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The rights of the child and protection of children



Children's rights form part of the fundamental rights that the European Union (EU) is committed to protect while respecting the jurisdiction of its Member States. According to the Lisbon Treaty, the EU shall promote the rights of the child. In 2010, EU action focused on implementing the Stockholm Programme, the EU's new justice strategy, primarily in regard to child protection. In early 2011, the European Commission released its Communication on an 'EU Agenda for the rights of the child', setting out a programme of action for the coming years. A key action item is to render justice systems more child friendly, turning the rights of the child into reality through EU legislation. However, many challenges remain, as there is evidence that the rights of children, in particular of those in a vulnerable situation, are not adequately protected.

This chapter first looks at developments regarding violence against children, including sexual abuse and exploitation. It then examines issues and developments in relation to child-friendly justice, child trafficking and the situation of separated children in a migration or asylum context. The chapter concludes by looking at data availability issues.

In February 2010, the European Commission's Directorate General for Justice commissioned a qualitative Eurobarometer survey on children's rights in all 27 EU Member States. The survey aimed to identify how children view their rights and which of these rights they consider most important, as well as the various obstacles they face in exercising these rights. The study follows up on Flash Eurobarometer surveys carried out in 2008 and 2009 (Flash EB series 235 and 273). Children, from 15-to-17-years old, from different social and ethnic backgrounds – including Roma and Traveller children, and children with special needs – participated in the study. Many children referred to the 'right to participate' and repeatedly underscored its importance in relation to areas of their lives where they are expected to attain certain achievement levels, such as in school, further education or jobs. However, they also referred to the 'right to participate' in the context of families undergoing separation and divorce. Key rights identified include freedom of speech, access to healthcare, the right to family life and freedom from violence and bullying. The final Eurobarometer report, published in October 2010, underlined the importance of consulting children.¹

Key developments in the area of children's rights:

- the European Commission adopted in early 2011 an EU Agenda for the rights of the child, including 11 action points;
- agreement was reached at EU level on the final text of a directive on preventing and combating trafficking in human beings and protecting victims, which devotes particular attention to child protection;
- the Council of Europe adopted Guidelines on child-friendly justice and a recommendation on de-institutionalisation and community living of children with disabilities;
- the European hotline for missing children, 116 000, was in operation in only 13 EU Member States;
- worrying results emerged from inquiries in different EU Member States into child abuse committed in institutions or by their staff members;
- FRA findings underlined that separated children in a migration or asylum context are often not appropriately housed, medical screening upon arrival is not always accessible, asylum determination procedures are often not child friendly, and the quality of guardianship varies significantly among EU Member States;
- there remained a lack of comprehensive disaggregated data regarding child trafficking for sexual or labour exploitation; where they are recorded, the number of victims of trafficking identified remained very low.

¹ European Commission (2010a).

"It is very disappointing when I talk to someone older and the answer is, 'you are too young to know'" (Greek girl).

Beyond education, the right felt to be most important for children is the 'right to be a child', to have the opportunity to play, grow and develop.

"Parents, society and teachers: they expect very much from us [...]" (Estonian girl).

European Commission (2010a), The rights of the child, Eurobarometer, Qualitative Study, available at: http://ec.europa.eu/public_opinion/archives/quali/ql_right_child_sum_en.pdf

4.1. Violence against children

The well-being of children also depends on ensuring that societies are free of violence, abuse and exploitation. In March 2010, the European Commission adopted two proposals for directives aiming at reinforcing the framework for protection of some of the most vulnerable children, namely those who are victims of sexual abuse and exploitation and of trafficking. The protection of children against all forms of violence is a priority for the EU. Since 1997, the EU has, for example through the Daphne Programme², supported Member States' efforts to prevent and combat violence against children, young people and women and to protect victims and groups at risk. During 2010, the Daphne III Programme³ contributed to the protection of children, young people and women against all forms of violence through a variety of projects implemented throughout the EU.

In November 2010, the European Commission began a campaign, 'Dial 116 000: The European hotline for missing children'⁴, calling again on Member States to implement the missing children hotline 116 000 as a matter of priority to ensure a high-quality service. Three years after the adoption of the relevant Commission Decision (2007/116/EC), the hotline is operational only in 13 Member States.

4.1.1. Violence in domestic and institutional settings

According to the European Association for Injury Prevention and Safety Promotion (EuroSafe), most acts of violence against children occur in the domestic environment, making it difficult to identify them or to intervene preemptively.⁵ However, EuroSafe highlighted that "epidemiological data show that in Europe about 19.4% of children are physically maltreated within the family and 32.6% of children are victims of bullying".⁶ Since 2008, the Council of Europe has been campaigning for the total abolition of corporal

punishment. In about three quarters of the EU Member States, corporal punishment is prohibited.⁷ The 2009 EuroSafe report on *Injuries in the European Union – Statistics summary 2005-2007* says, "100 fatalities occur per year due to abuse and neglect of children younger than one year in the EU. A significant number of child deaths resulting from abuse or neglect, however, may still not be recorded as such in the official death certificates".⁸

In 2010, **Poland** set a good example in this regard, by amending the Act on the prohibition of domestic violence on 6 May 2010,⁹ thereby banning the use of physical punishment, psychological violence and any form of vexatious behaviour. The law, which entered into force on 1 August 2010, will enable social workers to intervene in cases of alcoholic parents or if children are not cared for properly, placing them under the supervision of another family member, if necessary. The law contains measures to separate offenders from victims (for example, through eviction from a common dwelling) and local authorities are required to register domestic violence victims and offenders.

Promising practice

Advocacy and Advice helpline

In the **United Kingdom**, an advocacy and advice helpline for children and young people, which was launched in May 2010, gives children and young people the opportunity to get help on issues that are important to them, especially if they feel their views are not being heard or are not being taken into account. The 'Meic' advice helpline works with and complements other advice services and helplines, which have a prominent safeguarding role. Meic is the first helpline of its kind in the UK to be rolled out on a national basis in Wales and is supported by the Welsh Assembly Government. Anyone under 25 can get in touch with the helpline for free, via telephone, text or instant message, seven days a week, initially for eight hours a day from 12.00-20.00 before it becomes a 24-hour service. Advisers provide callers with information, let them know where they can get further help or transfer them to an independent professional advocate trained to help children and young people.

For more information, see: <http://wales.gov.uk/newsroom/childrenandyoungpeople/2010/100514helpline/?lang=en>

Violence against children in institutions is a particularly heinous form of child abuse, as these children are particularly vulnerable. Although the United Nations Convention on the Rights of the Child explicitly recognises in Article 3 that institutions, services and facilities responsible for the care or protection of children shall conform to the standards

2 For more information, see: www.ec.europa.eu/justice/funding/daphne3/funding_daphne3_en.htm.

3 European Parliament and the Council of the European Union (2007).

4 European Commission (2010b).

5 For more information, see the EU Injury Database – a systematic injury surveillance system that collects accident and injury data from selected emergency departments of Member State hospitals at: www.webgate.ec.europa.eu/idb/index.cfm?fuseaction=home&CFID=8131853&CFTOKEN=671378aefbc160a-7B9FE270-F6AA-B156-D00A714E3CSD9236&jsessionid=3608ebfe79d57c22f726TR.

6 EuroSafe, 'Child violence', Factsheets, p. 3.

7 *Ibid.*, p 5.

8 EuroSafe (2009), p. 20.

9 Poland, *Ustawa o przeciwdziałaniu przemocy domowej*, Journal of Law 2010 No. 125, 10 June 2010.

established by competent authorities, a number of problems persist in EU Member States. This concerns in particular the standards established in the areas of safety and health, as well as the number and suitability of the staff working in such institutions or facilities.

For example, in **Poland** a study conducted by Warsaw University on behalf of the Nobody's Children Foundation in the context of the DAPHNE III project on 'Sexual abuse against children at residential institutions'¹⁰, surveyed a sample of 62 children aged 15-18 years (42 girls and 20 boys) living in Warsaw residential care institutions. The study found that 53% of the respondents reported that they had experienced emotional abuse (name calling, humiliation) by adults in the preceding year: 32% of the respondents were hit – at least once – by a grown-up; 32% had one of their things purposely damaged; 52% were victims of theft; 24% had sexual proposals or vulgar comments about their appearance; 10% had their private body parts touched against their will; 11% were forced to have some form of sexual intercourse and 13% were witnesses to rape; 13% made an online acquaintance of a person who later attempted to abuse them sexually and 7% reported they had had sex for money or other payment. Girls were significantly more likely than boys to experience sexual abuse. However, a majority of the adolescent respondents were optimistic about the availability of help in cases of victimisation and other difficult life situations.

Against a backdrop of investigations into institutional child abuse cases in European countries, the Committee of Ministers of the Council of Europe¹¹ adopted on 3 February 2010 a recommendation on de-institutionalisation and community living of children with disabilities. This recommendation requires that children with disabilities should be able to exercise the same rights as other children and to access social rights on the same basis. Similarly, on 26 November 2010, policymakers from the 53 member countries of the World Health Organization (WHO) Regional Office for Europe signed the *European declaration on the health of children and young people with intellectual disabilities and their families*.¹² The European declaration identifies 10 priority areas, the first of which is that "all children and young people with intellectual disability, wherever they live, must be guaranteed lives free from bullying, harm or abuse and should not live in fear or neglect". For more information, see the relevant section in Chapter 5 on equality and non-discrimination.

However, there is still concern about the conditions under which children live in institutional care. In 2010, in its concluding observations on **Spain**, the United Nations Committee on the Rights of the Child expressed concern about the situation of children with conduct disorders placed in special centres financed by the public administration, but

privately managed.¹³ The committee found a large variety of intervention programmes ranging from highly restrictive to more open. It was also concerned that the criteria and procedures for referring children to these centres may be insufficient and that these centres may constitute a form of deprivation of liberty.

Promising practice

Protocol for action in protection centres

In **Spain**, the Commission of Directorate Generals of Childhood of the Autonomous Communities adopted a protocol that aims to make the assessment of professional interventions simpler and more systematic in order to guarantee the protection of the rights of the child. The 'Basic protocol for action in protection centres and/or residences for children diagnosed with behavioural disorders' (*Protocolo básico de actuación en centros y/o residencias con menores diagnosticados de trastornos de conducta*) in May 2010.

For more information, see: www.dipgra.es/documentos/documentos_interes/4_centros_menores_trastornos_conducta_1295267411.pdf

In **Ireland** in March 2010, the publication of a report by the Health Service Executive (HSE) on the death of a child in state care caused considerable controversy. The HSE stressed that the death of a child in care is a very serious matter and requires careful and detailed consideration to ensure that improvements are implemented. The report¹⁴ raised concerns regarding child protection, the responsibility of the State to protect those in care and the issues surrounding the investigation and reporting. According to the HSE, 20 children died in care over the past decade. The media also reported concerns over complaints of physical and sexual abuse of children in foster care and the lack of prosecution arising from such complaints.¹⁵ Figures released by the HSE and published on 28 May revealed that at least 18 children who were in contact with social services or in care died over the past decade of unnatural causes, such as suicide, drug overdoses, unlawful killings, road traffic incidents and other accidents.¹⁶ The figures caused considerable public disquiet and controversy. An Independent Review Group on Child Deaths was established to investigate this matter. The Health (Amendment) Bill, due to be published on 18 June 2010¹⁷, will provide the legislative basis for the provision of information from the HSE to the Minister of State for Children and the Independent Review Group on Child Deaths. In March 2010, the Health Information and Equality Authority

10 Nobody's Children Foundation (2010), p. 31.

11 Council of Europe Committee of Ministers (2010a).

12 WHO, Regional Office for Europe (2010).

13 United Nations Committee on the Rights of the Child (UNCRC) (2010), paragraphs 41-43.

14 Ireland, Health Service Executive (HSE) (2010a).

15 Ireland, Raidió Teilifís Éireann (RTÉ) (2010) and Downes, J. (2010).

16 Ireland, HSE (2010b).

17 Ireland, Office of the Minister for Children and Youth Affairs (2010).

(HIQA) published new standard reporting guidelines according to which in addition to providing information on children in care who died of unnatural causes, information should be provided relating to children who die of natural causes due to illness or disease. This is the standard now applied for all cases to be notified from 2010 onwards.

In March 2010, the Chief Prosecutor of **Bulgaria** ordered jointly with the Bulgarian Helsinki Committee (Български хелзинкски комитет) a new inquiry into the deaths and bodily injuries of children with disabilities in childcare institutions. The inquiry was ordered after the Bulgarian Helsinki Committee filed a lawsuit against the Prosecutor's Office for discrimination of children with disabilities in February 2010. On 20 September 2010, the Chief Prosecutor and the Bulgarian Helsinki Committee announced the results of their joint inspections, including evidence of 238 cases of deaths occurring between 2000 and 2010. At least two thirds of these deaths were considered avoidable: 31 cases of death were caused by systematic malnourishment; 84 cases by physical deterioration due to neglect; 13 cases by infections resulting from insufficient hygiene; six cases by accidents, such as freezing to death, drowning or suffocation; 36 by pneumonia resulting from exposure to the cold or long-term immobility; two cases by violence; and 15 cases remaining unexplained. As a result, the Chief Prosecutor announced the opening of 166 criminal proceedings.¹⁸ All appellate prosecution offices have been instructed to exercise *ex officio* instance review of the previously terminated pre-trial proceedings. In accordance with comprehensive action plans for 2011, the district prosecution offices have been requested to monitor regularly the operation of care homes.

4.1.2. Sexual abuse and exploitation

On 29 March 2010, the European Commission adopted a *Proposal for a Directive on combating sexual abuse, sexual exploitation of children and child pornography*.¹⁹ The proposal repealing the previous relevant Framework Decision 2004/68 builds on the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse²⁰ and covers several fields: criminal law including the criminalisation of serious forms of child sexual abuse and exploitation currently not covered by EU legislation; criminal investigation and initiation of proceedings; and developments in the information technologies environment, including the criminalisation of new forms of sexual abuse and exploitation facilitated by Internet use. In addition, the proposal envisages national mechanisms to block access to websites with child pornography, together with action to delete content at source under the supervision of judicial services or the police. On 24 January 2011, the European Parliament Committee on Civil Liberties, Justice and Home

Affairs (LIBE) published its draft report²¹ on the European Commission proposal.

On 1 July 2010, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse entered into force. **Denmark, Greece, the Netherlands and France** were the first EU Member States to ratify the convention, which is the first international instrument to tackle all forms of sexual violence against children. The convention also covers sex tourism and the solicitation of children for sexual purposes through information and communication technologies (also known as 'child grooming'). On 29 November 2010, the Council of Europe launched an awareness-raising campaign in Rome on sexual violence against children to break the silence surrounding sexual abuse and educate children and professionals.

Promising practice

Red button for a safer Internet



The Czech National Centre for a Safer Internet and the governmental Committee for the Rights of the Child prepared special software. When installed on a computer, a 'Red Button' (*Červené tlačítko*) appears on the screen, which, when pressed, submits anonymously the content of the webpage on display to a hotline, where experts analyse the content and contact the police, if necessary.

For more information, see: www.horka-linka.saferinternet.cz/internet-hotline

At national level, the public debate about sexual abuse and exploitation by members of religious institutions, in particular the Roman Catholic Church, continued in 2010 leading to different initiatives.

In **Ireland**, the 'Saving Childhood Ryan'²² campaign was launched by a number of NGOs on the anniversary of the 'Ryan Report'²³ seeking to improve child protection mechanisms and the full implementation of the Ryan Report recommendations. The campaign promoted the strengthening of children's rights in the Constitution and requested that provisions of the 'Implementation Plan' of the Ryan Report recommendations be given a statutory basis, as well as ensuring that all children in care have a dedicated social

18 Bulgaria, Bulgarian Helsinki Committee (2010).

19 European Commission (2010c).

20 CETS No. 201.

21 European Parliament (2010).

22 For more information, see: www.savingchildhoodryan.ie.

23 Ireland, The Compensation Advisory Committee (2002).

worker and care plan.²⁴ Work on a constitutional amendment to protect children's rights began.²⁵

In **Austria**, the Federal Minister of Justice and the State Secretary for Family and Youth Affairs convened an expert Roundtable on prevention of child abuse on 13 April 2010, where experts criticised the lack of resources for child protection services.²⁶ During the same month, the Catholic church initiated the Independent Ombudsperson. This institution is a civil-society-based body that acts on the basis of recommendations issued by an independent Commission for Victims of Abuse and Violence (*Unabhängige Opferschutzanwaltschaft – Initiative gegen Missbrauch und Gewalt*).²⁷ Since its establishment, more than 500 victims have contacted the institution, which collects information from victims, cooperates with police and prosecutors, and recommends support measures for victims abused by representatives of the church, including financial compensation. On 21 September 2010, the Commission announced the first 10 decisions regarding financial compensation. In the **Netherlands** in March 2010, through the initiative 'Help and Law', the Roman Catholic Church set up its own investigations into more than 2,000 allegations of sexual and physical abuse of children by representatives of the church dating back to the 1950s.²⁸

High-profile court cases in the EU Member States have increased public awareness of sexual abuse and exploitation of children. In **Portugal** on 2 September 2010, following a trial that lasted six years, the 7th and 8th Criminal Courts rendered judgment in the case of the Casa Pia institution, in which paedophile crimes were allegedly committed against the young boys and girls with financial problems who were in its care. The case, which involved 32 victims and 920 witnesses, resulted in six prison sentences ranging from five years and nine months to 18 years imprisonment, with one acquittal. Most of the accused have lodged appeals.

In **Belgium** in April 2010, the Brussels Court of Appeal upheld a judgment which ordered the sentencing of a former parish priest to five years in prison for the sexual abuse of a six-year-old boy from 1994 until 2001. In June 2010, the media reported²⁹ that the Belgian police raided the headquarters of the Belgian Catholic Church and the premises of an independent church commission, which was investigating hundreds of child abuse claims, and seized computers and files reportedly evidencing systematic sexual abuse practices. Subsequently, a Belgian court declared the raid illegal and ordered the material returned.

In **Denmark** in April 2010, police launched an investigation into more than 17 claims of abuse dating back to the 1970s and 1980s. The investigation was terminated as the time elapsed since the alleged abuses exceeded the statute of limitations.³⁰

A number of national legislative initiatives combating child abuse were taken. For example, in **Spain**, amendments to the Criminal Code implementing the Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, include a new section criminalising sexual aggression against children 13 years old and under and the practice of 'grooming'.³¹ The amendments, which entered into force on 23 December 2010, also introduce the penalty of deprivation of paternal authority.

The increasing importance of combating grooming is reflected in EU legislative proposals and in national initiatives.

4.2. Child-friendly justice

Significant work on child-friendly justice was produced by the project 'Children in the Union - Rights and Empowerment' (CURE).³² CURE is a cooperation of partners in nine Member States, and is co-funded by the Prevention of and Fight against Crime programme (ISEC) of the European Commission, DG Justice. It is run by the Crime Victim Compensation and Support Authority of **Sweden**, which examined children as crime victims in the criminal justice systems of the EU. The 2010 CURE report argued that justice systems, and in particular criminal justice systems, are not adapted to children. The report noted, "Children are more exposed to crime than other groups of individuals. Children subjected to crime are also particularly vulnerable when entering the criminal justice system. The reasons are connected to the fact that this system is not adapted to children. This means that child victims and witnesses do not have the same access to justice as adults. It also might lead to secondary victimisation. Not responding to the needs of child victims might be detrimental to the well-being and development of these children. Another effect is lack of confidence in the judicial system."³³

"[C]hild victims and witnesses do not have the same access to justice as adults".

2010 CURE report. For more information, see: www.brottsoffermyndigheten.se/default.asp?id=3251.

The European Commission's proposal in August 2010 for a directive³⁴ on the right to information in criminal proceed-

24 Ireland, Saving Childhood Ryan (2010).

25 Ireland, Joint Committee on the Constitutional Amendment on Children (2010).

26 Austria, Ministry of Justice (*Bundesministerium für Justiz*) (2010) and for more information on Ombuds offices against violence and sexual abuse with respect to the catholic church, see: www.katholisch.at.

27 For more information, see www.opfer-schutz.at.

28 BBC (2010).

29 Mevel, J. (2010) and Le Soir (2010).

30 The Copenhagen Post (2010).

31 Spain, Ley Orgánica 5/2010 of 22 June 2010, Boletín Oficial del Estado, 23 June 2010.

32 For more information see: www.brottsoffermyndigheten.se/default.asp?id=3251.

33 CURE (2010), p. 13.

34 European Commission (2010d).

ings contains special provisions for children. According to these, the information normally provided in a standard written document (Letter of Rights) must be presented orally to children, taking into account a child's age, level of maturity, as well as to the child's intellectual and emotional capacities. For more information, see Chapter 8 on child-friendly access to justice.

More broadly, the European Commission's Communication on an EU Agenda for the Rights of the Child³⁵, published in February 2011, highlights that making justice systems more child-friendly is a key action item for the EU, as it concerns an area of high practical relevance where the EU has, under the Treaties, the competence to turn the rights of the child into reality through EU legislation. In the context of civil and criminal justice policies the Commission's Agenda contains proposals for concrete measures to make justice systems more child-friendly, which for instance include for 2011 the

"When my parents got themselves divorced, there were loads of people who took the decision 'in my interest'. No-one asked my advice."

Luxembourg, boy, Eurobarometer (2010), The rights of the child, p. 11.

adoption of a proposal for a Directive raising the level of protection of vulnerable victims, including children.

The Council of Europe Committee of Ministers adopted the Guidelines on child-friendly justice on 17 November 2010.³⁶ Their aim is to ensure that all rights of children, among which the right to information, representation, participation and protection, are fully respected with due consideration to the child's level of maturity and understanding as well as to the circumstances of the case in all judicial and administrative procedures. These guidelines are intended to serve as a practical guide to implementing internationally agreed standards built on the existing international, European and national standards.

There were also some important initiatives in Member States. For example, in **Latvia** on 4 March 2010, the Parliament adopted amendments to the Law on the Protection of the Rights of Children, regarding the sphere of authority of police and other institutions in cases of violence against children. Accordingly, the police, childcare, educational, medical and social rehabilitation institutions can ban parents and close relatives from meeting a child, if this can harm his/her health, development and security. These new rules also envisage specific action against institutions in cases of reasonable suspicion of violations of children's rights.

The need to strike a balance between state intervention for child protection and the protection of family life, and, in particular, the need to limit the power of authorities to separate a child from his/her family was highlighted in **Poland** by

the Commissioner of Children's Rights.³⁷ The Commissioner argued that the procedures for compulsory removal into state care should be standardised, that the obligations of the court-appointed custodian should be clarified and that the family should be informed about foster care procedures.

4.3. Child trafficking

On 29 March 2010, the European Commission adopted a *Proposal for a Directive on preventing and combating trafficking in human beings and protecting victims*,³⁸ which builds on the Palermo Protocol³⁹ and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. Several articles deal with child protection acknowledging that children are more vulnerable and stipulating that in the application of the directive the primary consideration must be the child's best interests. On 14 December 2010, political agreement was reached on the final act and on the same day, the European Commission appointed Myria Vassiliadou as its first Anti-Trafficking Coordinator.

However, in 2010 little progress was made regarding the paucity of comparable and disaggregated data on child trafficking for sexual or labour exploitation at EU and at national level, which had already been highlighted in 2009 by the FRA report on *Child Trafficking in the European Union – Challenges, perspectives and good practices*⁴⁰. Differences in legal definitions of offences and non-conformity to the Palermo Protocol for criminalising trafficking remain key obstacles to systematic data collection.

Nevertheless, some EU Member States systematically collect disaggregated data on children. For example, in the **UK**, such data are broken down according to the type of exploitation, the age range and gender of victims by the National Referral Mechanism (NRM)⁴¹ of the UK Human Trafficking Centre (UKHTC). The NRM enables the UKHTC to identify the number of victims and to build a clearer picture about the scale of the problem of human trafficking in the UK. During the first 18 months of the NRM (1 April 2009 to 30 September 2010) 276 referrals of children were made, and in 77 of these cases the information received was considered to be sufficient for concluding that the person was indeed believed to be a victim of human trafficking. In **Romania**, the National Agency against Trafficking in Persons collects data on all victims of trafficking, including children disaggregated by gender, age, residence and background of the victim, recruitment and transportation, destination of trafficking and type of exploitation. The report for the first half

35 European Commission (2011).

36 Council of Europe Committee of Ministers (2010b).

37 For more information, see www.brpd.gov.pl/wystapienia/wyst_2010_02_12.pdf

38 European Commission (2010e).

39 United Nations, Protocol to the Convention against Transnational Organised Crime to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children, Geneva, 2000.

40 European Union Agency for Fundamental Rights (FRA) (2009), p. 13.

41 UK, Serious Organised Crime Agency website: www.soca.gov.uk/about-soca/library/doc_download/237-nrm-statistical-data-010409-to-300910

of 2010 identified 27 boys and 99 girls as victims of trafficking, compared with 63 children in the corresponding period for 2009 and 109 for the same period in 2008.⁴²

Some positive steps were taken by EU Member States in incorporating the uniform definition contained in the Council of Europe Convention on Action against Trafficking of Human Beings. For example, in **Poland** an amendment to the Penal Code, which entered into force on 8 September 2010, implemented the convention's definition of trafficking and provided a definition of illegal adoption. The amendment also defined slavery and introduced a minimum conviction of three years imprisonment for the crime of human trafficking.

There is some evidence to suggest that certain groups of children, including those who beg, are vulnerable to being trafficked. During 2010 stronger sanctions have been put in place for persons who exploit children for begging in **Italy**. The Italian Court of Cassation clarified that the new article 600-*octies* of the Italian criminal code, introduced by *Legge n. 94* of 2009, punishes whoever exploits a child under 14 years of age to beg, or otherwise allows or encourages a child under his/her legal custody or authority to do so.⁴³ The new law changes the qualification of the offence from misdemeanour to crime, broadens the scope of guilt, and increases the level of sanctions: children exploitation for begging is now punishable with a maximum sanction of three years of imprisonment.

4.4. Separated children in a migration or asylum context

Many children arrive in the EU every year separated from their parents, often seeking asylum. Some of these children have fled their country of origin displaced by war, armed conflicts, for fear of persecution and some to escape from poverty. Some may even have been trafficked for sexual or labour exploitation. The situation of these children is particularly precarious and their protection is therefore of critical importance. The European Council noted the problem in the Stockholm Programme giving "priority to the needs of international protection and reception of unaccompanied minors".

In this context, the FRA published in 2010 a report on separated asylum-seeking children based on fieldwork interview research and complementing parallel legal and policy research carried out by the European Migration Network (EMN) on *Policies on reception, return and integration, arrangements for, and numbers of, unaccompanied minors – an EU comparative study*.⁴⁴

42 Romania, Ministerul Administrației și Internelor, Inspectoratul General al Poliției Române, Agenția Națională împotriva Traficului de Persoane, (2010).

43 Italy, Corte di Cassazione, I sez. pen., 22 June 2010, No. 23869, in materia di accattonaggio.

44 European Migration Network (EMN) (2010).

FRA ACTIVITY

Study on separated, asylum-seeking children

On 7 December 2010, the FRA published its report on *Separated, asylum-seeking children in EU Member States*, which found that children are sometimes placed in unsuitable accommodation, such as in closed structures, including hotels or hostels together with unrelated adults. The report, which was based on interviews with 336 separated asylum-seeking children and 302 adults responsible in their care in 12 Member States, also found problems with medical screening and health assessment, and guardianship systems. The report, which was published at the Agency's Fundamental Rights Conference, 'Ensuring justice and protection for all children', also said that legal representatives are not always trained or qualified.

For more information, see: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_sep_asylum_en.htm

The European Commission adopted on 6 May 2010 an *Action Plan on Unaccompanied Minors for the years 2010–2014* focusing on three main strands for action: the prevention of unsafe migration and trafficking; reception and procedural guarantees in the EU – encompassing age assessment and family tracing issues; and the identification of durable solutions – including family reunification. The Action Plan supports the adoption of common standards for guardianship and legal representation and recommends that a decision on the future of each unaccompanied minor be taken by the competent authorities as soon as possible, preferably within six months. The return of the children is identified as only one option "because the issue is much more complex and multidimensional and there are clear boundaries to the Member States' freedom of action when dealing with unaccompanied minors".⁴⁵

On 3 June 2010, the Justice and Home Affairs Council, in its conclusions on unaccompanied minors, invited the European Commission to assess whether EU legislation offers them sufficient protection. The Council also asked Member States to monitor the quality of care provided in order to ensure that "the best interest of the child is being represented throughout the decision-making process". It also encourages them to cooperate with EU agencies and networks, mainly Frontex, Europol, the European Asylum Support Office, the FRA and the European Migration Network in order to improve the analysis and exchange of data.

45 European Commission (2010f), p. 2.

Promising practice

Little alien – a documentary on young asylum seekers

On 1 October 2010, the documentary ‘Little Alien’ by Nina Kusturica received the ‘Outstanding Artist Award - Intercultural Dialogue 2010’ sponsored by the Austrian Federal Ministry for Education, Arts and Culture (Bundesministerium für Unterricht, Kunst und Kultur). The film portrays the struggles of young asylum seekers from Somalia and Afghanistan, who are trying to find a new home in Austria. Educational material was produced by the filmmakers and as part of their ‘school tour’ the film crew and protagonists participated in workshops and public screenings.

For more information, see: www.littlealien.at

of the children victims of violence, profile of the person who submitted the claim, the profile of the perpetrator, and measures for protection that have been applied.⁴⁶

An example of a Member State collecting data in the context of sexual abuse is **Sweden**. According to the National Council for Crime Prevention (*Brottsförebyggande rådet*, Brå), it is not unusual for teenagers aged between 14 and 15 years to report that they have been contacted through the Internet

FRA ACTIVITY

Presentation of child rights indicators

In November 2010, the FRA published its final report on child rights indicators. Their purpose is to enable EU institutions, Member States, and organisations and individuals concerned with developing the appropriate legal and policy responses to enhance the protection and promotion of children’s rights by the EU. The FRA’s child rights indicators are an initial toolkit to evaluate the impact of EU law and policy on children’s status and experience across the fields of: family environment and alternative care; protection from exploitation and violence; adequate standard of living; and education, citizenship and participation in activities related to school and sport. The indicators highlight limitations and gaps in current legal and policy responses, providing a springboard for future legal and policy development. They respect EU competence and the role of national and local authorities in addressing different aspects of the protection, promotion and fulfilment of the rights of the child.

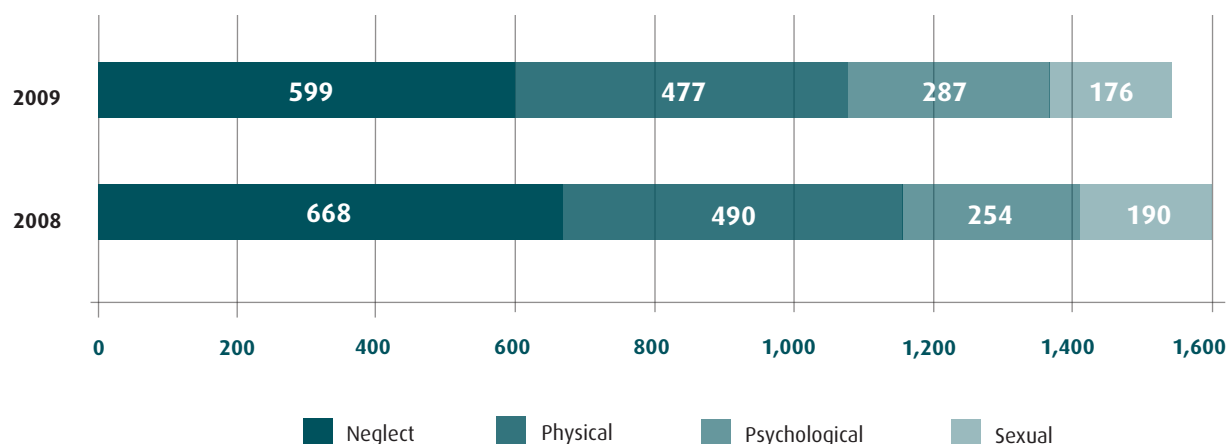
FRA (2010b) Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub-rightschild-summary_en.htm

4.5. Data collection

The lack of robust comparable data on child rights issues described in the 2006 Commission Communication ‘Towards an EU Strategy on the Rights of the Child’ remains a persistent problem in the EU. Although some countries have data collection systems in place, their quality varies and data are not comparable, as they are based on different indicators.

An example of a Member State collecting data in the context of violence against children is, for instance, **Bulgaria**. Since it was established in 2001, The State Agency for Child Protection collates the statistics provided by all Child Protection Departments of the state. They record the cases of violence against children on a special information card which includes: the number of cases of violence against children, type of violence, location of the violent acts, age and family status

Figure 4.1: Number of child victims of violence in Bulgaria, 2008 and 2009



Source: FRA 2010, based on statistics from the State Agency for Child Protection, Bulgaria

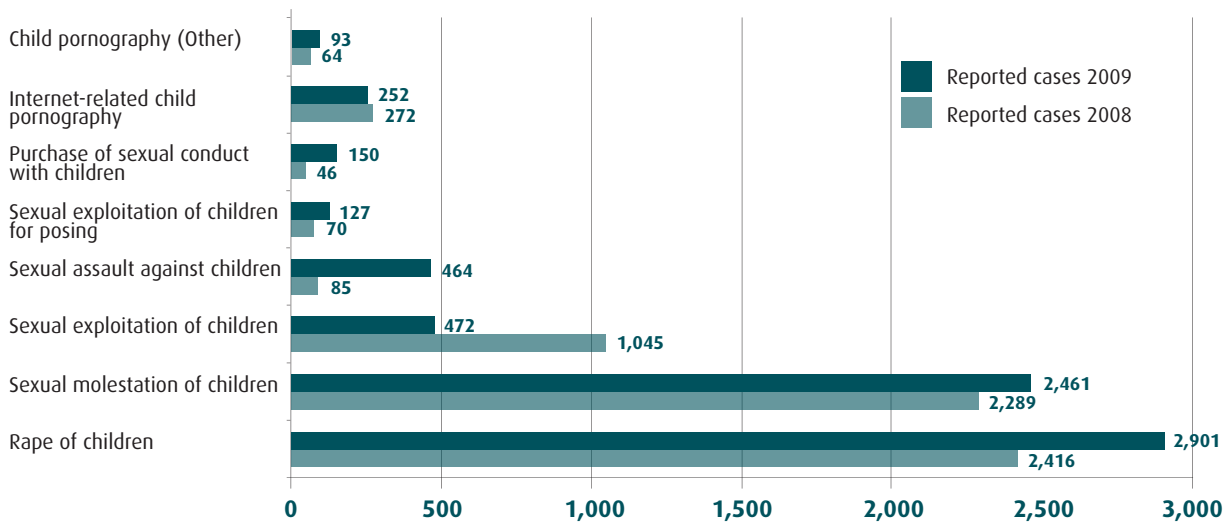
46 For more information, see: www.stopech.sacp.government.bg/.

and offered money or other forms of payment (such as topping up their mobile phone cards) in exchange for sexual services. Although a report of the Swedish National Youth Board suggests that the Internet has not led to more young people selling sex, a third of the youth covered by the report had received sexual invitations on the Internet.⁴⁷ However, according to Swedish sources, the majority of reported cases of sexual exploitation of children are committed by someone with a close relationship to the victim. As figure 4.2 illustrates, most of the reported cases of child abuse and exploitation in Sweden concerned rape. The majority of reported cases of child rape victimise girls aged between birth and 14 years, followed by girls aged between 15 and 17 (40%). Child rape against boys aged between birth and 14 years amounts to 6% and of boys aged between 15 and 17 to 1%.⁴⁸

implementation by providing evidence-based assistance and expertise, collecting data from secondary sources and fieldwork research, and by continuing to report progress made.

Following the strong focus of the EU Agenda on child-friendly justice and the adoption of the relevant Council of Europe guidelines, progress in this area will be of primary importance. Legal and policy developments in this field should reflect international standards such as the UN Convention on the Rights of the Child, as well as the European Convention on Human Rights and international standards and relevant case law concerning children. A particularly important goal is to achieve recognition of the special status, needs and rights of children and, as a result, the need to respect, protect and fulfil their right to access justice, as well as to be consulted and heard in proceedings involving or affecting them.

Figure 4.2: Reported cases of child abuse and exploitation in Sweden, 2008-2009



Source: FRA 2010, based on the criminal statistics report 2008-2009 of the National Council for Crime Prevention (Brottsförebygganderådet, Brå), Sweden.

Given the need for objective, reliable and comparable data on children’s rights, the European Commission asked the FRA to develop indicators for measuring the protection, respect and promotion of the rights of the child in the EU in order to assess the impact of Union law and policies identifying their achievements and revealing gaps.

Outlook

The European Commission’s Communication on an Agenda for the Rights of the Child contains an ambitious work plan for improving child protection in the EU. It proposes concrete action in key areas, such as child-friendly justice, protecting children in vulnerable situations and fighting violence against children inside the EU and externally. The FRA will support its

Children in situations of particular vulnerability are another key focus area for EU work. These include children that go missing from home, children with disabilities, Roma and Traveller children, separated children in a migration or asylum context and child victims of trafficking for sexual and labour exploitation. The EU measures to enhance the protection of these children must have as a primary consideration the children’s best interests, with respect to their psychological and physical well-being, as well as their legal, social and economic interests. Furthermore, the children’s views and opinions should be taken into account.

Finally, children using modern communication technologies benefit from digital learning. Nonetheless, they are also vulnerable when confronted with potentially harmful content and harmful conduct through cyber-bullying or grooming, for instance. In this regard, the EU, national authorities and service providers have a responsibility to develop concrete measures that protect children effectively.

47 Sweden, National Council for Crime Prevention (Brottsförebygganderådet, Brå) (2010), p. 68.

48 *Ibid.*, p. 26.

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UN & CoE

EU

January

January

3 February – CoE Committee of Ministers issues recommendation on de-institutionalisation and community living of children with disabilities

February

February

29 March – European Commission adopts a proposal for a directive on combating sexual abuse, sexual exploitation of children and child pornography

March

March

April

April

May

6 May – European Commission publishes an Action Plan on unaccompanied minors (2010-2014)

18 June – UN Committee on the Rights of the child publishes Concluding Observations on Belgium

May

June

June

1 July – Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse enters into force

July

July

August

August

September

29 September – UN Committee on the Rights of the child publishes Concluding Observations on Spain

October

September

November

5 October – CoE Parliamentary Assembly adopts recommendation on child abuse in institutions

December

October

17 November – CoE Committee of Ministers adopts guidelines on child-friendly justice

November

December

January

Beginning of 2011 – European Commission adopts EU Agenda for the rights of the child (15 February 2011)

February