the suicide rate.

The issue of sexually transmitted diseases (STDs) and HIV/AIDS was also underlined by the Committee specifically in relation to adolescents (see also specific paragraphs below), taking into consideration the Committee’s General Comment n. 3 on HIV/AIDS, to some EU Countries (5 EU Member Countries and 2 EU Accession / Candidate Countries). In particular, the Committee has suggested that a comprehensive and multidisciplinary study be undertaken to understand the scope of adolescent health problems, including the negative impact of STDs and HIV/AIDS, in order to be able to develop adequate policies and programmes or to develop prevention programmes against STDs and HIV/AIDS.

The Committee in its recommendations to a high number of EU Countries (13 EU Member Countries and 3 EU Accession / Candidate Countries) has recognised the importance of promoting, developing, strengthening mental health programmes, policies and / or services for adolescents (see also paragraph on basic health and disabilities). In particular, the Committee has requested EU Countries (5 EU Member Countries and 1 EU Accession / Candidate Country) to take all necessary measures to strengthen its mental health and counselling services ensuring that these are accessible and sensitive to adolescents. In just two cases the Committee specified that those mental health services for adolescents include specialized psychiatric services or institutions in which adolescents need to be separated from adults.

The Committee has recommended to EU Countries that they should promote, include or strengthen the programme of health education in schools (14 EU Member Countries and 1 EU Candidate Country), including sexual and reproductive health (11 EU Member Countries and 1 EU Accession and 1 Candidate Countries). The Committee has also recommended more information campaigns or programmes addressed to adolescents concerning family planning or birth control measures (9 EU Member Countries and 2 EU Accession / Candidate Countries), including the use of condoms, also to prevent early pregnancy.

Recognizing the importance of health policies and programmes to adolescents, the Committee has recommended to EU Countries that they should strengthen and ensure or promote activities of this kind (3 EU Member Countries and 1 EU Accession / Candidate Country), including the provision of adequate resources, and with the full participation of adolescents.
As regards health education, the Committee has focused its attention on training programmes (6 EU Member Countries and 1 EU Accession / Candidate Country). In particular, the Committee has specifically requested EU Countries to undertake further measures, including the allocation of adequate human and financial resources, to evaluate the effectiveness of training programmes in health education, in particular in a few cases as regards reproductive health (6 EU Member Countries). The Committee has also recommended the development of youth-friendly counselling, care and rehabilitation facilities (10 EU Member Countries and 2 EU Accession / Candidate Countries), in some cases specifying that these may be used without parental consent when this is in the best interests of the child.

Finally, the Committee has recommended in a few cases that States should seek the technical cooperation and advice from, among others, UNICEF and the WHO.

7.4. CRC on standards of living

Article 27
1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Comment on article 27
The focus of article 27 is the right of the child to an adequate standard of living for his/her full development. The primary responsibility for securing this right lies with parents; States must if necessary assist parents in doing so and in cases of need provide material support for the child, such as food, clothing and housing and shall also take appropriate measures to recover maintenance from parents. In connection with article 27, there are two essential CRC principles, also found in other articles. The first, set out in paragraph 1 of article 27, is the right of each child to “development”, which, as the CRC makes clear, must be to “the maximum extent” (article 6) or to the child’s “fullest potential” (article 29). The second, set out in paragraphs 2 and 4 of article 27, is that parents have primary responsibility for

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62 Cyprus, Czech Republic, France, Latvia, Lithuania, Sweden, Turkey.
63 Czech Republic, France, Latvia, Lithuania, Malta, Sweden.
64 Cyprus, Czech Republic, France, Hungary, Latvia, Lithuania, Malta, Slovakia, Sweden, Romania, Turkey.
65 Slovakia, Croatia.
securing this development, with the assistance of the State. This principle is also asserted in articles 5, 7 and 18. Article 27 recognizes that the child’s development needs to be connected to his or her living conditions. By listing the different components of full development – physical, mental, spiritual, moral and social – article 27 makes clear that an adequate standard of living is not just limited to the basics of food, clothing and housing, important though these are. Very few countries that have reported to the Committee to date can claim to be using their available resources to the maximum extent possible to alleviate children’s needs. Some of the wealthiest nations of the globe have children experiencing unacceptable levels of deprivation.

**Comment on Committee’s concluding observations on article 27**

When parents are unable to ensure an adequate standard of living for their child, it is a duty of the State to intervene. Article 27 also indicates explicit qualifications on the State’s obligations “in accordance with national conditions and within their means”. These words reflect a general concern of governments about financial commitments and control over government expenditure. The Committee’s concluding observations are focused on this point regarding the State’s obligations. The Committee notes the efforts made by some EU Countries (9 EU Member Countries, 1 EU Accession / Candidate Country) on the issue of adequate standard of living presented in article 27. *Inter alia*, the Committee has underlined one specific point: commitments, action plans, strategies and programmes made to prevent and eliminate social exclusion and child poverty or to increase the child allowances or benefits (8 EU Member Countries), including very specific details that were underlined each of them for a maximum of one Country.

In the same direction the Committee issued some recommendations to EU Countries going more into the details of the contents of article 27 (12 EU Member Countries and 1 EU Accession / Candidate Country). The first point regards the recommendations made by the Committee to EU Countries (8 EU Member Countries and 1 EU Accession / Candidate Country) to ensure that the needs of all children are met without discrimination, in particular those whose families are in socially and economically disadvantaged situations. The Committee has recommended to the States that they should support and ensure the principle of non discrimination in relation to the most disadvantaged groups of children and families. In particular it has recommended support for economically disadvantaged families, in particular those living in single parent families, families with three or more children, families of ethnic origin, Roma families and families caring for a child with severe disabilities.

The second point on which the Committee had focused its attention is related to the means of achieving the first aim, namely which kind of initiatives some EU Countries (8 EU Member Countries and 1 EU Accession / Candidate Country) need to take to further reduce or eliminate child poverty. In particular, the Committee has recommended the provision of strategies, material or financial assistance and/or support programmes (7 EU Member Countries and 1 EU Accession / Candidate Country) or take all necessary measures to the “maximum extent of... available resources” (3 EU Member Countries and 1 EU Accession / Candidate Country).

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67 Austria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Slovakia, United Kingdom, Croatia.
68 Austria, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, United Kingdom.
69 Austria, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Slovakia, United Kingdom, Croatia.
70 Austria, Denmark, Germany, Greece, France, Hungary, Latvia, United Kingdom, Croatia.
71 Hungary, Latvia.
72 Denmark, Croatia.
73 Greece, Croatia.
74 Austria, France, Germany, Greece, Hungary, Latvia, Lithuania, United Kingdom, Croatia.
75 Austria, Finland, France, Germany, Greece, Hungary, Lithuania, Croatia.
76 Germany, Latvia, United Kingdom, Croatia.
8. Special measures of protection

8.1. Street children

Comment on the CRC on street children

The issue of children living or working on the streets is not specifically addressed in the CRC, however it has been an issue of major concern for the Committee in its Concluding Observations on State reports as these children are certainly among the most vulnerable and disadvantaged.

Article 2 which prohibits discrimination of any kind against children on different grounds (“irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”) certainly also covers the case of the so-called “street children”.

In the Report on its sixth (special) session, the Committee noted resolution 1994/93 of the Commission on Human Rights on “The plight of street children”: “...In its discussion the Committee also pointed out that the term ‘street children’ may not clearly define the nature or the causes of the violations these children suffer. It is in fact an expression that covers a diversity of situations affecting children. Some work on the streets but have homes, others are abandoned or for other reasons become homeless, others again have escaped abuse, some are pushed into prostitution or drug abuse. Another concern about the term was that it was understood in some societies to be stigmatizing and discriminatory. The Committee, therefore, had endeavoured to use more appropriate terminology.” (Report on the sixth (special) session, April 1994, CRC/C/29, p. 31)

Other articles of the CRC that should be taken into consideration when considering the issue of children living and/or working in the street are art. 9 and art. 20.

Article 9 addresses the issue of children’s separation from parents stating 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.”

This provision may be relevant also in the cases when children are abandoned by their families in specific circumstances such as war or extreme poverty or when children leave their home due for instance to violence experienced in the family. In such cases the Committee has encouraged the States to make efforts to trace families in order to verify if family reunification would be in the child’s best interest or other solution should be found.

Article 20 addresses the issue of children deprived of their family environment requesting the States to provide for special protection or assistance.

This provision applies therefore to those children living on the streets who are deprived of their family environment either because they are orphans, have been abandoned by their parents or have left their families. However it would be a mistake to think that all street children are deprived of their family as a number of them have a family to which they return on a regular basis and their choice to live and work on the streets may be due in some contexts to economic reasons rather than to a family rejection.

Comment on Committee’s concluding observations on street children

The Committee has formulated Concluding Observations on the issue of children living and/or working in the street for 6 EU Member Countries¹ and 2 EU Accession Countries².

In all cases the Committee expressed its concern about the significant or growing number of children living and/or working on the streets often in the main cities, noting, on some occasions, that they may be vulnerable to sexual abuse, violence, including violence by the police, exploitation, lack of access to education and health services, substance abuse, sexually transmitted diseases, HIV/AIDS and malnutrition. While appreciating some legislative acts, the setting up of centres providing counselling,

¹ Czech Republic, Estonia, Germany, Greece, Latvia, Portugal.
² Romania and Turkey.
training and rehabilitation centres and the realization of awareness and prevention campaigns, and in
general the efforts undertaken in this field, the Committee has often noted the absence of a
systematic and comprehensive strategy to address this situation and to provide these children with
adequate assistance. It has also expressed its concern about the fact that in some cases the most
frequent response to such a problem is the institutionalisation of children and that the protection
services are only provided by NGOs.
As a consequence the Committee has recommended in a number of cases a study on the cause and the
scope of this phenomenon or the strengthening of the effort to identify the numbers of street children
and the development of a strategy for reducing and combating this phenomenon.
In the majority of cases the Committee has recommended that the States ensure children are provided
with adequate nutrition, clothing, housing, health care and educational opportunities, including
vocational and life-skills training, in order to support their full development.
The Committee has also requested in several cases that these children be provided with recovery and
reintegration services, including psychosocial assistance for physical, sexual and substance abuse,
and services and reconciliation with their families. As indicated above, the Committee has paid special
attention to the issue of family reunification and reconciliation, in accordance with article 9 of the CRC,
on the basis of the consideration that alternative placement to the family environment may not always
be the best solution for children working and/or living on the streets.
Still regarding the issue of recovery and reintegration services, the Committee has requested in a
number of cases the provision of protection from police brutality which is certainly an issue of major
concern in the protection of children living on the streets at worldwide level.
Although the Committee has identified as a negative aspect the fact that in some States only NGOs are
trying to provide help and assistance to children living on the streets, it has on the other hand
underlined the importance of the collaboration with NGOs by asking States to continue to support and
co-operate with NGOs working in this field.
In a few cases the Committee has requested the State to pay special attention to the presence among
children living on the streets of foreign or Roma children and has expressed its concern at the fact that
young children illegally in the State party are expelled from the country without a process to examine
what action would be in their best interests.
Finally the Committee has underlined the importance of informing children living on the streets of their
rights and strengthen children's participation in achieving respect for them. Children's participation is
indeed one of the crucial principles of the CRC that should be implemented for children in all
circumstances, on the basis of article 12 of the CRC.

8.2. CRC on unaccompanied, refugee and asylum-seeking children

Article 22
1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee
status or who is considered a refugee in accordance with applicable international or domestic
law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Comment on article 22
Article 22 of the CRC regards the rights of refugee and asylum-seeking children to receive appropriate protection and humanitarian assistance, including tracing family members or his or her previous legal or customary primary caregiver. Article 22 should be read in combination with other CRC articles, in particular the following: article 9 related to the separation from parents only when that is considered indispensable in the best interests of the child, article 10 related to the right to family reunification (that has to be implemented in a positive, humane and expeditious manner), article 20 related to the protection of children without families, article 37 related to the deprivation of liberty as a measure of last resort and article 39 related to recovery and rehabilitation after experience of armed conflict, torture and other forms of abuse. It should also relate to the guidelines of the UNHCR, especially the 1994 Refugee children Guidelines on Protection and Care.

The international definition of refugees is provided by the Convention relating to the Status of Refugees 1951 amended by the 1967 Protocol relating to the Status of Refugees, it states, for adults and children, that “refugees must be outside their country of nationality (or without nationality) because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, and they must be unable or unwilling to return because of this fear. A child or adult who holds this refugee status cannot be forced to return to his or her country of origin where he or she may face persecution, or be passed on to another country that might force such a return”.

Article 22 also includes children who are “seeking refugee status”, in particular in relation to the essential protection needed by those children who are still awaiting the conclusion of the request for asylum, and unaccompanied or separated children. As accompanied children in general assume their parents’ refugee status, the problem concerns unaccompanied or separated children who have to prove their refugee status. “Unaccompanied children (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so”. Whereas, “Separated children are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members”. “Country of origin is the country of nationality or, in the case of a stateless child, the country of habitual residence”.

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88 Survey on the Committee’s Concluding Observations on the last EU Countries’ Reports - June 2006
The UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, (1997) and Refugee Children Guidelines on Protection and Care (1994) provide details on essential safeguards for the determination of the status of such children and stress that the interviews and hearings should be conducted in child-friendly environments and that there should be access to appeal. A guardian or adviser, who is appointed to ensure that all decisions taken are in the child’s best interests, should assist unaccompanied and separated children.

UNHCR points out that refugee children are disproportionately likely to be victims of sexual abuse or military recruitment and they are among the most vulnerable groups of children. In relation to the special needs of children and adolescent refugees, UNHCR points out that: “The needs of young children are usually evident as adequate nutrition, health care and support are essential for mere survival. The needs of older children, and particularly those of adolescents who are mid-way between childhood and full maturity, may be less visible but are of equal importance [...] Unaccompanied and separated adolescents may find themselves in situations of great responsibility for themselves and others. They may be difficult to place in foster families, and, moreover, may be part of child headed households assuming responsibility for younger children. Access to post-primary education, vocational training and income generating opportunities are the key means of supporting the rights and capacities of adolescents to develop life skills and become self-sufficient”.

Comment on Committee’s concluding observations on article 22
The Committee appreciated the effort made by EU Countries concerning some specific issues related to the principles expressed in article 22 (15 EU Member Countries and 2 EU Accession / Candidate Countries).

In particular, the Committee positively underlined the effort to discuss and/or approve national legal reforms to improve the legal situation of asylum-seeking children and to pay more attention to their needs (9 EU Member Countries and 2 EU Accession / Candidate Countries) i.e. which stipulate that cases involving children and adolescents should be given priority and processed quickly and that a legal guardian should be appointed to separated children in deportation procedures. The Committee positively underlined also that some Countries increased the number of refugees and asylum-seeking children (2 EU Member Countries) and paid special attention to the needs of this category of children (2 EU Member Countries), i.e. by enhancing the quality of reception and interviewing for asylum-seeking children.

Other specific positive achievements noted by the Committee: the intention to ratify the Convention relating to the Status of Stateless Persons of 1954; the fact that children with temporary refugee status are able to be enrolled in primary and secondary schools under the same conditions as national children; the efforts made by the State Parties to speed up the processing of applications of unaccompanied children and refugee cases; the assumption of full responsibility for asylum matters; the creation of special institutions for unaccompanied minors for inter-alia managing their request to stay; to establish or increase special accommodation / reception centres for unaccompanied minors and separated asylum-seeking children; to address the situation of unaccompanied minors by providing them with assistance during their time in the holding area from an “ad hoc administrator”

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From Summary Note on the UNHCR’s Strategy and Activities concerning Refugee Children and Adolescents, September 2000.

Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Hungary, Italy, Malta, Poland, Slovenia, Sweden, United Kingdom, Croatia, Romania.

Belgium, Cyprus, Denmark, Finland, Greece, Italy, Malta, Slovenia, United Kingdom, Croatia, Romania.

Czech Republic, United Kingdom.

Czech Republic, Sweden, Croatia.

Sweden.

Belgium, Italy.

Austria, Belgium, Hungary.
who replaces a legal representative; to provide the “systematic recording of information” on unaccompanied minors” and to cooperate “with UNHCHR in drafting foreigners who are also unaccompanied minors”.

Concerning the recommendations of the Committee these were formulated for 20 EU Member Countries and 3 EU Accession / Candidate Countries.

In only one case the Committee requested that a EU Country draws the attention to the General Comment on Treatment of unaccompanied and separated children outside their country of origin, adopted by the Committee during its 39th session.

The first issue underlined by the recommendations of the CRC Committee is the need to adopt national legislative reforms; these were formulated to 9 EU Member Countries and 1 EU Accession / Candidate Country. Nevertheless the subjects of legislative reforms are various and very specific, all of them concerning the almost rights of refugee and asylum-seeking children, i.e. it is a request to: approve as soon as possible the draft law on the creation of a guardianship service, in order to ensure the appointment of a guardian for an unaccompanied minor from the beginning of the asylum process and thereafter as long as necessary, and make sure that this service is fully independent, allowing it to take any action it considers to be in the best interests of this minor; adopt, as soon as possible, a harmonized procedure in the best interests of the child to deal with unaccompanied minors throughout the State party; develop a refugee status determination procedure for minor asylum-seekers; change the definition in the law of unaccompanied minors seeking asylum so as to bring it into line with international standards; introduce specific laws or administrative regulations or directives that provide special procedures and address special needs of unaccompanied asylum-seeking and refugee children, and in particular ensure that these children have proper accommodation.

Another specific issue faced by the Committee is the implementation of existing laws. There are few recommendations in which the Committee requests the implementation of national legislations (6 EU Member Countries and 1 EU Accession / Candidate Country), and they are not generally defined but concern very different subjects, i.e. “refugee and asylum-seeking children have access to basic services such as education and health, and that there is no discrimination in benefit entitlements for asylum-seeking families that could negatively affect children or to all refugee children below the age of 18 years or to an increase in repatriations without adequate follow-up.

Special assistance and protection of the rights of children in particular legal aid and procedures of children seeking asylum are also faced by the Committee (10 EU Member Countries). Concerning the legal aid, those Committee recommendations are focused on qualified guardians, their systematic assignment to unaccompanied and separated asylum-seeking children and their functioning, taking into consideration the best interest of the child (4 EU Member Countries). In those cases, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations. The guardian should be consulted and informed regarding all actions taken in relation to the child and he should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child’s legal, social, health, psychological, material and educational needs are appropriately covered by, inter

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22 Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, United Kingdom, Croatia, Romania, Turkey.
23 Belgium, Cyprus, France, Greece, Italy, Malta, Netherlands, Poland, Portugal, Croatia.
24 Czech Republic, France, Germany, Italy, Slovenia, Spain, Croatia.
25 Austria, Belgium, Czech Republic, Denmark, Greece, Finland, Luxembourg, Slovenia, Sweden, United Kingdom.
26 Austria, Denmark, Slovenia, United Kingdom.
alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child. Agencies or individuals whose interests could potentially be in conflict with those of the child’s should not be eligible for guardianship. Other specific observations made by the Committee on this issue are i.e. to: ensure that the so-called ‘accelerated procedure’ respect the due process and legal safeguards for asylum seekers; consider means to reduce delays in the consideration of asylum requests and in subsequent administrative and judicial proceedings, which affect children; consider appointing a temporary guardian within 24 hours of arrival for each unaccompanied child; carry out a review of the availability and effectiveness of legal representation and other forms of independent advocacy for unaccompanied minors and other children in the immigration and asylum systems.

Another important question concerns the location where refugee and asylum-seeking children are placed: reception centres. Some of the Committee’s recommendations are focused on this issue (9 EU Member Countries) and are all concentrated on the characteristics of those reception centres: there must be enough special reception centres for unaccompanied minors, with particular conditions (such as access to education and health) and safety and with a duration of the permanence for the shortest time possible. The Committee recommends that EU Countries: expedite efforts to establish special reception centres for unaccompanied minors, with special attention to those who are victims of trafficking and/or sexual exploitation; ensure that asylum-seeking children temporarily placed in emergency blocks are not held together with juvenile offenders and only remain there for the shortest possible time, and not exceeding the legal maximum of three months; and take all necessary measures to prevent children who have settled in a particular area being forced to leave when they reach the age of 18 years; undertake efforts to expedite the procedure for dealing with asylum applications and to avoid placing children in temporary accommodation which is inappropriate, accommodating them rather as “children in need” under the child care legislation.

Regarding the treatment and management of the unaccompanied foreign, refugee and asylum-seeking children, the Committee asked the States parties to facilitate access to basic services such as education and health for 12 EU Member Countries and 3 EU Accession / Candidate Countries and in relation to the former, the Committee declared that “States should ensure that access to education is maintained during all phases of the displacement cycle. Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered in a particular area being forced to leave when they reach the age of 18 years; undertake efforts to expedite the procedure for dealing with asylum applications and to avoid placing children in temporary accommodation which is inappropriate, accommodating them rather as “children in need” under the child care legislation.”

General Comment no. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, adopted by the Committee on the Rights of the Child, Thirty-ninth session, 17 May – 3 June 2005, p. 18-19.

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Austria, Belgium, Denmark, Italy, Luxembourg, Poland, Slovenia, Spain, United Kingdom.

Austria, Denmark, Luxembourg, Slovenia, Spain.

Italy, United Kingdom.

Belgium, Cyprus, Czech Republic, France, Greece, Luxembourg, Malta, Poland, Portugal, Slovenia, United Kingdom, Croatia, Romania, Turkey.

Survey on the Committee’s Concluding Observations on the last EU Countries’ Reports – June 2006
The Committee, in particular, recommended that States should ensure adequate living conditions and full or equal access to education, health services, including psychological care for unaccompanied or separated children, displaced or refugee and asylum-seeking children (9 EU Member Countries and 1 EU Accession / Candidate Country)\(^32\), in particular for those who are victims of any form of neglect, exploitation or abuse. Nevertheless, the Committee recommended that States should guarantee special protection and care to all child asylum-seekers with respect to their special needs, including those in the 15 to 18-year age group and that children aged under 15 may be placed in diagnostic institutions which are not equipped to provide the special care these children require; provide supervision by qualified persons to ensure their physical and psychological well-being; consider preferential treatment for refugees to benefit from exemptions from reductions in tuition fees for upper secondary and university education.

Another focal point taken into consideration is the non-discriminatory treatment of those children. The principle of non-discrimination (see article 2), in all its facets, applies to all dealings with separated and unaccompanied children. In particular, it prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant. This principle, when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those deriving from age and/or gender. Measures should also be taken to address possible misperceptions and stigmatization of unaccompanied or separated children within society. Policing or other measures concerning unaccompanied or separated children relating to public order are only permissible where such measures are based on the law; entail individual rather than collective assessment; comply with the principle of proportionality; and represent the least intrusive option. In order not to violate the principle of non-discrimination, such measures can, therefore, never be applied on a group or collective basis.

In particular, the Committee recommended a non-discriminatory approach and treatment regarding specific and vulnerable groups such as Roma children, ethnic minorities seeking asylum to only 3 EU Member Countries\(^33\). Refugee Status is also taken into consideration by the Committee that recommended that two EU Countries\(^34\) should determine the status in conformity with international standards, in particular to conduct refugee status determination procedures for children in a child-sensitive manner, in particular by giving priority to applications made by children and by considering child-specific forms of persecution when assessing an asylum-seeking child’s claim under the Convention relating to the Status of Refugees of 1951; and to ensure that the determination of refugee status of minors conforms to international standards, and consequently reconsider the 48-hour accelerated procedure.

The Committee requested that particular attention be given to the training of personnel working with separated and unaccompanied children and dealing with their cases. Specialized training is equally important for legal representatives, guardians, interpreters and others dealing with separated and unaccompanied children. The Committee invited some EU Countries to provide, continue and strengthen these kinds of activities for 4 EU Member Countries and 1 EU Accession / Candidate Country\(^35\) addressed not only to the reception centre personnel but also to the officials who deal with child asylum-seekers and refugees, in particular in child-interviewing techniques and on how to ensure family reunification.

The Committee adopted some recommendations on the issue of the detention of unaccompanied or separated children in 6 EU Members States and 1 EU accession / Candidate Country\(^36\). In this regard, according to article 37 and article 3 – the principle of the best interests of the child –, unaccompanied

\(^{32}\) Belgium, Cyprus, France, Greece, Malta, Poland, Portugal, Slovenia, United Kingdom, Croatia, Turkey.

\(^{33}\) Germany, Greece, United Kingdom.

\(^{34}\) Sweden, Netherlands.

\(^{35}\) Austria, Lithuania, Spain, Sweden, Turkey.

\(^{36}\) Czech Republic, Greece, Italy, Lithuania, Netherlands, United Kingdom, Romania.
or separated children should not, as a general rule, be detained. **Detention cannot be justified** solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Where detention is **exceptionally justified** for other reasons, it shall be conducted in accordance with article 37 (b) of the CRC that requires detention to conform to the law of the relevant country and only to be used as a **measure of last resort** and for the **shortest appropriate period of time**. In consequence, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.

The Committee recommends States i.e. to: **avoid any form** of detention of asylum-seekers under 18 years of age, ensure that the detention of children whose applications for refugee status have been rejected is used only as a measure of **last resort**, and that all children awaiting expulsion **receive adequate** education and housing; as there have been reports of cases of arbitrary detention and threatened expulsion, fully uphold their international obligations concerning lawful detention as well as the **principle of non-refoulement**. This principle means that “as under-age recruitment and participation in hostilities entails a high risk of irreparable harm involving fundamental human rights, including the right to life, State obligations deriving from article 38 of the Convention, in conjunction with articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entail extraterritorial effects and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of under-age recruitment or participation, directly or indirectly, in hostilities”

The following paragraph is dedicated to the recommendations adopted by the Committee on the issue of **family reunification** in the country of origin (9 EU Member Countries), that is not in the best interests of the child and should therefore not be pursued when there is a “reasonable risk” that such a return would lead to the violation of fundamental human rights of the child. Such a risk is indisputably documented in the granting of refugee status or in a decision of the competent authorities on the applicability of non-refoulement obligations mentioned above. Accordingly, the granting of refugee status constitutes a legally binding obstacle against return to the country of origin and, consequently, to family reunification therein. Where the circumstances in the country of origin contain lower level risks and there is concern, for example, of the child being affected by the indiscriminate effects of generalized violence, such risks must be given full attention and balanced against other rights-based considerations, including the consequences of further separation. In this context, it must be recalled that the survival of the child is of paramount importance and a precondition for the enjoyment of any other rights.

The **definitions** used by the Committee regarding the procedure for family reunification are various (deportation, returned unaccompanied minors, repatriation, expulsion) and depend on the national laws and procedures.

In any case, the Committee explicitly requested the States to respect in the applied procedure the **best interest of the child** for 3 EU Member Countries, a **follow-up is guaranteed** for those children who are repatriated for 2 EU Member Countries, and i.e. the Committee recommends that States fully take into account the principle of the best interests of the child when deciding on the deportation of unaccompanied and separated asylum-seeking children and avoid their placement in custody pending deportation; reduce the length of the procedures for children seeking asylum and deal with an application by a child or his/her parents for the purpose of family reunification in a positive, humane and expeditious manner; take all measures to prevent irregular procedures in the expulsion of unaccompanied foreign children.

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37 General Comment no. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, adopted by the Committee on the Rights of the Child, Thirty-ninth session, 17 May – 3 June 2005, p. 18-19.
38 Austria, Belgium, Finland, France, Germany, Hungary, Italy, Luxembourg, Spain.
39 Austria, Belgium, Italy.
40 Italy, Spain.
The Committee was also concerned about the unaccompanied foreign children that “continue to be deprived of their liberty and placed in detention with adults” and that “unaccompanied children arriving at the airport may be returned to the country of origin without judicial intervention and without an evaluation of their family situation”.

Another issue underlined by the Committee regards cooperation with international agencies and NGOs, in different matters, i.e. with the Office of the United Nations High Commissioner for Refugees, to establish a formal system of asylum and refugee protection procedures that conform to the Convention and applicable international standards.

To intervene in a phenomenon it is fundamental to know it and to facilitate this knowledge the collection and exchange of statistical data and information is a basic point. In the experience of the Committee, data and statistics collected with regard to unaccompanied and separated children tend to be limited to the number of arrivals and/or number of requests for asylum. These data are insufficient for a detailed analysis of the implementation of the rights of such children. Furthermore, data and statistics are often collected by a variety of different ministries or agencies, which can impede further analysis and present potential concerns with regard to confidentiality and a child's right to privacy.

Among the recommendations addressed by the Committee to 4 EU Member Countries it requested two EU Countries to provide statistical data on the registration of unaccompanied and separated children, or to ensure a coordinated approach to the collection of information and statistics, allowing a response commensurate to the needs.

The Committee also recommended to each EU Country, specific points, concerning procedural aspects, that cannot be analysed together because are related to very particular and singular cases. In some of them, the Committee’s request is to: ensure that children either of whose parents is an IDP can acquire that status; consider introducing recent methods of age determination which have proven more accurate than the method in use; investigate in an effective way reported cases of ill-treatment of these children and “establish effective mechanisms to receive and address complaints from children in care, monitor standards of care and, in the light of article 25 of the Convention, establish regular periodic review of placements; increase coordination between the different actors, in particular the police, the social services and the Swedish Board of Migration, in order to react efficiently and in a timely manner when children disappear; devise, in a consultative and participatory process with these groups and their children, a comprehensive and constructive plan of action to effectively target the obstacles to the enjoyment of rights by children belonging to these groups; take effective measures to resolve the problem of property owners, most of whom are Serbs, returning to their homes before their occupiers (refugees and displaced persons) have been able to find alternative shelter, and that further efforts be undertaken to facilitate the return of refugees and displaced persons; ensure the availability of national language courses, as stipulated by law, to facilitate the integration of asylum-seeker and refugee children in the education system; ensure that birth certificates are issued for all children of refugees and asylum-seekers born in the territory of the State party.

A last issue mentioned by the Committee regards the ratification of international treaties addressed to some EU Countries (2 EU Member Countries and 1 EU Accession / Candidate Country), in particular the 1961 Convention on the Reduction of Statelessness, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the consideration of withdrawing the geographical limitation on the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

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[41] Belgium, France, Luxembourg, Sweden.
[43] Greece, Spain, Turkey.
8.3. CRC on children of minorities or of indigenous peoples

**Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Comment on article 30

Article 30 protects the rights of children from minority or indigenous groups to enjoy their culture, practise their religion and use their language together with other members of their group.

The protection of children belonging to minority or indigenous groups is also addressed in other articles of the CRC. First of all the general provision on non-discrimination contained in article 2 guarantees that all rights set forth in the Convention must be enjoyed by all children “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, ... language, religion, ... national, ethnic or social origin ... or other status”.

In addition Articles 7 and 9 prevent unreasonable separation from parents; article 8 secures the right of the child “to preserve his or her identity”; article 14 safeguards children’s freedom of religion with direct reference to their parents’ role in this respect; article 16 prevents arbitrary or unlawful interference with the child’s family; article 20 ensures that where the child is deprived of his or her family environment “due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background”; article 21 reaffirms this in respect of intercountry adoption; article 29 includes respect for the child’s own culture, language and values for the aims of education and upholds the child’s right to be educated outside the state system; and article 40 requires the use of interpreters if the child cannot understand the language used in the administration of juvenile justice. Finally articles 10 and 22 require special measures regarding immigrant and refugee children.

However during the preparatory process of the CRC it was felt that the protection of children belonging to minority or indigenous groups deserved a specific provision due to the presence of serious and continuing discrimination against such groups which at present continues to be an important matter of concern.

Article 30 of the CRC has a very similar wording to article 27 of the International Covenant on Civil and Political Rights indicating in this way that the rights provided by the International Covenant must apply to children as well.

The Committee in its Guidelines for periodic reports has asked the States to “provide information on the measures adopted, including at the legislative, administrative, educational, budgetary and social levels, to ensure that a child belonging to an ethnic, religious or linguistic minority or who is indigenous is not denied the right, in community with other members of his or her group to: enjoy his or her culture; profess and practise his or her own religion; use his or her own language”.

States are also asked to indicate which ethnic, religious or linguistic minorities or indigenous groups are present within the State Party’s jurisdiction, as well as which measures are to be adopted to ensure the preservation of the identity of the minority or indigenous group, the measures adopted to recognise and ensure the enjoyment of the rights set forth in the CRC by children belonging to a minority or who are indigenous; the measures adopted to prevent any form of discrimination and combat prejudice against those children, as well as those designed to ensure that they benefit from equal opportunities, including in relation to health care and education.

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The Committee has also specified that in relation to article 30, due consideration should be given to other provisions of the CRC, including in the areas of civil rights, particularly in relation to the preservation of the child’s identity, family environment and alternative care (for example art. 20, par. 3 and art. 21), education and the administration of juvenile justice\(^45\).

**Comment on Committee’s concluding observations on article 30**

The Committee has formulated Concluding Observations concerning the protection of children belonging to minority groups in 19 EU Member Countries and 4 EU Accession/Candidate Countries\(^46\), thus indicating that this is one of the issues that is among the Committee’s major concerns.

The Committee has appreciated various improvements at legislative and applicative level; first of all it has welcomed the adoption of specific laws or plans of action on the rights of minorities and for the prevention of their social exclusion often with special regard to the Roma minority\(^47\), as well as the ratification of international conventions such as the 1995 European Framework Convention on the Protection of National Minorities and the setting up of specific mechanisms, such as the post of Deputy Prime Minister on Human Rights, National Minorities and Regional Development. The Committee has further appreciated the adoption of strategies aimed at promoting the inclusion of minority children, in particular Roma children, in the area of health care and education, the realisation of pilot programmes and the general efforts undertaken to improve the situation of minority children with special regard to Roma children\(^48\) including the adoption of intercultural mediators. Another measure which has been positively valued by the Committee is the participation of Roma NGOs in the drafting and implementation of policies regarding Roma children\(^49\).

Notwithstanding these positive remarks, the Committee has made several recommendations to the States with a special emphasis on the prevention of discrimination against the children belonging to the Roma minority. The peculiar situation of disadvantage suffered by this minority has been a special issue of concern for the Committee that has focused on this issue in the Concluding Observations on 11 EU Member Countries and 3 EU Accession/Candidate Countries\(^50\).

The Committee has expressed its concern at the discrimination and social exclusion suffered by the Roma children in particular as regards access to social and health services, school and in general the widespread presence of acts of discrimination culminating sometimes in acts of violence, as well as, forms of ill-treatment by the police.

As a consequence, the Committee has recommended first of all that States adopt legislative measures and implement policies aimed at the full enjoyment of the rights enshrined in the Convention by Roma children\(^51\). It has also requested the promotion of social inclusion to combat the marginalisation of Roma children in society\(^52\) also through campaigns aimed at addressing the negative attitudes toward Roma people in society\(^53\). The Committee has further specified that Roma representatives and Roma NGOs should be involved in those policies and programmes that concern them with the aim of empowering the Roma community\(^54\).

Special attention is requested as regards improving access to primary health care, education and social welfare services also in cooperation with Roma NGO partners\(^55\).

\(^{45}\) CRC/C/58, par. 165 and 166.
\(^{46}\) Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, United Kingdom, Bulgaria, Croatia, Romania, Turkey.
\(^{47}\) Denmark, Estonia, Hungary, Spain, United Kingdom, Croatia.
\(^{48}\) Czech Republic, Italy, Poland, Portugal, Romania.
\(^{49}\) Czech Republic, Hungary, Spain, United Kingdom, Croatia.
\(^{50}\) Czech Republic, Italy, Poland, Portugal, Romania.
\(^{51}\) Czech Republic, Hungary, Spain, United Kingdom, Croatia.
\(^{52}\) Czech Republic, Poland and Romania.
\(^{53}\) Czech Republic, Finland, France, Greece, Hungary, Italy, Poland, Portugal, Slovakia, Spain, United Kingdom, Bulgaria, Croatia, Romania.
\(^{54}\) Finland, Italy, Portugal, Slovenia, United Kingdom, Spain.
\(^{55}\) Finland, Hungary, Italy, Netherlands, Poland.
\(^{56}\) Czech Republic, Poland and Romania.
\(^{57}\) Czech Republic, Greece, Italy, Slovenia.
\(^{58}\) Czech Republic, Hungary, Italy, Lithuania, Romania.
In particular as regards the subject of education, the Committee has issued several recommendations:

- to realise pre-school programmes for Roma children to learn the primary language of schooling in their communities
- to develop curriculum resources for all schools, including in relation to Roma history and culture, in order to promote understanding, tolerance and respect for Roma people
- to develop and implement a plan aimed at integrating all Roma children into mainstream education and prohibiting their segregation into special classes.

Still in relation to education, the Committee has expressed its concern about the fact that the CRC had not been translated in the language of the Roma minority.

In the area of juvenile justice the Committee has expressed its concern for the stigmatisation of the most vulnerable categories of children, such as Roma minority, including cases of police misconduct and for the presence of racially motivated acts of violence directed towards ethnic minorities.

The Committee then identified similar areas of concern as regards the protection of children belonging to other ethnic minorities, requesting States to take all necessary measures to prevent and eliminate discrimination, not only at juridical but also at de facto level, underlining that provisions on equality before the law may not be sufficient to ensure equal enjoyment of rights by certain minority groups and to ensure that such children do not live in poverty.

Also in this case, the Committee paid special attention to education by requesting States to promote the education of ethnic minorities. As regards the issue of language it requested on the one hand that children belonging to minority groups receive an instruction in their mother tongue, also in secondary school, and on the other that they are taught the language spoken by the majority in the country in order to participate on a more equal level with the other children in society. The Committee further demanded that the school curricula include culture, history and identity of the various groups present in the country or that it includes human rights education in order to foster respect for minorities and intercultural dialogue.

The Committee has also expressed its worry for the racially motivated acts of discrimination and violence by calling States to ensure measures to prevent and combat racism, xenophobia, discrimination and intolerance and to eliminate the impunity enjoyed by those who harass these groups.

Finally the Committee has encouraged States to withdraw their reservations on article 30 of the CRC.

8.4. Economic exploitation

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

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56 Czech Republic, Poland, Romania.
57 Greece, Hungary.
58 Slovakia, Bulgaria.
59 France, Denmark, Germany.
60 Denmark, Netherlands, United Kingdom.
61 Estonia, Latvia.
62 Belgium, Estonia, Slovakia.
63 Belgium, Denmark, France.
64 Belgium, France.
65 Slovenia, Croatia.
66 France, Turkey.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;
(b) Provide for appropriate regulation of the hours and conditions of employment;
(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Comment on article 32

Article 32 recognizes the right of the child to be protected from economic exploitation, and from any work that is considered to be hazardous, or to interfere with the child’s education, or to be dangerous to the child’s health or physical, mental, spiritual, moral or social development.

The article requires States Parties to take legislative, administrative, social and educational measures to ensure implementation, and in particular to provide: a minimum age or ages for admission to employment; appropriate regulation of the hours and conditions of employment; and appropriate penalties or other sanctions to ensure effective enforcement. States Parties must have regard “to the relevant provisions of other international instruments”: the most relevant are International Labour Office Conventions and Recommendations. More recently the General Conference of the International Labour Organization adopted the Worst Forms of Child Labour Convention, 1999 (No. 182). Among previous ILO Conventions, the Minimum Age Convention, 1973 (No. 138) is of key importance and it consistently encourages States Parties to ratify those Conventions.

The most comprehensive ILO instruments on child labour are the Minimum Age Convention, 1973 (No. 138) and Recommendation (No. 146). Convention No. 138, in particular, which has been upheld by the Committee as a relevant standard. States Parties that have not yet ratified it have been urged to do so by the Committee. The Minimum Age Convention is a consolidation of principles that had been gradually established in various earlier instruments and applies to all sectors of economic activity, whether the children are employed for wages or not. According to the ILO: “The Convention obliges ratifying States to fix a minimum age for admission to employment or work and undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The Convention was not intended as a static instrument prescribing a fixed minimum standard but as a dynamic one aimed at encouraging the progressive improvement of standards and of promoting sustained action to attain the objectives. Recommendation No. 146, which supplements Convention No.138, provides the broad framework and essential policy measures for both the prevention of child labour and its elimination”

On 17 June 1999, the Worst Forms of Child Labour Convention (No. 182) was adopted by the General Conference of the ILO. The Conference also adopted the Worst Forms of Child Labour Recommendation (No. 190), supplementing the Convention. The new Convention requires Member States which ratify it to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency” (article 1). The “worst forms of child labour” are defined in article 3. The definition includes work “likely to harm the health, safety or morals of children”. It is left to States to determine what types of work fall within this definition, in consultation with employers’ and workers’ organizations and taking international standards into account. Member States must design and implement programmes of action to eliminate the worst forms of child labour as a priority, design appropriate mechanisms for monitoring implementation, take time-bound measures for prevention, provide support for the removal of children.

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Footnote:

from the worst forms of child labour and for their rehabilitation and access to free basic education or vocational training. It calls for international cooperation or assistance with implementation, including support for economic development, poverty eradication and education.

Comment on Committee’s concluding observations on article 32

The Committee focused its attention in its Concluding Observations (8 EU Member Countries and 3 EU Accession / Candidate Countries)\(^{48}\), first of all on the **ratification and the implementation of the ILO Conventions** (No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and No. 138 concerning Minimum Age for Admission to Employment) and adoption of **national laws** on the issue.

Few positive achievements were underlined by the Committee for some European Countries (5 EU Member Countries and 3 EU Accession / Candidate Countries)\(^{69}\), regarding the ILO Conventions and national laws and other efforts that aim to **prohibit child labour; protect children** from economic exploitation. In particular, at the international level, the Committee has welcomed the **ratification of ILO Convention N. 138**\(^{70}\); the **ratification of ILO Convention N. 182**; the **signing of a number of protocols** between a State party and the ILO, in particular that for the promotion of education of working children and the ongoing **efforts of the Special Representative**, in cooperation with the ILO and IPEC, aimed at addressing the problem of child labour in the Country; at a national level the Committee notes that policies with regard to the **minimum wage reflect programmes** of the State party aimed at encouraging young people to study and improve their skills.

The Committee, with the same approach, has adopted its recommendations to EU Countries starting from **international and national legislation on child labour** (3 EU Member Countries and 2 EU Accession / Candidate Countries)\(^{71}\).

In particular, the Committee recommended that those Countries: **ratify ILO Convention n. 138**; **amend its domestic legislation** by raising this age to that set forth in ILO Convention No. 138 while domestic legislation continues to permit children from the age of 12 to be involved in light work; **ratify ILO Convention No. 182** and **fully enforce child labour laws**; adopt all necessary legal and other appropriate measures to protect children from economic exploitation through labour, including in the informal sector and **implement international principles** on child labour such as article 32 of the CRC, and ILO Conventions Nos. 138 and 182.

In connection with the legislation, the question of the **age of child labour** is also crucial. Article 32 of the Convention requires that a minimum age, or minimum ages, for employment **must be set**; it **does not prescribe any particular ages**. But the Committee has indicated that such ages should be established in the light of other international instruments, and in particular **ILO Convention No. 138**. Basically, the ILO Convention requires: 1. a commitment “to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons” (article 1); 2. a minimum age for any employment **not less than the age of completion of compulsory schooling** and in any event **not less than 15** (article 2); and 3. a minimum age of **18** “for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons” (article 3).

The Committee underlined the need for a **clear legal minimum age** for working and the **protection of young workers** especially in specific economic activities in which they are involved (4 EU Member

\(^{48}\) Austria, Czech Republic, France, Greece, Italy, Malta, Spain, United Kingdom, Bulgaria, Romania, Turkey.

\(^{49}\) Austria, Czech Republic, France, Malta, United Kingdom, Bulgaria, Romania, Turkey.

\(^{50}\) Austria, Bulgaria.

\(^{51}\) Austria, Czech Republic, Malta, Bulgaria, Romania.
Countries and 2 EU Accession / Candidate Countries). In particular the Committee was concerned about: the absence of a clear legal minimum age for working children; the reports of under-age employment in family businesses and tourism-related activities during the summer holiday season; the fact that the national minimum wage does not apply to young workers above the minimum age of employment, and that therefore they can be at risk of being economically exploited; the fact that many children, as young as 6 years, are engaged in regular work. The Committee has also recommended that States should: protect all children above 15 years from any work that is likely to be hazardous or interfere with the child’s education; make every effort to ensure that those children above 15 who do work legally continue to have access to education; take steps to reduce the numbers of underage children working, giving particular attention to the agricultural, fishing, street trade, garment manufacturing, construction and tourism industries, and giving particular attention to children from disadvantaged communities.

The CRC Committee held a General Discussion on the “Economic exploitation of the child” in October 1993. At the conclusion of the General Discussion, the Committee made a public statement that invited financial institutions, including the World Bank and the International Monetary Fund, to a discussion about the need to protect the rights of the child in economic reform programmes. Second, the Committee recommended that UNESCO take the lead in an international effort to make school education “a real and effective alternative to exploitative child labour, including child prostitution”. Third, it recommended that all Governments “ratify promptly the ILO standards on minimum age and on conditions of employment”. These international norms should also be incorporated into national legislation and be enforced. The Committee adopted “Recommendations concerning economic exploitation of children” at its fifth session in January 1994. These emphasized that the holistic approach to the human rights of children, stressed in the CRC and in particular in the general principles of the Convention (articles 2, 3, 6 and 12), should be used as a general framework in which to consider situations of economic exploitation of children. It called for “an adequate legal framework and necessary mechanisms of implementation”, as well as periodic assessment and evaluation of progress. The Committee recommended the establishment of a national mechanism for coordinating policies and monitoring the implementation of the Convention, having specific competence in the area of protection from economic exploitation.

As there are many cases in which EU Countries are confronted with the phenomenon of child labour, the Committee focused its recommendations on the fight against all forms of economic exploitation and child trafficking (6 EU Member Countries and 2 EU Accession / Candidate Countries). Concerning the States’ reports, the Committee is concerned about the fact that children work in very poor conditions, including without insurance or social security benefits, with very low wages, for long hours and in dangerous and/or abusive conditions. In particular the Committee has requested EU Countries to continue efforts to prevent, combat and protect all children from economic exploitation through: the establishment of an effective mechanism for inspection; the development of a comprehensive strategy containing specific and well-targeted actions; labour inspectorates strengthened and penalties imposed in cases of violation; reconsideration of its policies regarding the minimum wage for young workers in the light of the principle of non-discrimination; subsequent measures to dismantle trafficking and exploitation networks, in particular of foreign children, which continue to operate, as well as to strengthen its cooperation with and support for non-governmental organizations working in this area.

Another issue underlined by the Committee concerns the collection of data and information, as a fundamental step towards a better knowledge of the phenomenon of child labour.
Countries and 1 EU Accession / Candidate Country. In particular, the Committee has recommended that States: **undertake studies to assess** the nature and extent of child labour in the Country, in particular in family businesses and in the agricultural sector, with an aim to prevent and improve the situation of child labour because the statistical data are lacking; **collect and maintain up-to-date data** on the number of children who are working. The Committee has also expressed its worry about the large number of children engaged in labour activities, in particular children **working in the fields, domestic workers, children working in small enterprises** and children **working in the streets**, who appear to be less protected by legislation.

Finally the Committee has recommended to one EU Country that it should **continue its cooperation with IPEC**, as well as strengthening its cooperation with and support for NGOs working in this area, as the number of children working in the city streets, in rural areas and households is still large.

8.5. CRC on drug abuse

**Article 33**

*States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.*

**Comment on article 33**

Article 33 of the CRC requires ratifying States to take all appropriate measures to protect children from the illicit use of narcotic drugs and psychotropic substances and to prevent the use of children in the production or trafficking of such drugs. The article does not indicate which are such **drugs and substances**, but it refers to relevant international treaties that have identified the following categories:

- opium, morphine and opium alkaloids and synthetic morphine (for example heroin);
- coca leaves and cocaine;
- cannabis products (marijuana);
- any psychotropic/psychoactive drug capable of producing a state of dependence or the abuse of which could lead to social and public health problems warranting international control (sedatives such as barbiturates, stimulants such as amphetamines and hallucinogens such as LSD).

In addition the Committee in its **Guidelines for Periodic reports** has asked States to provide information on legislative and other measures to prevent also the use by children of **alcohol, tobacco** and other substances which may be prejudicial to their health and which may be available with or without restrictions to adults. States are asked to indicate the measures they have adopted not only at legislative and administrative levels, but also at social and educational level as the emphasis of article 33 is on protection and prevention.

The main international treaties on drugs are the **Single Convention on Narcotic Drugs** (1961) as amended by the 1972 **Protocol, and the Convention on Psychotropic Substances** (1971) and in its Guidelines for Periodic Reports, the Committee asks ratifying States to report on the relevant Conventions to which they are parties.

Besides art. 33, there are other articles of the CRC that are relevant for the issue of drug abuse, for instance article 6 on children's right to life and optimum development, article 24 on children's rights to health services and health promotion and article 29 on education to prepare children for responsible life.

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25 Czech Republic, Greece, Spain, Turkey.
Drug abuse by children was not a significant issue of concern in the post-war decades and therefore the question does not figure in the conventions and declarations of that period. On the contrary it has nowadays become one of the most pressing issues of concern as regards the health as well as the physical and mental integrity of children becoming an high priority in the political agendas. For instance the 1990 World Summit’s Plan of Action stated: “Drug abuse has emerged as a global menace to very large numbers of young people and, increasingly, children – including permanent damage incurred in the prenatal stages of life. Concerted action is needed by Governments and intergovernmental agencies to combat illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances to counter this tragedy. Equally important is community action and education, which are vitally needed to curb both the supply of and the demand for illicit drugs. Tobacco and alcohol abuse are also problems requiring action, especially preventive measures and education among young people”.

Furthermore the Declaration on the Guiding Principles of Drug Demand Reduction of 1998 identifies youth as a group in need of special attention, and invites countries to establish networks that facilitate their participation in the design and implementation of youth drug-reduction programmes. Participation by children is also listed by the UNDCP (United Nations Drug Control Programme) among the key factors to be taken into consideration when designing drug prevention programmes for youth. The issue of illicit drugs is linked with that of criminality, as children who use drugs may find themselves involved in the production or trafficking of drugs or be involved in various forms of exploitation. This is why the issue is also addressed in the International Labour Organization Convention n. 182 on the Worst Forms of Child Labour that includes “the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties...”.

Comment on Committee’s concluding observations on article 33

The CRC Committee has addressed the issue of drug abuse in its Concluding Observations for 21 EU Member Countries and 3 EU Accession/Candidate Countries, showing a special concern for the issue of drug abuse among children and adolescents that in many States is increasing. While appreciating the efforts undertaken by some States to prevent and fight this phenomenon, e.g. through health education in schools and national plans of action and programmes, the Committee has repeatedly expressed its concern for the large and/or increasing number of children making use of drugs as well as tobacco and alcohol. In the great majority of its Concluding Observations (16 EU Member Countries and 3 EU Accession/Candidate Countries), the Committee has in fact specified alongside the use of drugs that of tobacco and/or alcohol, that are not covered by any international treaty, but can nonetheless be very dangerous for children’s health.

The recommendations formulated by the Committee generally focus on prevention, care and rehabilitation for children involved in drug abuse.

As regards prevention, States are encouraged to continue and strengthen their efforts first of all by providing children and parents with accurate and objective information about the harmful consequences of drug, alcohol and/or tobacco abuse also through health education in the school and

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27 World Summit Declaration, para. 20(7) and Plan of Action, par. 24.
28 A/RES/S-20/3.
29 Austria, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Croatia, Romania, Turkey.
30 Portugal, Croatia.
31 Cyprus, Estonia, Sweden.
32 Estonia, Portugal.
33 Austria, Cyprus, Czech Republic, Denmark, Estonia, Germany, Ireland, Lithuania, Latvia, Malta, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden, Croatia, Romania, Turkey.
34 Austria, France, Germany, Slovenia, Sweden.
awareness raising campaigns. Secondly the Committee has recommended that specific studies on the involvement of children in drug abuse be undertaken in order to understand the extent, scope and nature of these practices and in order to strengthen the effectiveness of the strategies to combat this phenomenon.

The request for a study of the reasons for children’s involvement in drug abuse is considered crucial also by the UNDCP that has affirmed: “Quantitative data on drug abuse among young people are available in many countries [...] What is really missing however, is systematic qualitative information about how young people perceive drugs and why they use drugs. Such information is indispensable for the understanding of the root causes of the high prevalence of drug use and the design of effective prevention programmes.”

The Committee has also paid a special attention to the evaluation of the prevention programmes by asking States to evaluate the effectiveness of prevention and training programmes regarding drug abuse.

As regards care and rehabilitation, the Committee has generally requested States to strengthen or set up appropriate services specifically for children and adolescents and has often asked States to develop youth-sensitive and confidential counselling, care and rehabilitation facilities that are accessible without parental consent when this is in the best interests of the child.

It is very important services and programmes are tailored specifically for children and adolescents as paediatric systems may not always be competent to handle drug abuse by children while adult treatment centres may not accept under-age patients.

Finally the Committee has focused its attention on the crucial issue of resources by demanding that States allocate adequate human and financial resources to evaluate their training programmes in health education, in particular as regards drug abuse.

8.6. CRC on sexual exploitation, abuse and trafficking

Article 34
States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
- The inducement or coercion of a child to engage in any unlawful sexual activity;
- The exploitative use of children in prostitution or other unlawful sexual practices;
- The exploitative use of children in pornographic performances and materials

Comment on article 34
Article 34 provides obligations to protect children from “all forms of sexual exploitation and sexual abuse”, requiring national, bilateral and multilateral measures to protect children from three particular (and often linked) forms of exploitation set out in paragraphs (a), (b) and (c). More generally it covers protection from “all forms of physical or mental violence” and specifically mentions sexual abuse.

85 Denmark, Germany, Lithuania, Malta, Poland, Portugal, Slovakia, Spain, Romania.
86 Latvia, Luxembourg, Portugal, Turkey.
88 Cyprus, Czech Republic, Estonia, Latvia, Sweden, Turkey.
89 Estonia, France, Germany, Greece, Netherlands, Portugal, Slovakia, Slovenia.
90 Cyprus, Czech Republic, Latvia, Sweden, Turkey.
91 Cyprus, Czech Republic, Sweden, Turkey.
referring also to the exploitative use of children in prostitution and pornography, which States Parties are required to take all appropriate measures to prevent.

In 1994, the Committee noted the adoption by the Commission on Human Rights of a resolution on the need to adopt effective international measures for the prevention and eradication of the sale of children, child prostitution and child pornography (resolution 1994/90, 9 March 1994), and the decision of the Commission to establish an open-ended working group to prepare guidelines for a possible draft optional protocol to the Convention on the sale of children, child prostitution and child pornography, as well as basic measures needed for their prevention and eradication. Thus, during its sixth session (April 1994) the Committee adopted a formal statement on “Cooperation with United Nations bodies – Sale of children, child prostitution and child pornography”, in which it stressed the important framework established by the Convention to deal with such situations, and “that the child affected by situations of sale, prostitution and pornography should be considered mainly as a victim and that all measures adopted should ensure full respect for his or her human dignity, as well as special protection and support within the family and society”93. In a 1996 statement to the working group, the Committee pointed out that the Convention not only provides specific provisions on sexual exploitation, but that it also “sets up a holistic approach for the consideration of the human rights of children. In the light of such an approach, all rights are recognized as inherent to the human dignity of the child, and the implementation of one right will only be effective when taking into consideration the implementation of, and respect for, all the other rights of the child. [...] The protection of the child from all forms of exploitation, including from sale, prostitution or pornography, should therefore not be seen simply in isolation but in the broader context of the realization of children’s rights and taking in due consideration the international obligations arising from the Convention.” In a word, the Convention reaffirms the indivisibility and interdependence of human rights.

During its 20th session in January 1999 the Committee made a statement to the 5th session of the open-ended working group on the draft optional protocol, reconsidering the best way of proceeding: “...it seems to the Committee that it might be helpful for the working group to take stock of recent developments and to reassess its approach in the light of these changing circumstances, with a view to providing a very valuable opportunity for the international community to ensure that the overall approach which is emerging is optimal. There are a lot of calls for coherence and coordination but it is difficult to achieve these objectives when many initiatives are developing simultaneously; it is essential to avoid duplication and overlapping initiatives, as well as the risk of inconsistency and incompatibility... It is, indeed, the belief of the Committee that the holistic approach to the rights of the child enshrined in the Convention requires a careful effort, and closer collaboration among all the relevant actors, to ensure the harmonization of outcomes”94. The open-ended working group continued to meet and develop successive drafts of the optional protocol and on the 25th of May 2000 the United Nations General Assembly adopted the Optional Protocol, which was ratified by 26th January 2006, by 103 States Parties.

Other international instruments and standards95 could be found in the Universal Declaration of Human Rights (article 4) which requires generally that: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”. This is repeated in article 8 of the International Covenant on Civil and Political Rights, which also covers “forced and compulsory labour” (see article 32). The Human Rights Committee, in a General Comment on article 24 of the International Covenant (which recognizes children’s right to protection), notes the need to protect children “from

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being exploited by means of forced labour or prostitution”⁹⁶. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others targets procurers and exploiters of prostitutes⁹⁷; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery requires States to “take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of”, inter alia, “any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour” (article 1). The 1979 Convention on the Elimination of All Forms of Discrimination against Women requires States Parties in article 6 to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. The Committee on the Elimination of Discrimination against Women issued a General Recommendation in 1991 on violence against women which notes in commenting on article 6 that: “Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence”⁹⁸. The ILO Worst Forms of Child Labour Convention, 1999 (No. 182) includes in its definition of “the worst forms of child labour”, “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances” (see article 32). In 2000 the United Nations Convention against Transnational Organized Crime was adopted, together with its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The purposes of the Protocol are “to prevent and combat trafficking in persons, paying particular attention to women and children” (children are defined as in the Convention on the Rights of the Child) and to “protect and assist the victims of such trafficking, with full respect for their human rights”, promoting cooperation among States Parties to meet these objectives (article 2). “Trafficking in persons” is defined to mean “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. “Exploitation” includes “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (article 3). The Protocol covers offences which are transnational in nature and involve “an organized criminal group”. It requires States Parties to “establish comprehensive policies, programmes and other measures” to prevent and combat trafficking in persons and to protect victims (article 9). However the only mention of the phenomenon of child trafficking in the CRC could be found in article 35, which states that:

*States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.*

Article 35 acts as a fail-safe protection for children at risk of abduction, sale or trafficking, whereas article 11 protects against the illicit “transfer or non-return of children abroad” (usually undertaken by relatives, not for profit); article 21 provides that international adoption must not involve “improper financial gain”; article 32 protects children against exploitative or harmful work; article 33, from involvement in drug trafficking; article 34 from their use in the sex trade; and article 36 from all other

⁹⁶ Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, p. 132.
⁹⁷ General Assembly resolution 317(IV), 2 December 1949, annex.
forms of exploitation. Article 35 is a safety net to ensure that children are safe from being abducted or procured for these purposes or for any other purpose.

During the initial phases of drafting the CRC, articles 34, 35 and 36 were condensed into one, but the Working Group agreed it would be more useful to tease out the separate strands of child exploitation. Article 35 was introduced because the sale or trafficking of children was wider in scope than that of article 34, which relates to prostitution and child pornography99. Article 35 also requires measures to deal with internal abductions within the jurisdiction. In addition, children in poor countries can be sold into the equivalent of slavery, through bonded labour or debt repayment, and they can be trafficked for the purposes of begging. Article 32 protects children from economic exploitation. Moreover in conditions of war, children can be forced to become soldiers or servants to armed forces (see article 38). Children can also be trafficked for the purposes of sex – into prostitution or the production of pornography or, less overtly, through forced marriages or traditional practices (see article 34). Children, particularly babies, are a desirable commodity for adoption: article 21 requires measures to ensure that intercountry adoption “does not result in improper financial gain for those involved in it”. There is also a strong suspicion that children’s bodies are being used to provide organs for transplants, in breach of article 6.

Thus, with article 35, the CRC provides a double protection for children: the main forms of child trafficking are dealt with in the different articles, but blanket action on abduction, sale or traffic “for any purpose or in any form” is also required by this article.

Comment on Committee’s concluding observations on article 34

The Committee addressed the issue of corporal punishment in its Concluding Observations for 23 Member Countries and 1 Accession Country100.

During the examination of the States Parties’ reports, the Committee appreciated: the efforts made in addressing the issue of sexual abuse and child pornography, through the adoption of the National Plan of Action, to fight commercial sexual abuse of children and against sexual abuse and child pornography on the Internet101; the enactment of specific national laws on the combating of trafficking of persons, on sexual exploitation of minors and on the protection of witnesses, making specific provision for the protection of child witnesses; the amendment of criminal law providing a new regulation on trafficking in human beings, prostitution, pornography and sexual tourism targeting children102; the review of provisions regulating criminal procedure; the measures taken to prevent and raise awareness of the problem of trafficking in persons103; the establishment of the National Committee to prevent and combat Trafficking in Persons104; the adoption of activities of bilateral and trilateral cooperation to address, inter alia, trafficking in human beings, in particular the sexual exploitation of children for prostitution105; the implementation of social, preventive and re-socialization programmes for victims of sexual exploitation and the significant work done by NGOs in this field; the establishment of a special “investigation unit” providing for investigations on criminal offences, also through the Internet in the case of child pornography; the establishment of an inter-ministerial committee with the mandate to coordinate the government activities against child abuse and trafficking in minors for sexual purposes; the establishment of a national Task Force on Trafficking; the development of mechanisms allowing doctors, teachers and other suitable professionals to lodge complaints of alleged sexual abuse or

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100 Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, United Kingdom, Croatia, Romania.
101 Austria, Czech Republic, Finland, France, Germany, Lithuania and United Kingdom.
102 Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovenia, Spain, United Kingdom, Croatia, Romania.
103 Austria, Belgium, Croatia, Romania.
104 Finland, Croatia, Romania.
105 Czech Republic and United Kingdom.
exploitation of children; the training of the police and other professionals in order to address the sexual exploitation of children in a thorough professional manner.

However, despite the efforts accomplished and the results achieved the phenomenon of sexual exploitation of children and child trafficking remain among the most serious areas of concern for the Committee. In fact, the Committee has paid consistent attention to the issue related to the lack of information and has stressed the importance of establishing national monitoring mechanisms and of undertaking studies assessing the causes, nature and extent of sexual exploitation, including on the Internet for 12 EU countries. The Committee's Guidelines for Periodic Reports asks for detailed information on implementation, including disaggregated data, proposing a study of the “root causes” and suggesting that Governments should work closely with NGOs and children's groups. It consistently urges States to take into consideration the recommendations adopted at the 1996 First World Congress against Commercial Sexual Exploitation of Children. It also recommends that the State Party engage in studies with a view to elaborating and implementing appropriate policies and measures, also in the area of rehabilitation, to combat this phenomenon comprehensively and effectively.

Another particular aspect of concern for the Committee is the lack of sufficient and effective measures to prevent sexual exploitation and trafficking of children. The Committee expressly requested 5 EU countries to elaborate policies and programmes in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children.

A further relevant issue is related to the presence of and the access to adequate programmes and reintegration services for child victims. On this subject, the Committee elaborated recommendations for 8 EU Member Countries and 1 Accession Country, asking them to establish appropriate recovery and reintegration programmes and services and to effectively ensure access to these services for all children who are victims of trafficking, prostitution and/or pornography. This could be achieved in a coordinated manner also enhancing cooperation with non-governmental organisations. Moreover for 6 EU Member Countries and 1 Accession Country the Committee requested the allocation of appropriate human and financial resources to policies and programmes in this area.

In relation to “recovery and reintegration” it should be mentioned that article 39 requires States Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of child victims of any form of abuse, exploitation and so forth. The Committee has emphasized the importance of adopting a non-punitive approach to child victims of sexual exploitation, following the Agenda for Action of the Stockholm World Congress, which suggests that social, medical and psychological counselling and other support should be provided for child victims and their families; that there should be gender-sensitive training of medical personnel, teachers, social workers, non-governmental organizations and others working to help child victims; that social stigmatization of victims should be prevented and their recovery and reintegration in communities and families should be facilitated; and that where institutionalization is necessary, it should be for the shortest possible period.

The Committee requested for 8 UE Member Countries that they strengthen their efforts to identify, prevent and combat trafficking in children for sexual purposes, also through appropriate training of the personnel and the expansion of cooperation activities with countries of origin and transit.
International cooperation is considered one of the most effective actions to prevent and combat sexual exploitation of children, because many forms of exploitation have become transnational, for example sex tourism, trafficking in child prostitutes, and dissemination of child pornography including through the Internet.

The Committee’s Guidelines for Periodic Reports seek information on “bilateral, regional and multilateral agreements”, including judicial cooperation and cooperation among law enforcement officials. The Agenda for Action, adopted at the Stockholm World Congress in 1996, promoted “better cooperation between countries and international organizations, including regional organizations, and other catalysts which have a key role in eliminating the commercial sexual exploitation of children, including the Committee on the Rights of the Child, UNICEF, ILO, UNESCO, UNDP, WHO, UNAIDS, UNHCR, IOM, the World Bank/IMF, INTERPOL, United Nations Crime Prevention and Criminal Justice Division, UNFPA, the World Tourism Organization, the United Nations Commissioner for Human Rights, the United Nations Centre for Human Rights, the United Nations Commission on Human Rights and its Special Rapporteur on the Sale of Children, and the Working Group on Contemporary Forms of Slavery, each taking guidance from the Agenda for Action in their activities in accordance with their respective mandates…”.

However, this international cooperation must be combined, on the basis of the conclusions and recommendations of the International Conference on Combating Child Pornography on the Internet (Vienna, 29 September – 1 October 1999), with a policy of zero tolerance, which “requires clear and strong legislation and effective law enforcement. Our efforts must make it clear to any potential perpetrator that the Internet is no longer an anonymous place for crimes and illegal activities”.

Another particular issue raised by the Committee is related to the necessity of providing specific professionals dealing with these specific problems, thus it invited 6 EU Member Countries and 1 Accession Country to implement training dedicated to law enforcement, officials, social workers and prosecutors on how to receive, monitor and investigate cases of sexual exploitation of children.

In the light of article 34 and other related articles of the Convention, the Committee recommends that the State Party reinforce its legislative framework to fully protect children from all forms of sexual abuse or exploitation, including within the family.

The Committee has placed particular emphasis on the need for legislation, as an essential basis for protection against sexual exploitation. The Guidelines for Periodic Reports request information on “legislative, educational and social” measures to protect the child from all forms of sexual exploitation and sexual abuse. The Guidelines ask in particular “whether sexual exploitation and abuse of children, child prostitution and child pornography, including the possession of child pornography, and the use of children in other unlawful sexual practices are considered criminal offences”.

The Guidelines also ask about criminalizing sexual exploitation by nationals in other countries. Thus, the Committee has proposed that legal reform should consider as an offence the use of child prostitutes and the possession of child pornography, as well as the publication and distribution of child pornography. On these assumptions, in the Concluding observations analysed the Committee asked the States: to adopt adequate measures in combating child trafficking, child prostitution, child pornography also by defining as illegal the production, distribution and possession of erotic images involving children; to extend the protection against sexual exploitation and trafficking to all boys and girls below the age of 18 years; and to ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography, the Protocol to Prevent, Suppress and Punish trafficking in Persons, especially Women and Children, the International Convention on the Rights of
All Immigrant Workers and Members of Their Family\textsuperscript{122} and ILO Convention no. 182 on the Worst Forms of Child Labour.

The Committee was also concerned that, while commercial sexual exploitation must be criminalized, the child survivors of it must not be criminalized or penalized. “Child-friendly” and sensitive procedures are required; those who expose violations must be protected from reprisals and there must be adequate rehabilitation programmes for survivors. Thus, it demanded to 4 EU Member Countries and 1 Accession Country\textsuperscript{123} the abolition of every legal provision that results in administrative or other punishment of the victims of commercial sexual exploitation and the prevention of other forms of stigmatization of the victims.

In the report on its General Discussion on Administration of juvenile justice, the Committee noted that children were often denied the right to lodge complaints when they were victims of violation of their fundamental rights, including cases of ill-treatment and sexual abuse.

Thus, the Committee invited States to ensure that procedures are simplified, so that responses are appropriate, timely, child-friendly and sensitive to child victims, ensure that a confidential, accessible and child-sensitive mechanism is established to receive and effectively address individual complaints of all children, including those in the 15 -18 age group\textsuperscript{124}.

Concluding, the Committee underlined also for 4 EU Member Countries\textsuperscript{125} the need to develop a \textbf{specific national plan of action} fulfilling the recommendations formulated in the Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children in Stockholm (1996) and on the other side requested 3 EU Member Countries, 1 Accession Country and 1 Candidate Country to fully implement the already adopted plan of action\textsuperscript{126}.

8.7. CRC on administration of juvenile justice

\textbf{Article 37}

States Parties shall ensure that:

\(\text{(a)}\) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

\(\text{(b)}\) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

\(\text{(c)}\) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

\(\text{(d)}\) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

\textsuperscript{122} Finland and Luxembourg.

\textsuperscript{123} Latvia, Lithuania, Netherlands, Poland, and Romania.

\textsuperscript{124} Czech Republic, France and Portugal.

\textsuperscript{125} Germany, Greece, Poland and Sweden.

\textsuperscript{126} Germany, Lithuania, Slovenia, Croatia and Romania.
Comment on article 37

The central point of article 37 is the child’s right to be protected from torture, other cruel, inhuman or degrading treatment or punishment, capital punishment, life imprisonment without possibility of release and unlawful or arbitrary deprivation of liberty (see par. 4.5).

In addition, the article sets out conditions for any arrest, detention or imprisonment of the child, which shall be in conformity with the law, used only as a measure of last resort, and for the shortest possible time.

And the article sets out further conditions for the treatment of any child deprived of liberty: to be treated with humanity and respect for the inherent dignity of the human person; in a manner which takes into account the needs of persons of his or her age; to be separated from adults unless it is considered in the child’s best interest not to do so; to maintain contact with his or her family, through correspondence and visits, save in exceptional circumstances; to have the right to prompt access to legal and other appropriate assistance; to have the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority; to have the right to a prompt decision on such action.

Paragraph (a) of article 37 emphasizes that the absolute prohibition of torture, and cruel, inhuman or degrading treatment or punishment, examined in the previous specific paragraph that is upheld for everyone in the Universal Declaration of Human Rights (article 5) and the International Covenant on Civil and Political Rights (article 7), and also in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, applies equally to children. As indicated in the Manual on Human Rights Reporting, 1997, it should also be underlined that this prohibition applies to all children in all circumstances and wherever they are included within family life or in the school system.

The Committee requires article 37(a) of the CRC to be reflected in national legislation as applying to children. In its guidelines for periodic reports, the Committee requests information on “whether torture or other cruel, inhuman or degrading treatment or punishment of children is punished by the criminal law”.

In the report of its General Discussion on “Administration of juvenile justice”, the Committee also noted the importance of periodic visits and independent monitoring of institutions.

In relation to article 37, as well as article 19 and 28(2), the Committee has also addressed the issue of corporal punishment affirming that any corporal punishment of children, however light, is incompatible with the CRC and has called for a clear prohibition of all corporal punishment – in the family, in other forms of care, in schools and in the penal system. The Committee has in particular criticized legal provisions in States Parties that attempt to draw a line between acceptable and unacceptable forms of corporal punishment.

The Human Rights Committee, in its General Comment on article 7 of the International Covenant on Civil and Political Rights, notes that “prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7” (Human Rights Committee, General Comment 20, 1992, HRI/GEN/1/Rev.5, p. 139). Thus, placing a child in isolation or solitary confinement raises a further issue under article 37(a) of the Convention, in addition to the issues relating to the restriction of liberty involved.

In relation to paragraph b) of article 37, the Committee has adopted the definition of restriction of liberty present in the UN Rules for the Protection of Juveniles Deprived of their Liberty: “The deprivation of liberty means any form of detention or imprisonment or the placement of a person in another public or private custodial setting from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority”.

During its examination of States Parties’ initial reports, the Committee has found there are various routes, in various systems, to children’s liberty being restricted, in welfare, health, and immigration as well as penal systems.

The Committee has expressed concern at the length of restriction of liberty of children on arrest and during investigation (pre-trial detention), as well as the length of sentences, both generally and in specific circumstances. It should be noted that article 37(d) provides the right to challenge the legality of any deprivation of liberty before a court or other appropriate body “and to a prompt decision on any such action”.

As previously underlined, the Committee has pointed out that the provisions limiting restriction of liberty under article 37 apply to all instances of restriction of liberty, referring in particular to health and welfare institutions and to asylum-seekers and refugee children. Regarding this last point, analysed in depth below in the paragraph regarding article 22, the policy of the UNHCR is that refugee children should not be detained.

Furthermore the Committee has stated that the deprivation of liberty for children in need of protection must not be used and that mentally ill children should never be detained in prison. Inter alia the situation of children confined in non-penal institutions has also been addressed by the Special Rapporteur on torture in his report to the General Assembly in 2000.

Paragraph c) of article 37 stresses that children deprived of their liberty should not lose their fundamental rights, and that their treatment must take account of their age and development. The Committee has often expressed concern at the conditions in detention institutions and places where children's liberty is restricted. It has requested effective monitoring, inspection and complaints procedures, as well as appropriate training of all personnel.

The Committee has consistently recommended that all those involved in any form of restriction of liberty of children, and in the administration of juvenile justice systems should receive training in the principles and provisions of the CRC and of the relevant UN rules and guidelines.

The Committee has noted the importance of registering all children deprived of their liberty, and the Guidelines for periodic reports asks for detailed information on the numbers of children deprived of liberty “unlawfully, arbitrarily and within the law”, the reasons and periods of deprivation of liberty, and that data should be disaggregated.

**Article 39**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

**Comment on article 39**

Article 39 concerns measures to assist child victims of: any form of violence, neglect, exploitation or abuse (for example, as detailed in articles 19, 32, 33, 34, 35, 36); torture or any other form of cruel, inhuman or degrading treatment or punishment (article 37); armed conflicts (article 38).

Among the most important CRC principles, article 39 states that recovery and reintegration must take place in an environment that fosters the health, self-respect and dignity of the child; also that such measures must be accessible to all child victims without discrimination; the best interests of the child must be a primary consideration; the maximum survival and development of the child must be guaranteed; and the views of the child should be respected – for example in planning and
implementing programmes, including in individual cases. It is also fundamental that such children should be recognized as victims, as well as perpetrators of offences.

In its comments on States Parties’ initial reports, the Committee has indicated that the wording of article 39 requires consideration of a wide range of potential child victims. In addition to the situations specifically mentioned in article 39, the Committee has referred to issues such as victims of violence, refugee children (article 22), child labour and forced labour (article 32), drug abuse and trafficking (article 33), family conflict and the sale and trafficking of children (article 35), and children involved in the juvenile justice system (articles 37 and 40).

**Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

   (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
   
   (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
   
      (i) To be presumed innocent until proven guilty according to law;
      
      (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
      
      (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
      
      (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
      
      (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
      
      (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
      
      (vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

   (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
   
   (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Comment on article 40

Article 40 of the CRC covers the rights of all children in conflict with the law, who are claimed as, accused of or recognized as having violated the criminal law. Thus, it covers treatment during all the procedural phases, from the moment a claim is made, through investigation, arrest, charge, pre-trial, trial, sentence and execution of the punishment. The article needs States to promote a distinctive system of juvenile justice for children (i.e., in the light of article 1, up to 18 or the age of majority) with specific positive rather than punitive aims set out in paragraph 1. Article 40 details a list of minimum guarantees for the child and it requires States Parties to set a minimum age of criminal responsibility, to provide measures for dealing with children who may have violated the criminal law without resorting to judicial proceedings and to provide a variety of alternative dispositions to institutional care.

In addition, article 37 above prohibits the death penalty and life imprisonment without possibility of release and insists that any restriction of liberty must be used as a last resort and for the shortest appropriate period of time. Article 39 requires measures to support physical and psychological recovery and reintegration of child victims. Also to be noted is that the Committee has commended the UN Rules and Guidelines on Juvenile Justice as providing relevant standards for the implementation of the CRC. In the outline for its 1995 General Discussion on the “Administration of juvenile justice”, the Committee stated that the CRC, together with the United Nations Rules and Guidelines on Juvenile Justice, “call for the adoption of a child oriented system”.

The Committee, as we can see in the following paragraph, in its Concluding Observations and also during the discussion of the reports presented by the States Parties, has pointed out constantly that it regards the UN Rules and Guidelines relating to Juvenile Justice as providing relevant detailed standards for the implementation of article 40 and the administration of juvenile justice: the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); the UN Rules for the Protection of Juveniles Deprived of their Liberty; and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); the Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines).

Concerning the maximum age of child protection, among those instruments we point out that the “Beijing Rules” define as “juvenile” a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult. The provisions on juvenile justice in the CRC apply to “children”, defined for the purposes of the Convention as everyone below the age of 18, unless under national law majority is attained earlier. The Committee has pointed out that States Parties should not reduce the protection available to under 18 years of age simply because majority is reached earlier. Thus, the Committee believes that the standards in the rules and guidelines should be applied to all aged under 18.

The “Beijing Rules” recommend that they should be concerned beyond the criminal justice system for juveniles. Its rule 3 states:

1. The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

2. Efforts should be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

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3. Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.” The official commentary on the “Beijing Rules” indicates that rule 3(1) applies to “the so-called ‘status offences’ prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.).”

Comments on Committee’s concluding observations on articles 37, 39 and 40

First of all, the CRC Committee has discussed the subject of administration of juvenile justice with all of the 25 EU Member Countries and the 4 EU Accession / Candidate Countries analysed in the present survey.

Relating to the positive achievements, the Committee has underlined that during recent years in some EU Countries juvenile justice law reforms have been approved (11 EU Member Countries and 1 EU Accession / Candidate Country)\(^1\)) and in other EU Countries juvenile justice law reforms are still pending in their national Parliaments (2 EU Member Countries and 2 EU Accession / Candidate Countries)\(^2\)). The Committee has pointed out that perhaps the aims of those law reforms are to harmonize the juvenile justice system with the CRC and other international standards principles mentioned below.

The introduction in a few EU Countries of a system of special juvenile justice courts and of training courses (2 EU Member Countries)\(^3\)), in particular for judges, prosecutors and police officers, was also emphasized by the Committee.

The changes made in some EU Countries concerning the different treatment of persons under the age of 18 years in comparison with adults, was noted by the Committee, i.e. for pre-trial detention or the minimum age of criminal responsibility.

Finally, some references were mentioned by the Committee to specific positive steps taken in some EU Countries for the introduction of: restorative justice, multidisciplinary teams and community-based disposals; the application of alternative measures, such as probation and prisons facilities; custodial care and community youth services; units for child protection; special rehabilitation programmes and the complaints procedure.

Concerning the recommendations on administration of juvenile justice, we have analysed together the issues for which the Committee has indicated the presence of problems or difficulties and those for which the Committee has requested interventions and modifications.

The most common recommendation (22 EU Member Countries and 4 EU Accession / Candidate Countries)\(^4\)) on juvenile justice administration, is to ensure the full implementation, compliance or integration of juvenile justice standard rules, in particular articles 37, 39 and 40 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System, in the light of the Committee’s day of General Discussion on the Administration of Juvenile Justice, held in 1995.

This recommendation is a general recommendation because is limited to reminding each Country of all the UN instruments existing on juvenile justice, and it’s the first recommendation in each Concluding Observation on this issue. The differences between those recommendations adopted for the mentioned

\(^1\) Belgium, Cyprus, Denmark, Greece, Lithuania, Luxembourg, Portugal, Slovakia, Slovenia, Spain, Sweden, Croatia.

\(^2\) Czech Republic, Italy, Romania, Turkey.

\(^3\) Estonia, Slovenia.

\(^4\) Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Sweden, United Kingdom, Bulgaria, Croatia, Romania, Turkey.
EU Countries regards only the list of the UN international standards (Treaties, Guidelines, Minimum Standards, Rules and so on).
It’s also important to note that, among the mentioned UN international instruments, only the CRC is a Treaty that compels the States Parties that have ratified it (192 Countries in the world, in particular all the EU Countries) to implement its contents (principles and articles).

The second recommendation on the issue of the administration of juvenile justice is to ensure that the deprivation of liberty of children is really a measure of last resort (14 EU Member Countries and 3 EU Accession / Candidate Countries)\textsuperscript{134}; this recommendation is frequently accompanied by the request for it to be the shortest time possible (6 EU Member Countries and 2 EU Accession / Candidate Countries)\textsuperscript{135}, separated from adults in detention or custody (9 EU Member Countries and 1 EU Accession / Candidate Country)\textsuperscript{136}, also during daytime activities, and with due process (2 EU Member Countries)\textsuperscript{137}.

Another frequent recommendation regards the need for specialized training for the juvenile justice staff (so EU Member Countries and 2 EU Accession / Candidate Countries)\textsuperscript{138}, in particular for judges, prosecutors, police officers, probation officers, social workers and the staff of the juvenile detention centres.

A request to allocate adequate human and financial resources (6 EU Member Countries and 1 EU Accession / Candidate Country)\textsuperscript{139}, to develop or ensure specific policies and independent, accessible and effective complaints procedures or mechanisms or advocacy services (so EU Member Countries and 1 EU Accession / Candidate Country)\textsuperscript{140}, i.e. to monitor the implementation of the laws and UN instruments or the condition of detention of children, is also indicated by the CRC Committee.

The collection of data and information – in general or on specific issues such as the average length of pre-trial detention – is also underlined by the Committee as a measure to be improved in some EU Countries (3 EU Member Countries)\textsuperscript{141}, i.e. to obtain a clear and transparent picture of the practices.

Concerning the different phases of the criminal proceedings in which the juveniles in conflict with the law are involved, the Committee has identified the following specific issues:

\textbf{a. Age of criminal responsibility} (6 EU Member Countries and 1 EU Accession / Candidate Country)\textsuperscript{142}, in particular the attention was focused on the minimum age of the criminal responsibility and on the application to minors from a certain age of the criminal law for adults, i.e. the Committee considers that the minimum age of criminal responsibility is 11 years and the Juvenile Courts law cover children only between 11 and 14 years, while children between 15 and 18 are subject to the Penal Law, the referring of children between 16 and 18 years of age to ordinary courts and judges in case of crimes of particular gravity and the age at which children enter the criminal justice system is low, with the age of criminal responsibility (8 or 10 years), the abolition of the doli incapax and the deprivation of liberty of children between 12 and 14 years and recommends that States amend the legislation that permits life imprisonment and fix a maximum limit for their detention. The Committee has also recommended that States clarify the minimum age of criminal responsibility, for example for the pre-trial protective custody detention; undertake legislative reform to raise the minimum age of criminal responsibility; eliminate the assumption that a child aged between 9 and 14 years could act with mischievous intent; finally

\textsuperscript{134} Austria, Czech Republic, Estonia, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Spain, United Kingdom, Croatia, Romania, Turkey.

\textsuperscript{135} Austria, Estonia, France, Germany, Luxembourg, United Kingdom, Croatia, Turkey.

\textsuperscript{136} Austria, Czech Republic, Estonia, France, Germany, Latvia, Luxembourg, United Kingdom, Romania.

\textsuperscript{137} Denmark, France.

\textsuperscript{138} Austria, Czech Republic, Estonia, Greece, Hungary, Italy, Lithuania, Slovenia, Spain, Sweden, Bulgaria, Croatia.

\textsuperscript{139} Czech Republic, Greece, Lithuania, Slovakia, Spain, United Kingdom, Romania.

\textsuperscript{140} Czech Republic, Estonia, Greece, Italy, Latvia, Lithuania, Luxembourg, Slovakia, Slovenia, United Kingdom, Turkey.

\textsuperscript{141} Austria, Cyprus, Portugal.

\textsuperscript{142} Czech Republic, Luxembourg, Malta, Aruba (Netherlands), Portugal, United Kingdom, Turkey.
ensure that the juvenile justice system covers all children under the age of 18, including those between 16 and 18 years \(^{143}\) and between 17 and 18 years.

b. **Tribunals** (2 EU Member Countries and 1 EU Accession / Candidate Country) \(^{144}\), in particular the Committee considers the need to have **special courts** for minors in conflict with the law.

c. **Criminal law and criminal proceedings** (15 EU Member Countries and 4 EU Accession / Candidate Countries) \(^{145}\), in particular the Committee has requested to European Countries to take into consideration the need to have **access to legal aid** \(^{146}\) , the need to **alternative measures**, including **pre-trial detention** \(^{147}\) , the need to increase **probation**, the respect by the media of the child’s rights to privacy during the criminal proceedings, the possibility to be sentenced to unconditional imprisonment or the right to appeal restricted to sentences of imprisonment of more than one year. The Committee also recommended that States **decriminalize begging** and ensure that the punitive measures are taken only by judicial authorities, with due process and legal assistance \(^{148}\) and strengthen the **preventive measures** \(^{149}\) and the capacity of the juvenile justice system to provide a **timely response**.

d. **Police custody and pre-trial detention** (8 EU Member Countries and 2 EU Accession / Candidate Countries) \(^{150}\), in particular the Committee has considered that some EU Countries have to be care about the **duration of investigation**, Police custody and pre-trial detention \(^{151}\) , also because the juvenile justice systems are overloaded \(^{152}\) . The Committee has also recommended to some EU Countries that they should end and punish the **acts of violence by the Police** toward juveniles \(^{153}\) , end **illegal detention** \(^{154}\) or incommunicado detention, align the **period of Police custody** for children accused of terrorism with the provisions of the Act and review the length of prison terms for children accused of terrorism.

e. **Detention centres** (18 EU Member Countries and 3 EU Accession / Candidate Countries) \(^{155}\) , in particular the Committee has considered that some EU Countries have to be care about the **large or increasing number of persons below 18 years placed in detention** \(^{156}\) , in particular those who are of **foreign origin** \(^{157}\) , of **distinct ethnic, religious, linguistic and cultural groups** or **Roma** \(^{158}\) for whom it’s necessary to take all possible measures to prevent and eliminate **discrimination**. The Committee has also considered the use of the practice of **solitary confinement** and imprisonment (3 EU Member Countries) \(^{159}\) , in particular the serious behavioural problems in institutions; the placement of juvenile offenders and those having social or behavioural problems in the same structures; the presence of separate rooms and facilities in few juvenile detainees centres. The detention centres are sometimes over crowded and attention needs to be given to the tendency to favour repressive rather than educational measures. In addition the Committee recommends that States: promote recovery and social reintegration (8 EU Member Countries and 1 Accession / Candidate Country) \(^{160}\) including through **adequate education, protected...**
programs, for example from violent behaviour, with an holistic approach, and alternatives to detention, such as community service orders and intervention of restorative justice; abolish provisions allowing imprisonment for a period of 20 years; respect the rights of children during arrest and detention procedures; establish minimum conditions or improve the conditions of detention and imprisonment, non-restricted rights of appeal and legal representation, free interpretation where needed; maintain the child’s contact with their family or and provide adequate living standards in the detention centres or establish special detention centres; take all necessary measures to review the conditions of detention and ensure that all children deprived of liberty have statutory rights to education, health and child protection equal to other children. As we can see, the Committee has focused its attention on the whole juvenile justice administration system, on both substantial and procedural aspects of the juvenile in conflict with the law. Attention was centred in particular on the implementation of the law and on the situation of children during police custody, pre-trial detention and the detention following the judgment. The Committee further suggests that some EU Countries consider seeking technical assistance for implementation of UN international standards and training activities from UN bodies, for example the UNHCHR, the Centre for International Crime Prevention, the International network on juvenile Justice and UNICEF, through the UN Coordination Panel on Technical Advice and Assistance on Juvenile Justice (2 EU Member Countries and 3 EU Accession / Candidate Countries). Finally, the CRC Committee has requested only in one case that a State should consider withdrawal of the reservation on article 10 § 2 (b) and § 3 of the International Covenant on Civil and Political Rights. This last recommendation enables us to declare that very few cases of reservations on articles 37, 29 and 40 were made by EU Countries, and the CRC Committee hasn’t recommended to those Countries that they should consider withdrawing the reservation.

69 Austria, Estonia, France, Hungary, Latvia, Lithuania, Malta, Slovenia, Turkey.
70 Greece, Croatia.
71 Lithuania, Poland, Turkey.
72 Latvia, Slovakia, Bulgaria, Croatia, Turkey.
9. Conclusions

The survey on the Committee’s Concluding Observations on the last EU Countries Reports underlined various elements that can be summarised as follows. First of all it emerged that the majority of general measures and principles are not present only in their specific paragraph at the beginning of the Committee's Concluding observations, but also in the other specific issues considered by the Committee. In other words, in the formulation of the recommendations concerning the single rights set forth in the Convention, the Committee constantly refers to the overall general measures of implementation – such as the coordination of the intervention at national level, the presence of an independent monitoring mechanism, the dissemination of the CRC, the existence of a integrated and comprehensive national strategy on childhood, the collection of data and information on childhood condition – as well as to the fundamental principles of the CRC, namely the non-discrimination, the best interest of the child, the right to life, survival and development and the respect for the views of the child. For example training of personnel on the human rights principles, in particular on the child’s rights, is not only referred to by the Committee in its Concluding observations in the part related to the general measures of implementation (article 42), but also in the specific issues such as the right to education (articles 28 and 29 of the CRC) and administration of juvenile justice (articles 37, 39 and 40). Another example is dissemination of the CRC's principles and provisions (article 42) in connection with the right of access to information (article 17) and the rights of children with disabilities (article 23).

Secondly analysing the Committee’s Concluding Observations on the last EU countries’ reports discussed, it emerged that the Committee demonstrated great attention to leading the States parties, through a positive and open dialogue, in the process of CRC implementation at the national level. In fact the Committee gives a particular attention to the necessity to support the State parties in the elaboration, adoption, implementation and evaluation of any kind of activities undertaken in favour of childhood and adolescence or which have an impact on them as social group or as single person, promoting the pro-active approach strongly supported by the Committee itself.

Thirdly from an in-depth analysis of the Concluding Observations, it is important to underline that the discussion between the Committee and the States aims not only at monitoring the implementation of the CRC, but also to disseminate a culture based on the children's rights approach, in which the child is considered a subject with rights and not an object of protection and to whom the States should provide a pro-active and comprehensive policy of intervention aimed at establishing a child-friendly environment in which the child can have the opportunity to positively participate at his/her social and personal life.

Moreover another common point is the need for technical assistance for the implementation of the CRC and other UN international standards in specific issues (i.e. administration of juvenile justice) from UN agencies, such as UNICEF and UNHCHR as settled down in article 45 of the CRC with the intention to foster the effective implementation of the CRC encouraging international cooperation. The article outlines the role for specialised agencies and organs of the United Nations which should be involved when is demanded the implementation of aspects of the CRC which come within their mandate. Finally from the analysis of the Committee concluding observations taken into consideration for this survey it results that the most consistent concerns of the Committee in almost all the cases coincide with the issues covered by the recommendations elaborated in order to guide the active intervention of the single State parties. Thus, the survey focuses mostly on the recommendations, attempting to outline the guiding approach of the Committee in relation to the different topics addressed.

Following the structure of the Committee Concluding Observations these conclusions recall the recommendations elaborated for each specific issue for a minimum of one third (8-9 Countries) of the 29 EU Countries (25 EU Member Countries and 4 Accession/Candidate Countries). The most frequent point of weakness emerging from the issues of concern and from the recommendations as regards the general measures of implementation is the Committee’s request to continue or strengthen systematic education and training programmes on the CRC addressed not only
to children and parents but also to all professional groups working for and with children (27 EU Countries out of the 29 taken into consideration), followed by the request to strengthen the State efforts to make the CRC widely known and understood by adults as well as children and to realise systematic awareness-raising campaigns (17 EU Countries). The instruments of education and training emerged as fundamental for the implementation of the CRC, both for professionals dealing with children and for children themselves.

Two other frequent recommendations are those related to the use of indicators and collected data to formulate, review and monitor laws, policies and programmes to implement the CRC (21 EU Countries) and to strengthen its efforts to develop, continue to develop, to update and/or to establish a (nationwide) system for a comprehensive collection of indicators and comparative disaggregated data on all persons under 18 years for all Countries territories and all areas covered by the CRC, with an emphasis on the most vulnerable groups (15 EU Countries). In this case it emerged that when dealing with a specific phenomenon it is important to know it well, and the collection of data and indicators is crucial to reach this purpose.

The instruments of coordination and the national plans of action are also recognized by the Committee as fundamental for the implementation of the CRC and they are present in many recommendations. The Committee has recommended: to prepare and implement a coherent and comprehensive right-based national plan of action for the implementation of the CRC (14 EU Countries) and to strengthen coordination between the various government mechanisms involved in children’s rights, at both the national and local levels, with a view to developing a comprehensive policy on children and ensuring effective evaluation of the implementation of the CRC in the country (8 EU Countries).

Again in the framework of the implementation’s general measures, the Committee also recognized that the establishment of independent human rights institutions at national level, accessible to children and empowered to receive and investigate complaints of violations of child rights in a child-sensitive manner (16 EU Countries), is also useful both to disseminate the CRC principles and to strengthen a child right culture. Finally, the Committee underlined the importance of allocating sufficient financial and human resources for the effective functioning of such mechanisms in order to allow the effective implementation of the coordination role (13 EU Countries).

It is interesting to note that the positive achievements expressed by the Committee for some countries, frequently correspond to the key concerns and recommendations stated by the Committee for other EU countries: some issues may be at the same time points of strength (for certain countries) and points of weakness (for others).

The process of the implementation of the CRC is still in progress and the general measures of implementation are the basic issues analysed by the Committee, not only in the specific parts dedicated to them in the concluding observations, but also for the specific rights of the child analysed in the further parts of the concluding observations. In fact, as already mentioned, the issues of legislation, data collection, training activities, resources or coordination of government bodies and national action plans are taken into consideration also in the parts of the concluding observations regarding the various categories of children’s rights.

Coming to the analysis of the specific rights of the child, in the part concerning the general principles, there are two points for which many EU countries received recommendations: the principle of non-discrimination and the respect for the view of the child whereas few recommendations are related to the general principle of the best interest of the child and the right to life, survival and development. The reason for this difference is the fact that these principles, considered as fundamental pillars of the implementation of the CRC, are present in all the concluding observations in a transversal manner and are points of constant reference by the Committee for the full implementation of the single rights set forth by the CRC itself.

As regards the principle of non-discrimination (article 2), the Committee recommended as follows: to include specific information on the measures undertaken by the State to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination,
Xenophobia and Related Intolerance (20 EU Countries); to develop and adopt effective strategies to eliminate the existing forms of discrimination among children at the national level (16 EU Countries); to adopt a proactive and comprehensive strategy to eliminate discrimination suffered by any group of children and focusing on those belonging to vulnerable groups (10 EU Countries).

As regards the principle of the respect of the views of the child (article 17), the Committee recommended as follows: to reinforce awareness raising campaigns among the public in general as well as the education and training of professionals with a view to the implementation of this general principle in daily life, in order to change the traditional perceptions of children as objects rather than subjects with rights (12 EU Countries); to continue to promote within the family, schools, administrative bodies and other institutions respect for the view of the children and to facilitate their participation in all matters affecting them (9 EU Countries).

Regarding civil rights and freedom, the Committee pointed out several common recommendations, in particular for two issues: corporal punishment and abuse; access to appropriate information.

As regards corporal punishment and abuse (article 19), the Committee recommended that States should continue to carry out public education campaign about the negative consequences of corporal punishment and promote positive, non-violent forms of discipline as an alternative to corporal punishment (11 EU Countries).

As concerns access to appropriate information (article 17), the Committee recommended to strengthen the measures to protect children from the possible dangers deriving from the use of the media, Internet and videogames, in particular regarding violence, pornography, child pornography and racism (11 EU Countries).

From the beginning of its activities the Committee gave special attention to the right to education (articles 28 and 29), taking into consideration the first General comment dedicated to this issue. The Committee focused on various different aspects of the issue: from the access to education to be guaranteed (11 EU Countries), to the quality and aim of education to be improved (14 EU Countries), from the human rights education to be ensured (15 EU Countries) to an equal education addressed to all children, giving special attention to children with disabilities, in rural areas, belonging to minority groups and in special schools (17 EU Countries), from the prevention and fight against dropping out (13 EU Countries) to the educational teacher training programmes to be implemented (12 EU Countries). The large number and variety of aspects pointed out by the Committee confirm that the right to education was central in the discussion with the great majority of EU Countries taken into consideration.

The Committee also invited EU countries to pay attention to the issues related to the family environment. Among the most frequent recommendations in this area, the Committee underlined: the importance of alternative care for children deprived of their family environment (21 EU Countries); the regulation of the institute of adoption (12 EU Countries). As regards the first point the Committee requested States to: increase the availability of foster care, family-type foster homes and other family-based alternative care by providing greater financial assistance and increasing the counselling and support mechanisms for foster families (14 EU Countries); to undertake a periodic review of placement (8 EU Countries); to guarantee the contact between the children placed in out-of-home care and their parents (8 EU Countries); to take into account children's views in any decision regarding their placement (8 EU Countries). Concerning the institute of adoption, the Committee focused its attention on the legislative guarantees for the adoption procedure especially as provided by the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption of 1993. The Committee also focused on the issue of child abuse in the family, recommending that States organise public campaigns to prevent and combat all forms of child abuse, also with the participation of children (14 EU Countries); provide for the care, full physical and psychological recovery and reintegration of the child victims of abuse, in case of investigation and prosecution of cases of child abuse (12 EU Countries); establish child-friendly procedures and mechanisms to receive, monitor and investigate complaints (12 EU Countries) and develop or strengthen the reporting system (9 EU Countries).
Like the right to education and the issues related to the family environment, basic health was also a crucial point for the Committee. There are many frequent recommendations that can be summarised as follows. Countries are recommended to promote and strengthen mental health programmes, policies and services for adolescents (16 EU Countries); promote, include or strengthen the programme of health education in schools (15 EU Countries), including sexual and reproductive health (12 EU Countries); develop youth-friendly counselling, care and rehabilitation facilities (12 EU Countries), in some cases specifying that these may be used without parental consent when this is in the best interests of the child; ensure or facilitate the adequate and equal access of all children, without discrimination, to health care and services (11 EU Countries); increase information campaigns or programmes addressed to adolescents concerning family planning or birth control measures (11 EU Countries) and finally a concern was expressed about the high suicide rate or incidence in the Country (11 EU Countries).

Finally the Concluding Observations treated the special measures of protection indicated in the CRC: unaccompanied foreign, refugees and asylum-seeking children (article 22), street children (articles 9 and 20), children of minorities or indigenous peoples (article 30), economic exploitation (article 32), drug abuse (article 33), sexual exploitation, abuse and trafficking (article 34), administration of juvenile justice (article 37, 39 and 40). The Committee focused its attention on all of them indicating many points of concern and recommendations.

First of all it is important to highlight that the most frequent recommendation expressed by the Committee was to ensure the full implementation, compliance or integration of juvenile justice standard rules, in particular articles 37, 39 and 40 of the CRC, and inter alia the Beijing Rules, the Riyadh and the Vienna Guidelines (26 EU Countries), not only among the specific measures of protection but in all the different parts of the concluding observations. The Committee also made a General Comment on the administration of juvenile justice, thus recognising that this is a fundamental issue, as indicated not only by the CRC but also by the other international instruments of “soft law” adopted by the United Nations Agencies. The Committee frequently focused its attention on the question of detention centres (21 EU Countries), i.e. the Committee has considered the large or increasing number of persons below 18 years placed in detention; the criminal law and criminal proceedings (19 EU Countries), it has requested EU Countries to take into consideration the need to have access to legal aid; ensure that the deprivation of liberty of children is really a measure of last resort (17), frequently adding the request for it to be the shortest time possible (8 EU Countries), separated from adults in detention or custody (10 EU Countries); need for specialized training for the juvenile justice staff (12 EU Countries); develop or ensure specific policies and independent, accessible and effective complaints procedures or mechanisms or advocacy services (11 EU Countries); police custody and pre-trial detention (10 EU Countries). The Committee has also considered that some EU Countries have to pay attention to the duration of investigation, police custody and pre-trial detention; promote recovery and social reintegration (9 EU Countries) including through adequate education, protected programs, for example from violent behaviour, with an holistic approach, and alternatives to detention, such as community service orders and intervention of restorative justice.

As regards drug abuse (article 33), the Committee underlined the fact that not only the use of drugs but also that of tobacco and alcohol may be very dangerous for children’s health (20 EU Countries) and requested States to strengthen or set up appropriate care and rehabilitation services for child victims of drug and/or alcohol abuse (13 EU Countries) and to provide children and parents with accurate and objective information about the harmful consequences of drugs, alcohol and/or tobacco (9 EU Countries).

Another issue discussed by the Committee is the situation of unaccompanied foreign children, refugee and asylum-seeking children. This is a recent phenomenon concerning almost all EU Countries that deserves special attention and specific intervention policies. The Committee recommended facilitating access to basic services such as education and health for refugee and asylum-seeking children (15 EU Countries), it underlined the need to adopt national legislative reforms concerning the rights of
refugee and asylum-seeking children (10 EU Countries) as well as the need for special assistance and protection of the rights of children, in particular legal aid and procedures of children seeking asylum (10 EU Countries) and to ensure adequate living conditions and full or equal access to education, health services, including psychological care for unaccompanied or separated children, displaced or refugee and asylum-seeking children (10 EU Countries).

Finally, concerning the issue of sexual exploitation, the Committee underlined that the Optional Protocol on the sale of children, child prostitution and child pornography also monitors this issue, but until the Optional Protocol is ratified by all EU Countries and reports are discussed by the Committee, attention will continue to be concentrated on the implementation of the CRC. In particular, the Committee stated that it is important to establish national monitoring mechanisms and to undertake studies assessing the causes, nature and extent of sexual exploitation, including on the Internet (11 EU Countries) and also to establish appropriate recovery and reintegration programmes and services for victims of sexual exploitation (9 EU Countries).
10. Executive Summary

General measures of implementation

General measures of implementation – Coordination and National Plan of Action
(25 EU countries and 4 accession/candidate countries)

Have any positive achievements been identified? (27)
- the approval of comprehensive national plan of action on young rights, incorporating the objectives and goals of the document “A World Fit for Children”, adopted by the General Assembly Special Session on Children in 2002 (11)
- the establishment and reviewing of the role of governmental bodies such as: youth divisions, inter-ministerial conferences for the protection of child rights and competent authorities to deal with the welfare of children at the national and local municipalities levels and in charge of coordinating and monitoring the implementation of the Convention (10)
- the many efforts made in order to improve the national policy of coordination (6)
- the existence of numerous plans of action and policies focusing on specific issues of concern to children (5)

What are the key recommendations? (29)
- to allocate sufficient financial and human resources for the effective functioning of such a mechanism in order to allow the effective implementation of the coordination role (14)
- to ensure the establishment of a single permanent and effective coordination mechanism on the rights of the child (12)
- to strengthen the coordination between the various governmental mechanisms involved in children’s rights, at both the national and local levels, with a view to developing a comprehensive policy on children and ensuring effective evaluation of the implementation of the Convention in the country (8)
- to strengthen the coordination within the institutional framework designed to promote and protect human rights in general and the rights of the child in particular, cooperating closely with non-governmental organizations and civil society (8)
- to prepare and implement a coherent and comprehensive right-based national plan of action for the implementation of the Convention (8)

General measures of implementation – Dissemination and training (article 42)
(23 EU member countries and 4 EU accession/candidate countries)

Have any positive achievements been identified? (24)
- efforts to make the principles and the provisions of the Convention widely known (14)

What are the key recommendations? (27)
- to continue or strengthen the efforts to make the Convention widely known and understood by adults as well as children (17)
- to dedicate specific attention, as regards the dissemination of the convention, to reaching vulnerable groups (8)
- to incorporate the Convention in the school curricula (8)

General measures of implementation – Independent monitoring institutions
(20 EU member countries and 4 EU accession/candidate countries.)

Have any positive achievements been identified? (23)
- the establishment at the national level of the children’s rights commissioners, ombudsperson for children or national councils for children (8)
- the existence of a national institution for the general protection of human rights (8)
- the existence of a plan to set up a national independent monitoring body for children (6)

What are the key recommendations? (24)
- to establish independent human rights institutions at the national level accessible to children and empowered to receive and investigate complaints of violations of child rights (16)
- to support or strengthen with sufficient human and financial resources the office of the Ombudsman for Children (8)

* The number indicate the total of EU countries that received comments from the Committee
General measures of implementation – Data collection  
(25 EU member countries and 4 accession/candidate countries)

Have any positive achievements been identified? (16)  
- the extensive quality and quantity of statistical data provided by EU Countries (12)  
- the conscious effort made to improve data collection (6)  
- the establishment of specific instruments, programmes or organisms dealing with the collection of statistical data (6)

What are the key recommendations? (29)  
- to use these indicators and / or data collected to formulate / monitor laws, policies and programmes to implement the CRC (21)  
- to strengthen efforts to establish / develop / update a (nationwide) system for a comprehensive collection of indicators and comparative disaggregated data on all persons under 18 years for all the Country’s territories and all areas covered by the CRC (15)

General principles

General principles – Non discrimination (article 2)  
(24 EU countries and 3 accession/candidate countries)

Have any positive achievements been identified? (17)  
- the effort made to address positive legal and administrative efforts made to address racial discrimination (14)  
- the development of various programmes and plans aiming at combating discrimination (4)  
- the development of mechanisms and the conduct of surveys (2)

What are the key recommendations? (27)  
- to include specific information on the measures undertaken by the State to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (22)  
- the development and adoption of effective strategies to eliminate the existing forms of discrimination among children at the national level (17)  
- to ensure equal access to education, health and other services for children of migrant families, families living in poverty or in less developed areas, Roma children, foreign children in detention and children with disabilities (11)  
- to take steps to eliminate negative stereotypes of refugee and asylum-seeking and to address the root causes of de facto segregation in schools and localities (11)  
- to integrate into national legislation minimum standards in compliance with the CRC and ensure the effective implementation of existing laws guaranteeing the principle of non-discrimination (10)  
- to collect disaggregated data in order to monitor the extent of discrimination (7)

General principles – Best interest of the child (article 3)  
(11 EU countries and 4 accession/candidate countries)

Have any positive achievements been identified? (9)  
- the inclusion of the principle of best interest in the national legislation (8)  
- the various initiatives developed in order to take into consideration the principle of the best interests of the child (4)

What are the key recommendations? (15)  
- to integrate this principle into all the revisions made to legislation, judicial and administrative decisions and into projects, programmes and services which have an impact on all children (7)  
- to appropriately analyse the principle of the best interests of the child in all those situations having an impact on children as single person or as a social group (6)  
- to take appropriate and efficient measures in order to ensure that the principle of the best interests of the child forms the basis of the process and decisions in asylum cases involving children (3)  
- to adopt this principle as a paramount consideration in all legislation and policy affecting children in the juvenile justice system and in immigration practices (3)
General principles – Right to life, survival and development (article 6)
(6 EU Countries and 2 EU accession/candidate Countries)

Have any positive achievements been identified? (1)
• the decline in infant mortality rates in the State party (1)

What are the key recommendations? (8)
• to raise awareness about, and undertake public information campaigns in relation to, accident prevention (4)
• to promote initiatives with a view to diminishing the number and consequences of accidents involving children through, inter alia, legislation, standardization of toys and child care articles and the training of relevant professionals and of families with children in the prevention of accidents (4)

General principles – Respect for the view of the child (article 12)
(21 EU Countries and 3 accession/candidate countries)

Have any positive achievements been identified? (18)
• the adoption of various legal and administrative measures to guaranteeing the respect of the view of the child (7)
• the reviewing and harmonising of the national legislation in order to reinforce the rights of the child to express his/her own opinions freely in all matters affecting him/her (7)
• the promotion of the respect for the views of the child and their participation (6)
• the establishment of national representative authorities (5)

What are the key recommendations? (24)
• to provide the reinforcement of awareness raising campaigns among the public in general as well as the education and training of professionals with a view to the implementation of this general principle in daily life (13)
• to continue to promote within the family, schools, administrative bodies and other institutions respect for the view of the children and to facilitate their participation in all matters affecting them (11)
• to adopt provisions to ensure that article 12 is fully implemented and would be applicable to courts, administrative bodies, institutions, schools, childcare centres and in family matters affecting children (8)
• the promotion of contexts in which the child can express freely his/her opinions (6)
• to adopt specific legislation governing procedure in courts and administrative proceedings ensuring that children capable of forming their own views have the right to express their own views and that due weight is given to them in accordance with the age and maturity of the child (4)

Civil rights and freedom

Civil rights and freedom - Right to identity (article 7)
(13 EU countries and 3 accession/candidate countries)

Have any positive achievements been identified? (5)
• special recent provisions adopted in favour of the right to identity (3)

What are the key recommendations? (16)
• to ensure that all children are registered at birth in all the territory of the country (6)
• to focus the attention on the right to identity in relation to specific groups - in particular Roma children - in respect to the non-discrimination principle (6)
Civil rights and freedom – Freedom of religion (article 14)
(5 EU countries)

Have any positive achievements been identified? (2)
- provisions in the Constitution or enactment of laws that guarantee freedom of religion (2)

What are the key recommendations? (5)
- enactment of the regulation allowing children not to attend religion classes or to attend alternative courses (3)

Civil rights and freedom – Right to access to appropriate information (article 17)
(10 EU countries and 1 EU accession/candidate country)

Have any positive achievements been identified? (9)
- legislative acts and amendments of the Penal Code (5)

What are the key recommendations? (11)
- to strengthen the measures to protect children from the possible dangers deriving from the use of the media, Internet and videogames, in particular regarding violence, pornography, child pornography and racism (11)

Civil Rights and Freedom - Corporal Punishment and Abuse (article 19)
(20 EU countries and 4 accession/candidate countries)

Have any positive achievements been identified? (9)
- that corporal punishment has been prohibited by law in all settings, including in the family and within various other legal instruments to fight against domestic violence (6)
- the prohibition of corporal punishment by law is set down especially in schools (2)
- the creation of specific social programmes and services (2)

What are the key recommendations? (24)
- to take all the necessary legislative measures to extend the prohibition of corporal punishment on children explicitly in the family, in schools and in all other institutions (13)
- to carry out public education campaign about the negative consequences of corporal punishment and promote positive, non-violent forms of discipline as an alternative to corporal punishment (11)
- to undertake initiatives aiming to change the public attitude and approach to corporal punishment (6)
- the initiation of comprehensive studies (4)
- to adopt an effective enforcement of the ban on corporal punishment in schools and other institutions (3)
- to adopt legislative measures to remove the “reasonable chastisement”, prohibit all forms of corporal punishment in the family and in any other contexts not fully covered by existing legislation (3)

Civil rights and freedom – Torture, degrading treatment and deprivation of liberty (article 37)
(8 EU countries and 4 EU accession countries)

Have any positive achievements been identified? (3)
- the adoption of specific legislative provisions prohibiting torture and ill-treatment and the efforts undertaken by some States in this respect (3)

What are the key recommendations? (12)
- a greater effort in the investigation of all allegations of torture and ill-treatment, including when committed in social institutes (4)
- to provide care, recovery, reintegration and compensation for victims of torture (4)
Education

Education (articles 28 and 29)  
(24 EU countries, 4 accession/candidate countries)

Have any positive achievements been identified? (21)
- the importance given to the right to education (5)
- the provision of free compulsory schooling through a minimum age (5)
- the increase in the education budget and the provision of free textbooks (3)

What are the key recommendations? (28)
- further enhance systems of education for children with disabilities / in rural areas / belonging to minority groups / in special schools (17)
- to ensure human rights education (15)
- to take into consideration / promote / implement quality of education (14)
- to study / prevent / reduce dropping out (13)
- to continue / implement educational teacher training programmes (12)
- to ensure access to education (11)
- to take / strengthen measures to combat bullying (8)

Family environment

Family environment – parental guidance and the protection owed to families by the State (articles 5 and 18)  
(10 EU countries and 4 EU accession/candidate countries)

Have any positive achievements been identified? (6)
- laws and plans of action on family policy and against poverty and social exclusion (6)

What are the key recommendations? (14)
- to provide economic support and child-care services (6)
- to support parental education programmes (5)

Family environment - alternative care for children deprived of their family environment (article 20)  
(17 EU countries and 4 EU accession/candidate countries)

Have any positive achievements been identified? (5)
- the adoption of specific laws or plans of action to care for the needs of children deprived of their family environment (4)

What are the key recommendations? (21)
- to increase the availability of foster care by providing greater financial assistance (14)
- to undertake a periodic review of placement (8)
- to guarantee the contact between the children placed in out-of-home care and their parents (8)
- to take into account children’s views in any decision regarding their placement (8)

Family environment – adoption (article 21)  
(9 EU countries and 3 EU accession/candidate countries)

Have any positive achievements been identified? (3)
- the ratification of the Hague Convention on intercountry adoption (3)

What are the key recommendations? (12)
- to ratify the Hague Convention or ensure that the legislation complies with the principle of the Hague Convention (7)
Family environment – family reunification (article 10)
(5 EU countries)

What are the key recommendations? (5)
- family reunification procedures fully comply with article 10 of the Convention or that they are dealt in a “positive, humane and expeditious manner” (5)

Family environment – Child abuse (art. 19 and 39)
(21 EU countries and 4 EU accession/candidate countries.)

Have any positive achievements been identified? (21)
- the adoption of laws to ensure the protection of the child’s moral, physical and sexual integrity or to prevent domestic violence (10)

What are the key recommendations? (25)
- to run public campaigns to prevent and combat all forms of child abuse, also with the participation of children (14)
- to provide for the care, full physical and psychological recovery and reintegration of the child victims of abuse (12)
- to establish child-friendly procedures and mechanisms to receive, monitor and investigate complaints (12)
- to develop or strengthen the reporting system (9)

Health

Health – Children with disabilities (article 23)
(19 EU countries and 2 accession/candidate countries)

Have any positive achievements been identified? (13)
- the growing number of children with disabilities who are integrated into mainstream education and the recent involvement of children with disabilities and their families in policy making, especially in relation to the Ministry of Education’s special education department (6)
- the establishment of national policy on special education for children with disabilities (4)

What are the key recommendations? (21)
- to fulfil the principles set in the two Standard Rules on the Equalization of Opportunities for Persons with Disabilities and in the Committee’s recommendations adopted during the General Discussion day on the rights of the children with disabilities in relation to the different contexts for the full protection of children with disabilities (6)
- to increase the research to be undertaken on the diagnosis and the treatment of ADHD (Attention Deficit Hyperactivity Disorder) and ADD (Attention Deficient Disorder), “including possible negative effects of psychological well-being of children, and that other forms of management and treatment should be used as much as possible to address these behavioural disorder” (7)
- to make available the necessary resources and assistance for activities of the diagnosis and the treatment of mental health problems (7)
- to provide policies aimed at encouraging the integration of children with disabilities into the regular educational system and the inclusion into society also by providing special training to teachers and making school more accessible (7)
- to give the due attention to intervention aimed to combat negative social attitudes toward children with disabilities (6)
- to allocate the necessary resources for programmes and facilities for all children with disabilities, especially for those living in rural areas (6)
Health - Basic health, health care, health services and welfare (article 24)  
(21 EU countries and 4 accession/candidate countries)

Have any positive achievements been identified? (18)  
- the recent adoption of law reforms at national level / national Plans of Action / Programmes / Strategies on health / to fight poverty (11)  
- the recent decline of the infant mortality rate / initiatives taken to reduce it (6)  
- the protection of mother, infant and school-age children (3)

What are the key recommendations? (25)  
- to ensure / facilitate the adequate and equal access of all children, without discrimination, to health care and services (11)  
- to promote breastfeeding (7)  
- to allocate appropriate resources / develop comprehensive policies and programmes to improve the health situation of all children, without discrimination (6)  
- to pay attention / reduce / prevent malnutrition in some areas of the Country (5)

Health - Health of adolescents (article 24)  
(23 EU countries and 2 accession/candidate countries)

Have any positive achievements been identified? (10)  
- efforts / progress on the issue of health problem faced by adolescents (see also the executive summary on drug and alcohol abuse) in particular about:  
  - drug abuse (4)  
  - tobacco (4)  
  - alcohol abuse (3)  
  - health and sex education in schools (3)  
  - cases of sexually transmitted diseases (STDs) and HIV/AIDS (2)

What are the key recommendations? (25)  
- to promote, develop, strength mental health programmes, policies / services for adolescents (see also the executive summary on basic health – children with disabilities) (16)  
- to promote, include or strengthen the programme of health education in schools (15), including sexual and reproductive health (12)  
- to develop youth-friendly counselling, care and rehabilitation facilities (12)  
- to increase information campaigns / programmes addressed to adolescents concerning family planning or birth control measures (11)  
- to undertake / intensify measures / programmes to prevent suicide among adolescents (7)  
- to develop adequate policies / prevention programmes against STDs and HIV/AIDS (7)

Health - Standard of living (article 27)  
(12 EU countries and 1 accession / candidate countries)

Have any positive achievements been identified? (10)  
- commitments / action plans / strategies / programmes made to prevent and eliminate social exclusion and child poverty / to increase the child allowances or benefits (8)

What are the key recommendations? (13)  
- to ensure that the needs of all children are met without discrimination, in particular those whose families are in socially and economically disadvantaged situations (9)  
- the means of achieving the first aim, namely which kind of initiatives some EU Countries need to take to further reduce or eliminate child poverty (9):  
  - the provision of strategies / material / financial assistance and/or support programmes (8)  
  - take all necessary measures to the “maximum extent of… available resources”(4).
Special measures of protection

Special measures of protection – Street children
(6 EU countries and 2 EU accession/candidate countries)

Have any positive achievements been identified? (6)
- efforts undertaken in this field, such as legislative acts, the setting up of centres providing counselling, training and rehabilitation and the realization of awareness and prevention campaigns (6)

What are the key recommendations? (8)
- to ensure that children are provided with adequate nutrition, clothing, housing, health care and educational opportunities (6)
- to provide children with recovery and reintegration services (5)

Special measures - Unaccompanied foreign children, refugees and asylum-seeking children (article 22)
(20 EU countries and 3 accession/candidate countries)

Have any positive achievements been identified? (17)
- efforts to discuss / approve national legal reforms to improve the legal situation of asylum-seeking children and to pay more attention to their needs (11)
- to establish or increase special accommodation / reception centres for unaccompanied minors and separated asylum-seeking children (3)

What are the key recommendations? (23)
- to facilitate access to basic services such as education and health (15), in particular ensure adequate living conditions and full / equal access to education, health services, including psychological care (9)
- the need of special assistance and protection of the rights of children in particular legal aid and procedures of children seeking asylum (10)
- the need to adopt national legislative reforms (10) / to implement existing laws (7)
- to ensure enough special reception centres for unaccompanied minors, with particular conditions (such as access to education and health) (5)
- to take care of the family reunification in the country of origin (9), in particular if it is not in the best interests of the child

Special measures of protection – Children of minorities or of indigenous peoples (article 30)
(19 EU countries and 4 EU accession/candidate countries)

Have any positive achievements been identified? (13)
- the adoption of specific laws or plans of action on the rights of minorities and for the prevention of their social exclusion (6)

What are the key recommendations? (23)
- to adopt legislative measures and implement policies aimed at the full enjoyment of the rights enshrined in the Convention by Roma children (6)
- to adopt measures to promote the social inclusion to combat the marginalisation of Roma children in society (6)
Special measures - Economic exploitation (article 32)
(8 EU countries and 3 accession/candidate countries)

Have any positive achievements been identified? (8)
- at international level the ratification and the implementation of the ILO Conventions No. 182 and No. 138 and at national level laws and policies that aim to prohibit child labour / protect children from economic exploitation

What are the key recommendations? (11)
- to fight against all forms of economic exploitation and child trafficking (8)
- the need for a clear legal minimum age for working and the protection of young workers especially in specific economic activities in which they are involved (6)
- at international level ratify ILO Conventions No 138 and No 182 and at national level adopt all necessary legal and other appropriate measures to protect children from economic exploitation through labour (5)

Special measures of protection – Drug abuse (article 33)
(21 EU countries and 3 EU accession/candidate countries)

Have any positive achievements been identified? (6)
- efforts undertaken to prevent and fight this phenomenon, e.g. through health education in schools and national plans of action and programmes (6)

What are the key recommendations? (24)
- to strengthen or set up appropriate services for the care and rehabilitation (13)
- providing children and parents with accurate and objective information about the harmful consequences of drug, alcohol and/or tobacco abuse (9)
- to evaluate the effectiveness of prevention and training programmes regarding drug abuse (6)

Special measures for protection - Sexual exploitation, abuse and trafficking (articles 34 and 35)
(23 EU countries and 1 accession/candidate country)

Have any positive achievements been identified? (15)
- the adoption of the National Plan of Action, to fight commercial sexual abuse of children and against sexual abuse and child pornography on the Internet (7)
- the amendment of criminal law providing a new regulation on trafficking in human beings, prostitution, pornography and sexual tourism targeting children (7)
- the measures taken to prevent and raise awareness of the problem of trafficking in persons (3)
- the establishment of the National Committee to Prevent and Combat Trafficking in Person (3)

What are the key recommendations? (24)
- to establish national monitoring mechanisms and to undertake studies assessing the causes, nature and extent of sexual exploitation, including on the Internet (11)
- to establish appropriate recovery and reintegration programmes and services (9)
- to allocate appropriate human and financial resources to policies and programmes in this area (7)
- to ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography, the Protocol to Prevent, Suppress and Punish trafficking in Persons, especially Women and Children, the International Convention on the Rights of All Immigrant Workers and Members of Their Family and ILO Convention no. 182 on the Worst Forms of Child Labour (7)
- to strengthen their efforts to identify, prevent and combat trafficking in children for sexual purposes (7)
- to effectively ensure access to these services for all children who are victims of trafficking, prostitution and/or pornography (6)
- to elaborate policies and programmes in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children (5)
- to provide appropriate training of the personnel dealing with child victims (5)
- to abolish every legal provision that results in administrative or other punishment of the victims of commercial sexual exploitation and the prevention of other forms of stigmatization of the victims (5)
- to develop a specific national plan of action fulfilling the recommendations formulated in the Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children in Stockholm (1996) (4)
**Special measures - Administration of juvenile justice (articles 37, 39 and 40)**
(25 EU countries and 4 accession/candidate countries)

**Have any positive achievements been identified? (12)**
- the approval (12) or discussion in Parliament (4) of juvenile justice law reforms
- the introduction of a system of special juvenile justice courts and of training courses for juvenile justice staff (2)

**What are the key recommendations? (29)**
- to ensure the full implementation, compliance or integration of juvenile justice standard rules, in particular articles 37, 39 and 40 of the CRC, as well as the Beijing Rules, the Riyadh and the Vienna Guidelines (26)
- as regards criminal law and criminal proceedings, take into consideration the need to have access to legal aid / the need to alternative measures, including pre-trial detention / the need to increase probation (19)
- to ensure that the deprivation of liberty of children is really a measure of last resort (17), accompanied by the request for it to be the shortest time possible (8), separated from adults in detention or custody (10)
- the need for specialized training for the juvenile justice staff (12)
- to develop / ensure specific policies and independent, accessible and effective complaints procedures / mechanisms / advocacy services (11)
- to care about the situation of investigation, police custody and pre-trial detention (10)
- to promote recovery and social reintegration (9), including through adequate education, protected programs
- to focus the attention on the minimum age of the criminal responsibility / on the application to minors from a certain age of the criminal law for adults (7)
- to allocate adequate human and financial resources (7)