

Europe's children in care – what role for the EU?

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Presentation in round table discussion at the occasion of the launch of Eurochild's survey on children in alternative care

Honorable Members of the European Parliament,

Ladies and Gentlemen,

It is both a pleasure and an honor for me to address you at this occasion in my very first public appearance as the new Regional Representative of the United Nations High Commissioner for Human Rights.

Please let me start by congratulating Eurochild on the excellent survey which is being presented to the public today. This survey is extremely valuable because it provides both the estimates of numbers of children in various forms of alternative care – which, as it very clearly demonstrates, vary dramatically from one state to another – but also because it allows some insight into the underlying dynamics.

In particular, it shows that in several Member States of the European Union which joined in the last waves of enlargement, the numbers of children in institutional care remain quite high, similar to those at the end of Communist rule (which had relied heavily on institutional care in the near-absence of other alternatives), or even higher. It also indicates how this worrying heritage is compounded by poverty and ethnicity (particularly Roma ethnicity) as factors of institutionalization.

The issue of human rights of children in institutional care is one of great concern – in the light of the Convention on the Rights of the Child, as well as in the light of the Convention on the Rights of Persons with Disabilities. The latter is also highly relevant here because a large proportion of children in institutional care are those with disabilities - and because the Convention stipulates, in its Article 19, that States Parties recognize the equal right of all persons with disabilities to live in the community.

The Convention on the Rights of the Child dates from 1989 while the Convention on the Rights of Persons with Disabilities is the most recent addition to the international human rights framework, dating from 2006. As these dates indicate, the need for special protection of the rights of the child and particularly of the rights of persons with disabilities gained recognition (in the form of new pillars of international human rights law) considerably later than many other categories of rights.

We might see this development as illustrating that the evolution of the international human rights framework is not one of “inflation of rights”, as we sometimes hear, but rather one of gradually growing sensibility to the rights of those who are different; who are easily overlooked; who may have difficulties making their voice heard.

And if any general trend can be discerned in the development of new human rights instruments (both the international ones and those of the Council of Europe, such as the Convention on Human Rights and Biomedicine), it is the growing emphasis on the right to be treated as an active *subject* rather than a mere object of care.

Let us be frank: this is not some kind of academic legal issue, but one of tremendous impact on the life of those concerned. Recent research has shown that individuals who spend their childhood in institutional care suffer from very high rates of social exclusion, delinquency, psychological problems and indeed suicide, which is certainly worrying.

Also, there are contemporary research studies which demonstrate that very small children under three years of age who are kept in institutions suffer irreversible damage to their brain development. This occurs because even if their nutrition is provided properly and the hygienic norms are met with uttermost scientific precision, their more important needs – i.e., to develop profound affective links to other human beings – can hardly be met in the institutional set-up. Yet as the survey presented by Eurochild clearly shows, in several EU Member States there are still considerable numbers of children under three years of age in institutional care. And it is equally concerning to find out from the survey that even in a Member State where institutions for children of this age cohort have formally been abolished, in fact there are many children aged 0-3 who linger indefinitely in hospitals, even if some of them are (at least initially) neither sick nor disabled.

In this context, I would like to draw your attention to the United Nations Secretary-General's Study on Violence against Children, which clearly recommends that Governments should ensure that family-based care options are favored in all cases, and are the only option for babies and small children [Recommendation 12, page 218]. The study concluded that benefits of keeping children with their families are inarguable in terms of their health and happiness, and the best interests of the child.

Furthermore, the study on Violence against Children also highlighted that the cost of supporting families to maintain their children at home is substantially lower than institutionalizing these children. Several concrete and convincing case studies and examples of best practices by for instance NGOs and Governments are provided in the study.

Guidelines for the Alternative Care of Children

The United Nations General Assembly recently addressed the issue – on 18 December 2009 – when it adopted a resolution on the Guidelines for the Alternative Care of Children. These guidelines set out desirable orientations for policy and practice with the intention of enhancing the implementation of the Convention on the Rights of the Child (and of the relevant provisions of other international instruments regarding the protection and well-being of children deprived of parental care or who are at risk of being deprived of such care).

I am aware that these Guidelines will be discussed by at least one further speaker in this panel, Alan Kikuchi-White, and I will therefore limit myself to highlighting several elements thereof:

Point 13 of the Guidelines stresses that *removal of a child from the care of the family should be seen as a measure of last resort*, while point 14 emphasizes that *financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care... but they should be seen as a signal for the need to provide appropriate support to the family.*

The Guidelines also use very clear language in point 21, where they refer to the predominant opinion of experts that *alternative care for young children, especially those under the age of three years, should be provided in family-based settings, not institutions*. It is the most unambiguous statement on this issue from such an authoritative source so far.

Moreover, it is followed by point 22 which states that *where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalization strategy, with precise goals and objectives, which will allow for their progressive elimination, in favor of individualized and small-group care*.

It is beyond reasonable doubt that these new Guidelines can be seen as a landmark in the implementation of the Convention on the Rights of the Child – and that they also represent a major challenge to a number of European Union’s Member States.

The role of the EU

What can the EU contribute to address this challenge? It seems fairly obvious that even if the Member States (including, of course, those where institutional forms of alternative care predominate) have the primary responsibility for the delivery of such services, the European Union, which is now equipped with a Charter of Fundamental Rights, can – and in my view, should – **address the problem of children in institutional care as a serious human rights issue, providing both policy guidance and financial assistance** to the Member States concerned.

In fact, the financial assistance is already forthcoming, in the form of the Structural Funds. Yet without clear policy guidance, based on the need to conform to the development of international standards, there is a serious risk that such financial assistance will be used by some of the Member States to further strengthen the crumbling system of large residential institutions, rather than to replace it by individualized care which the aforementioned Guidelines prescribe. **The Office of the High Commissioner for Human Rights, and in particular its Regional Office for Europe, stands ready to provide support to the Member States and to the European Commission in their efforts,** for instance while strengthening the capacities of officials dealing with these issues.

In the context of the new development of international standards (both of the Convention on the Rights of Persons with Disabilities and of the Guidelines for the Alternative Care of Children), it is to be expected that the European Union will provide political leadership to its Member States, encouraging them to overhaul anachronistic systems which are so obviously at odds with the best interest of the children concerned.

Although last year's December event on the European Day of People with Disabilities was dedicated to the issue of independent living, we have not witnessed systematic attention to the rights of the child (disabled as well as non-disabled) in the context of institutional care. Indeed, while the European Commission has devoted itself significantly to issues involving the protection of children from various forms of criminal abuse by non-state actors, the issue of children in institutional care has so far received far less attention.

Let us hope that this event – and the excellent survey itself - will have the desired awareness-raising effect. *Thank you for your attention.*