

ENOC

European Network of Ombudspersons for Children

Respect of the rights of children & young people living in institutional care: state of play

ENOC Survey 2011

Prepared by Ankie Vandekerckhove

CRC, Art. 20 :

“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.”

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ENOC SURVEY 2011

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1. INTRODUCTION

A questionnaire on children's rights in institutional care, based on the principles of the Convention of the Rights of the Child and the UN Guidelines on Alternative Care, was sent to the 39 members of ENOC in the spring of 2011. A deadline was ultimately set on June 15th in order to get the report finished on time for ENOC's annual meeting in Warsaw, September 2011.

By the end of June, 22 members replied ¹. However, they did so in very different ways: not all offices replied on all questions, some answered very extensively, others with yes/no answers, and not all responses are easily comparable. Therefore, this report contains a general review of the practice of residential care in Europe, not a survey on all the existing legislation and practices in the different countries.

It must be repeated that, according to what was asked by the ENOC Bureau, this report only deals with the reality of children and their rights in institutional care settings, not with placement policies and the prevention of placement as such. It does not deal with the closed settings in which children and young people are being detained in cases of juvenile delinquency nor with institutions of mental health care or foster care.

Questions related to the possible positive or negative results of placement could not be included in this questionnaire either.

The term 'institutional care' was used for all the settings in which children and young people are placed when living at home is no longer possible or advisable, including every type of institution, ranging from small-scale family type homes to large institutions.

According to the Convention of the Rights of the Child, the child's family is the most appropriate place for a child to grow up and parents are (or should be) the first protectors of children's rights. Art. 7 makes a clear statement in favour of the family in stating that children have the right to grow up in their own families, with their own parents. Art. 5 and 18 contain the principles of parental responsibilities and how families should be fully supported in raising their children. Art. 9 gives the child the right not to be separated from his/her parents, unless this would be in his/her best interest. Even when separated the right to keep contact with both parents should be guaranteed.

Reality however can be quite different: child abuse or neglect, family conflicts, behavioural problems, socio-economic deprivation, health problems of a parent, detention of the main caregiver, lack of good care, lack of family support and other problematic living conditions can sometimes make it necessary for a child to be taken out of the family home to be taken care of elsewhere.

¹ The reports of the following offices were reviewed and integrated in this survey: Andalusia, Bosnia-Herzegovina, Catalonia, Croatia, Cyprus, Denmark, Flanders, France, Ireland, Lithuania, Luxembourg, Madrid, Malta, Norway, Poland, Portugal, Serbia, Slovakia, Srpska, Vojvodina and Wales. Upon agreement, the country reports of those members that contributed to the report may be made available on the ENOC website. All answers were reviewed and considered but not all of them could be specifically mentioned or quoted in the report.

These are the main reasons for placement in all countries covered by this survey². This survey doesn't look into all these possible causes for placement, but rather into the way placement decisions are taken and how children's rights in institutions are guaranteed (or not).

Some general impressions throughout the survey responses:

- There seems to be a large gap between law and practice, especially in reference to children's participation rights.
- Many countries seem to have a lack of appropriate and well-tailored places, and waiting lists are often a harsh reality. This causes children to be placed in the available places rather than in the most suited care settings in which their actual needs can be taken care of.
- Most of the legislation, in which reasons for placement are described, tends to be rather vague and leaves room for discretionary powers for either the judiciary or other competent bodies (child protection services, social welfare offices etc).
- A systematic review of placement decisions is not always provided in cases of 'voluntary' placement. The need for periodic review seems to be considered less urgent here, even though living in care should remain the exception and last for the shortest time possible. The possibility to return to parental care is to be regularly assessed in these cases as well.
- In several European countries laws are currently under review to make them more children's rights inspired. The role of ombudsman as well as the UN Guidelines for the Alternative Care for Children can't be denied here.
- In many countries, several complaint procedures do exist, but it is not always clear how accessible these are for children and how much they use them.
- As it is often the case, in placement decisions, reference is regularly made to the child's '*best interest*' but it often remains rather vague how and by whom this is exactly defined.
- Although placement should always be serving the best interest and rights of the child, it sometimes seems that the rights of the parents are still better protected than those of the child. In many cases the child is still the object of protection rather than a real actor.

Maybe somewhat surprising, the responding ENOC members reported on placement policies and practice in a very similar way. There does not seem to be that many outspoken differences between the concerned countries in Europe, at least not in theory.

According to the responses of the European Ombudspersons for children, there seems to be an overall lack of data. Absolute numbers of children in care are not part of this report, but many of the ombudspersons did mention that still too many children are referred to institutional care.

2. INTERNATIONAL CONTEXT

Besides the Convention of the Rights of the Child³, there are other international recommendations or calls referring to the issue of children's rights in institutional care.

While celebrating the 20th anniversary of the Convention of the Rights of the Child, the General Assembly of the UN adopted the Guidelines for the Alternative Care of Children⁴, based on as well as reaffirming the Convention's general principles. The fundamental rights of children are further

² A lot could be said about (the misunderstanding that) the parents need to carry this responsibility on their own. States also need to take responsibility in supporting parents in such a way that placement of children could be avoided; in our 21st century 'welfare states' however, this is not always the case.

³ Several articles of the Convention of the Rights of the Child are relevant here and the questionnaire was drafted along the lines of these articles (art. 2, 3, 5, 7, 9, 12, 13, 14, 15, 16, 18, 19, 20, 24, 25, 26, 28, 29, 31, 34, 36, 37)

⁴ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/470/35/PDF/N0947035.pdf?OpenElement>

These guidelines also contain recommendations on preventing family separation and promoting parental care but this does not fall within the scope of this survey. In the survey these are referred to as 'the UN guidelines'.

elaborated and described in detail in the guidelines, which offer a range of minimum policy standards. These guidelines can help governments to better implement the principles of the Convention of the Rights of the Child. Some of these are:

- The family environment is the most important one for a child to grow up in and should be supported by all means⁵.
- Placement in institutions is a matter of last resort and for the shortest period possible, aimed at the return to the family (or another suitable and definite solution).
- All children's rights should be respected while in placement proceedings and settings (give their opinion, health, education, religion, contact with parents etc.).
- Siblings should not be separated.
- Children should get the support and protection of a legal guardian.
- Children under 3 should only be placed in family-based settings.
- Care standards should be established to ensure quality and conditions that are conducive to the child's development.
- Overall deinstitutionalisation strategies and policies should be developed.
- Accessible complaint and independent monitoring mechanisms need to be established.

In 2009, Eurochild carried out a survey on children in care as well⁶. Some of their findings were the lack of (comparable) data, the worrying trend in some countries that residential care is increasing and the over-representation of specific vulnerable groups (Roma, children with disabilities, children from poverty stricken families). They also received information from their members on the poor level of involvement of both parents and children in decision making and the lack of formal and structural channels for children in care or their advocacy groups to be systematically heard.⁷ Eurochild roughly estimates that about one million children in the EU countries are living in (institutional, community and family-based) care, this being about 1% of all children, with some differences among the EU countries.⁸

Only recently UNICEF and the OHCHR repeated the serious concern on the all too common practice of putting – even very young - children in institutional care⁹ and pleaded to keep investing in alternatives in the area of family support and foster care, or care in family-type settings if it is deemed unavoidable to take a child out of the family home.

3. THE LEGAL FRAMEWORK

The UN Guidelines (par. 57 and 58) hold as a general principle that:

“Decision-making on alternative care in the best interests of the child should take place through a judicial, administrative or other adequate and recognized procedure, with legal safeguards, including, where appropriate, legal representation on behalf of children in any legal proceedings. It should be based on rigorous assessment, planning and review, through established structures and mechanisms, and should be carried out on a case-by-case basis, by suitably qualified professionals

⁵ E.g. free access to preventative health care, to day-care, family allocations and benefits, appropriate (social) housing...

⁶ Eurochild is a EU based network of over 80 children's organisations. For information on the survey, 'Children in care; what role for the EU?' see:

http://www.coe.int/t/dg4/youth/Source/Resources/Forum21/II_Issue_No5/II_No5_Children_in_care_EU_role_en.pdf

⁷ Some, rather exceptional, initiatives were mentioned but were not found in the Enoc responses.

⁸ They mention e.g. 2,2% in Latvia, 0.66% in Sweden and 1, 66 in Romania.

⁹ <http://www.crin.org/resources/infoDetail.asp?ID=25330&flag=news>

Jan Jarab, Regional Representative of the Office of the UN High Commissioner for Human Rights at the Regional Office for Europe said, "Many Central and Eastern European countries have largely maintained the system of large-scale residential institutions for children of all ages. Placement of children into institutions -- including those under 3 years of age -- is still the society's main response to disability, poverty or perceived lack of parental skills rather than a measure of protection from individual abuse, from which these societies often fail to protect children."

in a multidisciplinary team, wherever possible. It should involve full consultation at all stages with the child, according to his/her evolving capacities, and with his/her parents or legal guardians. To this end, all concerned should be provided with the necessary information on which to base their opinion. States should make every effort to provide adequate resources and channels for the training and recognition of the professionals responsible for determining the best form of care so as to facilitate compliance with these provisions.

Assessment should be carried out expeditiously, thoroughly and carefully. It should take into account the child's immediate safety and well-being, as well as his/her longer-term care and development, and should cover the child's personal and developmental characteristics, ethnic, cultural, linguistic and religious background, family and social environment, medical history and any special needs."

All responding ENOC members confirm that there is in fact legislation on placement, some providing more details than others.

Specific legislation on all different aspects such as the actual procedure, the aims of the placement, the duration of the placement, the involvement of parents and children, the rights of children in care, the infrastructure, the monitoring, the personnel requirements etc. does not exist on all issues in all countries.

In most cases however, the law states how, why and by whom the decision is taken. This is done most often by the court or a child welfare administration and usually based upon a thorough report on the child's living conditions and the possible reasons for placement. Some point out the different types of placement, on which different rules can apply, e.g. on the period of placement and the way the placement is reviewed and/or monitored.

In Malta for example, only the care orders and court orders are regulated by law, not the voluntary placement. In Flanders, there is a specific decree on the rights of the child in (all types of) youth care, in which the Convention of the Rights of the Child has been translated into the context of youth help. A similar decree is found in Madrid where the rights and duties of children in care are stipulated in detail.¹⁰

Andalusia: *In addition, there is regulation on rights of families of children subject to protective measures.*

Where the aim is often clear - being able to return back home - the exact proceedings on how to reach that aim is not always that clearly defined in the laws.

Deciding instances are among others the (juvenile) court, including a contradictory hearing, the minister of child welfare, social services and health services¹¹. When there is a 'voluntary' placement, the court doesn't always have to intervene and a placement decision can be taken by childcare services or child protection services. The question is, however, how 'voluntary' this decision has been taken. In most countries, the court shall intervene anyway when there is no agreement and when it is deemed necessary to take the child out of the family.

Serbia: *institutions may not accommodate children (except in emergencies) without an opinion of the Ministry.*

The reasons for placement are rarely mentioned in the law in detail; usually the law refers to 'the best interest' of the child, the child being in danger, abuse or neglect, parents not being able to take care of the child for a variety of reasons. More detailed descriptions seem to be exceptional.

¹⁰ See also UN Guidelines, par. 16: Attention must be paid to promoting and safeguarding all other rights of special pertinence to the situation of children without parental care, including, but not limited to, access to education, health and other basic services, the right to identity, freedom of religion or belief, language and protection of property and inheritance rights.

¹¹ Enoc members refer to many differently named services and administrations in the different countries, but it is clear that they are all officially mandated services in the broad area of child protection.

Portugal¹²: *A placement intervention (next to other possible interventions) can be taken to protect the child or young person in danger to the safety, health, training, education or development either caused by the parents, legal representative or de facto guardian, or caused by action or omission of a third party and not adequately opposed by them. In this way the danger can be removed.*

Several respondents say that the child is involved in the proceedings, but often this is a mere consultation only. Some laws have set an age limit for the obligatory hearing and consent of the child. The child's opinion will be taken into consideration and the 'due weight' will usually depend on the child's age and maturity. Children do not have real decisive powers and cannot veto the placement decision. In countries where the child does have the power (not) to consent¹³, the court can still 'overrule' this after a contradictory debate.

The parents as well, have the right to be heard and to be part of the decision making process, but, again, if social services or child welfare bodies can't get their agreement on the placement proposal, the court will have the final say. Adults, as opposed to children and young people, usually have the right to appeal against these court decisions. It is rather exceptional, e.g. in Portugal, that children themselves can also appeal to placement decisions.

According to all respondents, child welfare authorities provide the necessary assessment, reviewing the child's needs, hearing the parents and the child, looking for possible alternatives, the most appropriate type of care or placement module and/or detailed care plans¹⁴. In most countries this is done by a legally mandated, multidisciplinary team¹⁵, independently, which in some countries will also be responsible for the follow-up and regular review of the placement.

A few respondents added that this assessment contains a description of the best possible type of care, but that the reality shows that there is often a lack of space and waiting lists and that children mostly end up where there is a place and not where they should be placed.

In these assessments, the 'best interest' of the child is often mentioned without however providing clarity on how and by who this is finally interpreted?

Norway: *The law states that the child welfare authorities should assess the needs of the child and provide the necessary information to the body making the final placement decision (Fylkesnemnda). This body can set up the standards required for placement. If these standards are not met, the placement decision must be revised by the Fylkesnemnda.*

On the issue of regular review of the placement decision, the answers are rather varied. In most cases there is a certain system of review, but not all of them are equally regulated in detail.

Wales: *reviews are done every six months by an appointed Independent Review Officer.*

Most respondents refer to quality requirements in the law or regulations; only a few explain that these requirements do exist but that they are not binding. Daily life within the institutions is usually regulated according to the 'house rules'. Some countries have formulated proper care standards or guidelines on child-sensitive work, but it seems quite difficult to check whether these standards are actually met in practice. Others are in the process of drafting quality guidelines.¹⁶

Flanders: *The quality law states that care must be justifiable. This means effective, appropriate, continuous, socially acceptable and user-centred. In care human dignity and*

¹² The law provides more possible interventions, taking into account principles of proportionality, prevalence of the family and the best interest of the child, so that placement only occurs when leaving the child in its family environment will not be sufficient to remove the danger. The law describes rather detailed what 'danger' could be.

¹³ E.g. Portugal: as of 12 years old, the child has to consent with the placement proposal.

¹⁴ E.g. Cyprus, Flanders, Ireland, Wales.

¹⁵ In most countries: psychologists, pedagogists, social workers and paediatricians.

¹⁶ E.g. Croatia, Serbia

diversity, protection of privacy, self-determination, complaint procedures, participation are elements of quality.

Thirteen out of twenty-two respondents say that the national legislation does refer to the Convention of the Rights of the Child¹⁷. Six say that it does comply with the UN Guidelines, seven mention some improvement in policies since the guidelines or that new regulations will be drafted in conformity with the guidelines. It seems that the guidelines did put the issue back on the agenda in some European countries, but given that these guidelines date from 2009 not all legislation has yet been adapted to them.

One of the major questions in this context is whether there are clear policies in place on deinstitutionalisation or not. In ten states there is an explicit policy on looking for structural alternatives for institutional care, some with very clearly set quantitative goals within a comprehensive strategic plan¹⁸. In most countries the subsidiarity rule does apply, but this cannot be considered as an explicit and clear policy on deinstitutionalisation with the necessary policy actions¹⁹.

Serbia: *A master Plan for the transformation of social welfare institutions for children has been adopted. The Plan defines several aims: the decrease of the total placement capacities of institutions with 50% in the next 5 years; decrease of the number of children in large institutions and complete closing of certain institutions; development of community care services and further development of foster care.*

4. PARTICIPATION RIGHTS - FREEDOMS

4.1. Right to be heard (art. 12, 13)²⁰

The right to be heard or consulted doesn't seem all that problematic at first sight; most countries do legislate that children must be involved in placement procedures and decisions. Cypriote law even states that their views have to be recorded precisely as they were expressed.

Several ENOC members do add however that the practice is quite different.

In Flanders, inspection showed that the opinion of the child was not considered in over 70% of the cases; Denmark responds that children often do not have a say; the Lithuanian and Norwegian ombudspersons for children state that in practice they are more than often not heard etc.

In some countries the child can have an independent advocate to voice his/her opinion²¹; others have specially trained officials to consult with the child in a child friendly way²².

Ireland: *...Inspectors from the Health Information and Quality Authority found in 2008 that in the majority of residential care centres 'children were...confident of expressing their views in relation to their care'...'were consulted about their care and care plans'. The OCO's complaint-handling experience indicates that there is a shortfall as regards to*

¹⁷ Some countries adhere to so-called monistic system, implying that clearly formulated international law will be considered as part of the internal law, such as Belgium, Portugal a.o.

¹⁸ E.g. Croatia, Lithuania, Norway (clear preference for foster care), Portugal, Serbia, Vojvodina.

¹⁹ E.g. Andalusia, Flanders, Madrid,

²⁰ UN guidelines, par. 6: All decisions, initiatives and approaches falling within the scope of the present Guidelines (...) should respect fully the child's right to be consulted and to have his/her views duly taken into account in accordance with his/her evolving capacities, and on the basis of his/her access to all necessary information. Every effort should be made to enable such consultation and information provision to be carried out in the child's preferred language.

²¹ E.g. Wales

²² E.g. Vojvodina

consistency and adequacy with which children in care are afforded opportunities to participate in areas of decision-making affecting them. Most of the complaints made annually to the OCO by children themselves come from children in care and an issue consistently raised by them relates to not being heard and/or having their views taken into account...

(Draft national quality standards place the responsibility on the social workers to ensure that children will be able to enjoy this right.)

In some countries a placement decision cannot be taken without the consent of the child who has reached a certain age (E.g. 10 in Serbia or 12 in Portugal). If there is no such consent, the case will be brought before the court.

Almost all respondents say that children are involved in the review process of the placement. However comments like 'in as far as it is practicable' or 'not an absolute imperative', make it clear that in reality a large margin of appreciation is left.

Croatia: *The obligation for social welfare officials to visit children in care twice a year is often disregarded due to the heavy workload and costs. ...Reviewing is mostly conducted on the basis of written reports from the institution and children themselves do not participate....*

Some countries²³ have formally organised ways for children to participate in the decision making within the institution. This happens in the format of an 'assembly' or an association, an expression group, satisfaction surveys, suggestion box, structural resident's meetings or other methods. Some of these deal with important issues, such as defining the house rules, while in other countries ombudsmen say that children can only participate on rather mundane issues such as the weekly menu. It is difficult to figure out if these models of participation are qualitatively strong and authentic; some probably are, while others do not seem to get passed the tokenistic level.

Croatia: *Children may be members of what is called Beneficiaries' Council but their participation is reduced to a mere formality..."*

All but one respondents confirm that the child is heard or consulted in the drafting of their individual (educational) plan, although again, some add that this is not always the case in practice. In several countries the educational plan is drafted with consultation of parents and children.

Luxembourg: *generally the educational project is discussed with the children, but sometimes the flyer of an institution promotes a nicer picture than reality.*

4.2. Right to information (art. 13, 17)²⁴

In almost half of the countries the law provides a right to be informed on issues concerning the placement, sometimes related to the development and competence of the child. In some countries the implementation of this right is elaborated further in standards or rulebooks²⁵, and well executed in practice²⁶. Some mention child friendly versions of information booklets and materials. In others it will rather depend on the ethics and professionalism of the given professional.

Andalusia: *According to the decree 355/2003 on Residential care, the children will find in the protection centres appropriate information for the legitimate exercise of the following rights: a) receiving information on their rights and obligations, as well as the existing*

²³ E.g. Andalusia, Catalonia, France, Madrid, Norway...

²⁴ UN Guidelines, par. 64: The child and his/her parents or legal guardians should be fully informed about the alternative care options available, the implications of each option and their rights and obligations in the matter.

²⁵ E.g. Ireland, Serbia

²⁶ E.g. Cyprus, France,

procedures to guarantee the full realisation of such rights and obligations, b) receiving at admission, the necessary information about the institution and its performance standards, c) knowing their family and personal history and having their background and cultural, religious and ethnic values respected, d) being explained the functions assumed by everyone participating in their care and e) receiving this information in understandable language according to their degree of maturity.

The responses of the ombudsoffices on the different types of received information vary a lot and it is hard to draw general conclusions on this issue. Most children are only informed about what will happen on the moment they arrive in the institution.

While practical information on daily life in the institution is often offered, the relevant info on the real reasons for the placement or how long it will be is not always given in a way that they can really understand. Several Enoc members deplore the fact that they should get all the necessary information but in fact they hardly ever do. This is also reflected in the complaints.

Many respondents say that important information on complaints mechanisms is not always available or not explicitly passed on.

Croatia: *children are on the whole poorly informed about their rights and opportunities to complain.*

Some ombudsmen make their services known especially for children in care²⁷.

Catalonia: *They are given a Children's chart with rights and duties in the institution.*

A Flemish inspection report for example concluded that only 23% of the children and young people were informed about their rights in care although the law states they have a right to clear, sufficient and understandable information, adapted to their age and maturity on all issues related to their care plan.

Access to the child's file can also be somewhat problematic in practice. It can be limited to certain parts of the dossier, it can depend on age, it can be consulted upon special request only, or it has to be done through the legal representative or guardian.

All ENOC members report on the free access for children to information through the media (newspapers, television...), and internet, even though this will sometimes depend on the necessary infrastructure (lack of computers) or it will be limited to information which is not harmful to children and young people. Some mention a certain amount of content control especially on internet, e.g. no pornography.

4.3. Freedom of thought, conscience and religion (art.14)²⁸

In most countries the child's fundamental right to choose and practice his/her religion seems to be respected both in the law and in practice in care settings although not all institutions actively provide all the necessary practical support for that. E.g. some closed institutions will not allow scarves for Islamic girls, while others do not really provide the necessary dietary or clothing conditions for all religions²⁹. Also, non-religious institutions will host religious children, who will not always be able to practice their religion to the fullest degree.

²⁷ E.g. Lithuania

²⁸ UN Guidelines, par. 88: Children should be allowed to satisfy the needs of their religious and spiritual life, including by receiving visits from a qualified representative of their religion, and to freely decide whether or not to participate in religious services, religious education or counseling. The child's own religious background should be respected, and no child should be encouraged or persuaded to change his/her religion or belief during a care placement.

²⁹ E.g. Bosnia-Herzegovina, Denmark, Flanders, Vojvodina.

Some institutions adhere to a certain religion and will only have these services offered, some will facilitate the child's religion while taking into account the views of the parents on this matter and others allow visits of priests, imams, rabbis or other religious functionaries of the recognised religions. Other respondents confirm that institutions will carefully take into account the daily menu, according to the religion of the residents. Several ombudsmen pointed out that this is a specific issue in the care on unaccompanied minors.

While in most countries, the parents choose their children's religion, children in institutions sometimes experience more freedom in this area since they do not live with their parents any more.

Vojvodina: ...When access to educational services is obtained through institutions where the child is placed and not procured by the child's parents, then no pressure is made and children are given a free choice, without risk of forcefully changing their religious identities.

4.4. Right to privacy, protection of family life (art. 9, 16)³⁰

A certain level of privacy seems to be protected in most institutions: children can keep their personal belongings; the records are kept confidential with a right for them and their parents to consult their own files (often, again, depending on their age and in line with their best interest).

France: The use of mobile phones is generally restricted by the house rules and the child is usually required to hand it over to the staff upon arrival. Potential changes of residential facilities may lead to the loss of personal belongings of the child.

Cyprus: ...children's privacy in regards to his/her personal space and belongings should be ensured. The staff is responsible to ensure that there are no intrusions in the child's private life (room, mail, personal belongings) either by another child or staff members. When the staff needs to enter the child's personal space, it does so with respect and sensitivity.

Children can freely receive mail, gifts etc, but in some countries this is under some limited control of the staff for safety reasons.

In particular cases there can also be certain limitations set by the court or based on age limits.

All ombudsmen responded that separation of siblings is avoided as much as possible. Separation will only be allowed, advisable or necessary whenever it is in their best interest or when the infrastructure or the organisation by age groups will make it impossible to stay together.

Communication and contact with parents is encouraged in most settings (see below, family life) by telephone, regular visits, going home for the holidays and so forth. In most countries this is regulated by the house rules and only about half of the Enoc members reply that children can get in touch with their parents whenever they want or feel the need to.

Cyprus: Most children said that they can call their parents whenever they wish but that they have to first tell the officer in charge. Some of the older children who own mobile phones, however, said that sometimes they do not tell the officer when they call their families; by

³⁰ UN Guidelines, par 81-82 and par. 89: (81) When a child is placed in alternative care, contact with his/her family, as well as with other persons close to him or her, such as friends, neighbours and previous carers, should be encouraged and facilitated, in keeping with the child's protection and best interests. The child should have access to information on the situation of his/her family members in the absence of contact with them.

(82) States should pay special attention to ensuring that children in alternative care because of parental imprisonment or prolonged hospitalization have the opportunity to maintain contact with their parents and receive any necessary counseling and support in that regard.

(89) All adults responsible for children should respect and promote the right to privacy, including appropriate facilities for hygiene and sanitary needs, respecting gender differences and interaction, and adequate, secure and accessible storage space for personal possessions.

doing so they assert in their own way their right to communicate with others without asking permission first.

Slovakia: *children should be placed in the closest institution to their home as possible..., but that depends on each case.*

Where the law does contain a right to contact, it is usually only concerning the parents and close family³¹ and not other persons the child has a good relation with, such as friends, relatives, and others. Others will allow contacts with friends by mail, phone etc but not always by having them visit the institution.

Some developing policies are considering extending this right to contact with more than just close relatives as well.

Extending more contact with people outside the institution can only add to a better (re)integration after placement.

The exercise of the right to contact is of course very closely linked to the child's history and the reasons for placement. As it is in fact a right, the child should be able to refrain from exercising it. This is the case in almost all countries: children can refuse to have their parent(s) visit them, sometimes univocally; sometimes parents can appeal to this³². Some responses point out that the staff will discuss such a refusal with the child in order to figure out the reasons behind it and will work on improving the parent-child relationship. In some countries this right of refusal only comes with a certain age³³.

Serbia: *A child of 15 years of age and capable of reasoning can decide whether to maintain personal relationships with parents and how he/she will maintain these relationships.*

On the other hand, since it is a right, restrictions of contact with parents and family cannot be used as a sanction. Fourteen of the responding ombudsmen confirm that this is the case. Others add that only the court may decide to limit or even forbid personal contact, depending on the circumstances of the case and the Luxembourg ombudsman clarifies that it is not allowed as a sanction but it does sometimes happen in practice.

Adding to the protection of the child's privacy, most countries either have laws or deontological codes for the media³⁴: the identity of children in care cannot be revealed in the press. In some countries like Slovakia this is strictly followed while in France for example parents can agree to have their children exposed having no real protection for the child.

³¹ E.g. Flanders, Norway.

³² E.g. Andalusia.

³³ E.g. Norway, Serbia.

³⁴ See also the Council of Europe Guidelines on Child Friendly Justice
http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20_4_.pdf

Rule 2.6: The privacy and personal data of children who are or have been involved in judicial or non-judicial proceedings and other interventions should be protected in accordance with national law. This generally implies that no information or personal data may be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity, including image, detailed descriptions of the child or the child's family, names or addresses, audio and video records, etc.

2. 7. Member states should prevent violations of the privacy rights as mentioned under guideline 6. above by the media through legislative measures or monitoring self-regulation by the media.

5. PROVISION RIGHTS - SERVICES

5.1. Health³⁵

The responding ombudsmen have not reported access to health services as too problematic. In some institutions the level of medical care can even be higher than what children would be able to enjoy at home.

Lithuania: ALL children under 18 have social warranties and all medical services are provided for FREE.

Some specific concerns were mentioned, e.g. in Bosnia-Herzegovina, on the fact that there is not enough early intervention or sufficient care for the increasing numbers of children with special needs. In France, parents still need to pay to get fully covered dental care or other basics such as glasses. In Ireland and Portugal children are medically examined upon arrival to see what their medical needs may be.

Most institutions rely on the general medical services in the area, while a minority of countries report on health care provided within the institution or have doctors or nurses doing consultations on a regular basis.

Wales: In addition, a specialist Looked After Children nurse has a statutory responsibility to visit young people over the age of 11 up to the age of 18 to carry out annual medical assessments.

Procurement of mental health care can sometimes be less evident due to lack of specialised staff or scarce resources, or the complexity of the problem or disorder³⁶, while in some countries health, including mental health, is a priority³⁷.

Some mentioned existing rules on initiative or consent by the child of a certain age (e.g. 15, 16) or the necessary consent needed from parents. The child hardly ever has the right to choose a doctor and will be referred either to the doctor, chosen by the parents or by the institution, or to the closest one available. In Cyprus, exceptions can be made to choose a specialist doctor for specific examinations such as a gynaecologist. A full choice or initiative by the child does not really exist in most countries: usually the agreement of either the parents or staff is needed, a certain age has to be obtained or the child must be able to pay for the doctor him/herself in that case.

Professional secrecy is guaranteed in all countries, albeit with some specific modalities (passing on information to parents) and the mention of some violations of this rule. Some legal limitations to this secrecy have been added in laws dealing with obligatory reporting of cases of abuse or imminent danger³⁸.

5.2. Social security

Twelve respondents confirm that children in care enjoy all social security and benefits while living in an institution. It is not always clear whether or how the parent's remain eligible for the different types of social benefit, or whether (some of) the support is forwarded to the institution. Flanders e.g. has a rather specific arrangement on the general child allowances (which every family receives): two thirds of the benefit are forwarded to the institution, while one third can either remain with the parents or secured on a blocked savings account for the child until he/she reaches 18. In other

³⁵ UN Guidelines, par. 84: 84. Carers should promote the health of the children for whom they are responsible and make arrangements to ensure that medical care, counseling and support are made available as required.

³⁶ E.g. Denmark, Flanders, France, Portugal, Serbia, Srpska.

³⁷ E.g. Madrid, stating that there are psychiatrists on the staff whose work is considered essential in drafting the individual care plan.

³⁸ E.g. Wales.

countries the parents no longer receive such child support or need to use it in order to share in the cost of the placement. In some countries, like Vojvodina, children in care get priority for some benefits such as student loans.

In some countries³⁹, there are no social benefits, but all costs are covered during placement.

Almost all ENOC members respond positively on the question whether children in care receive any pocket money. In some legislation it is actually a right of the child, in others it is common practice to allow children to have some money for their own. In many countries this allowance increases with age.

Vojvodina: *A positive concept has been initiated in SOS Children's Village in the form of 'distance godfathering', with mostly foreign benefactors sponsoring a particular child throughout its stay in the institution, providing it with life savings and maintaining a close relationship with it during childhood.*

5.3. Education⁴⁰

All children placed in institutions in Europe continue to go to school and often finish a certain level of education. In Ireland e.g., care plans need to include a section on the child's educational needs.

However, in most countries, the placement does cause changes in their schooling career: they quite often have to change schools, they can no longer continue in the same direction, they are obliged to go to a school where there is a place for them due to limited capacity, or they no longer experience a stimulating environment for study.

Andalusia: *children under the protection system have a significant curricular gap despite the support they receive... They do not always achieve the desired results. The vast majority cannot get a higher education.*

Many answers refer to the reality that children in care do not always get the same schooling opportunities or choices as children living at home. Many of them will be oriented towards more vocational training in order to be able to become self-supportive as soon as possible after they leave the institution or become 18 years old.

Most children go to school outside the premises of the institution and try to integrate in the mainstream educational centres. Sometimes the very young children can go to a kindergarten within the institution⁴¹.

5.4. Leisure and daily life

Although children in care live in a rather organised setting and set daily routines, often with many peers together, the leisure issue was not reported as a challenged one by most ombudsmen. Within institutional life, necessary efforts are made to allow children to enjoy a range of leisure activities, such as sports, culture, creative workshops, visiting and hanging out with friends and exercising different hobbies. In a way this doesn't seem to differ all that much from life at home, except of course that they often have to miss the friends they had at home, when they are placed too far away from home.

³⁹ E.g. Croatia, Cyprus, Poland, Vojvodina.

⁴⁰ UN Guidelines, par. 85: Children should have access to formal, non-formal and vocational education in accordance with their rights, to the maximum extent possible in educational facilities in the local community.

⁴¹ E.g. Portugal.

Portugal: *As a rule the law establishes the right to participate in sports and cultural and leisure activities and also mentions the right to have a certain degree of autonomy in carrying out their personal life, as may be adequate to their age and situation.*

Most institutions offer a range of meaningful spare time activities, often organised by age groups, and let the children decide whether they join it or not. They often can spend their free time in clubs or organisations outside the institution.

Serbia: *Institutions encourage children to make use of their free time just like their peers who aren't deprived of parental care, by pursuing hobbies and sports, going out, picnicking, relaxing in other ways common to children of their age.*

Restrictions most often have to do with financial barriers, or the need to ask for permission from the staff or with a parent's refusal for some type of activity. It is also mentioned by some that the accessibility to organised leisure activities can be problematic for disadvantaged children in general and children in care in particular, while others refer to specific opportunities for children in care, for example to be exempt to pay fees⁴².

Day-to-day life in an institution is a lot more organised and structured than it is in the family setting. The daily routines can vary from one institution to another and are usually regulated in the house rules with set times to eat, sleep, study, play... All institutions have a set schedule for all daily activities, adapted to their age and leaving some margin for the children.

Since the closed institutions are not covered in this survey, children can leave the premises but most house rules require staff's permission to do so.

Norway: *Normally, most institutions have rules, some are reported to be too strict (on leaving the premises), versus Serbia: certain rules and time frames for visits do exist, but are quite liberal and not restrictive.*

Most institutions have a system of living arrangements in different age groups. Some groups are kept rather small to imitate some kind of family life. As the children get older, they are often divided into living groups according to gender.

In some countries there is a clear policy to move from large groups of children, into smaller groups of peers living together in separate parts of the institution.⁴³

Lithuania: *Usually, smaller groups, so-called 'families', are composed considering children's age, gender, family relationships, individual needs etc. Starting from 2015, there is a wish to have groups of 8 children living in these 'families'.*

Ireland: *An inspection report (2008) of the Health Information and Quality Authority, it was found that, in the main, children spoke warmly of staff members and the other children they lived with and that relationships between staff and children were characterised by warmth, thoughtfulness and humour in many centres. Children had friends in the community, went to local schools, many were on local sports teams and had regular contacts with their family.*

⁴² E.g. Denmark, Lithuania.

⁴³ E.g. Lithuania, Serbia, Slovakia.

5.5. Post placement care⁴⁴

A comparison between the UN Guidelines and the reported answers shows that in the area of post placement care a whole lot of work still remains to be done. Referring to the so often quoted 'best interest' of the child the all too frequent lack of after-care, or rather poor quality of it, can even be considered as a violation of this right. Whether the child has reached the age of majority or not, the reality in many European countries seems to be that they leave the institution with hardly any follow up or support at all.

Ireland: *Although standards require that children and young people need to be prepared to leave the care centre, the above mentioned inspection report (2008) report found that in a number of inspected care centres there were insufficient or no plans in place to assist children in their preparation for leaving care.*

Most of the ombudsman report that, in reality, children are not as well prepared to leave the institution as they should⁴⁵. Others are more positive and report on good cooperation with social work, on strong efforts to make a gradual familiarisation with the new living arrangements, either back at home or in some type of independent living arrangement⁴⁶. This is crucial especially after living in a very organised structure where everything is arranged for the child. Much more should be invested in after-care support systems such as parent support, autonomous living and support in case of rather traumatising return to the home setting (especially when during the placement no work has been done with the family back home).

Vojvodina: *Social welfare centres completely lose sight of them after the provision of social service has ended.*

As for follow-up, this also remains a lot to be desired. Not all respondents even had information on where the child returns to after the placement. Too severe family problems can lead to the child being adopted, move into foster care or start living on his/her own⁴⁷. Where there are figures available, the majority of children does not seem to return home. There seems to be a system of

⁴⁴ UN guidelines, par. 131-136: (131) Agencies and facilities should have a clear policy and should carry out agreed procedures relating to the planned and unplanned conclusion of their work with children to ensure appropriate aftercare and/or follow-up. Throughout the period of care, they should systematically aim at preparing children to assume self-reliance and to integrate fully in the community, notably through the acquisition of social and life skills, which are fostered by participation in the life of the local community.

(132) The process of transition from care to aftercare should take into consideration children's gender, age, maturity and particular circumstances and include counseling and support, notably to avoid exploitation. Children leaving care should be encouraged to take part in the planning of aftercare life. Children with special needs, such as disabilities, should benefit from an appropriate support system, ensuring, inter alia, avoidance of unnecessary institutionalization. Both the public and the private sectors should be encouraged, including through incentives, to employ children from different care services, particularly children with special needs.

(133) Special efforts should be made to allocate to each child, whenever possible, a specialized person who can facilitate his/her independence when leaving care.

(134) Aftercare should be prepared as early as possible in the placement and, in any case, well before the child leaves the care setting.

(135) Ongoing educational and vocational training opportunities should be imparted as part of life skills education to young people leaving care in order to help them to become financially independent and generate their own income.

(136) Access to social, legal and health services, together with appropriate financial support, should also be provided to young people leaving care and during aftercare.

⁴⁵ E.g. Bosnia-Herzegovina, Ireland, Malta, Norway, Vojvodina.

⁴⁶ E.g. Croatia, Cyprus, France, Luxembourg, Madrid, Poland, Portugal, Slovakia. In Bosnia-Herzegovina there are elaborated support systems for young people leaving care and reaching the age of majority.

⁴⁷ E.g. Portugal: In 2009, out of 3016 children leaving care, 71% was subject to another measure (37% with parent support at home, 14% with support to other family members and 15% being entrusted to a selected person for adoption and 118 children receiving support for independent living.) For 17% of the children no other measures were considered necessary (50% returned home, 26% went to live on their own). For an additional 12% no measure was taken after placement, as most of these young people reached majority.

The French report mentions the precarious living situations of young adults leaving care and notes that 30% of the homeless in France come from the child protection service. The Lithuanian ombudsman mentions the negative figure of 131 children who were returned from foster family care back to institutional care.

consecutive placements, in different types of care, for many children⁴⁸; some may even get in more trouble and end up in juvenile delinquent's centres.

The Spanish ombudsmen refer to a right to follow-up care for one year (Andalusia), family support, both technically and financially (Catalonia) or being supported by the local social services when needed (Madrid).

Croatia: If the child leaves the institution to return home before the age of 18, the institution is obliged to monitor the family and this is generally carried out.

6. PROTECTION RIGHTS – VIOLENCE AND LEGAL PROTECTION

6.1. Protection from violence (art 19, 34, 36 and 37)⁴⁹

Protection from violence and abuse is regulated in all countries, either by general or specific legislation, or by standards for behaviour or guidelines.

More and more countries have translated this right into very specific regulations on institutional care or consider violence against children in care as either an autonomous offence or as aggravating circumstances, given the peculiar vulnerability of the child and the relation of authority of the institution's staff⁵⁰. Some states have developed specific strategies, protocols or plans of action on this issue⁵¹.

The laws on violence and the investigation of incidents can be executed differently on staff than it is in cases of violence among peers in the institution.

Bases on a report 'Lost in care' (2000) in Wales, new regulations were drafted in 2002 on how disciplining, bullying and behavioural issues should be dealt with. A rather detailed protocol was also established in Vojvodina, involving both internal and external child protection bodies and specific reporting procedures.

While officially violence is strictly and explicitly condemned in most countries, the interpretation of 'discipline' can still raise questions. In many countries there is an explicit policy prohibiting all degrading, humiliating and violent punishment, but a certain amount of violence or restraint can be deemed necessary in order to keep staff and other children safe. However, few reported information on how this degree of 'necessary restraint' is used in practice and the referred standards are quite vague. Separation from the group or isolation is still allowed as a sanction in many countries. In some regulations, reporting and detailed registration of such incidents and interventions is obligatory.

⁴⁸ UN Guidelines, par. 60 however states that 'frequent changes in care settings are detrimental to the child's development and ability to form attachments and should be avoided.' Although Croatia for example reports on rather well prepared returns to the family and further follow up, for some categories of children (such as children with disabilities) the consecutive placing of children lead to a Human Rights Watch report entitled 'Once you enter, you never leave' See <http://www.hrw.org/en/node/93102/section/8>

⁴⁹ UN Guidelines, par. 92, 96-97: (92) States must ensure through their competent authorities that accommodation provided to children in alternative care, and their supervision in such placements, enable them to be effectively protected against abuse....

(96) All disciplinary measures and behaviour management constituting torture, cruel, inhuman or degrading treatment, including closed or solitary confinement or any other forms of physical or psychological violence that are likely to compromise the physical or mental health of the child, must be strictly prohibited in conformity with international human rights law. States must take all necessary measures to prevent such practices and ensure that they are punishable bylaw. Restriction of contact with members of the child's family and other persons of special importance to the child should never be used as a sanction.

(97) Use of force and restraints of whatever nature should not be authorized unless strictly necessary for safeguarding the child's or others' physical or psychological integrity, in conformity with the law and in a reasonable and proportionate manner and with respect for the fundamental rights of the child. Restraint by means of drugs and medication should be based on therapeutic needs and should never be employed without evaluation and prescription by a specialist.

⁵⁰ E.g. Flanders, Croatia, Ireland, Portugal, Serbia.

⁵¹ E.g. Lithuania, Serbia, Srpska, Vojvodina.

Vojvodina: *Use of force and violence is strictly forbidden and must be sanctioned. Still, the official draft on Minimum Standards of Social Welfare Rights does mention restrictive measures, permitting their use as to ensure safety and welfare of all beneficiaries. Formulations applied in these measures imply that force can only be used to control and suppress temper outbursts and other incidents as an extreme measure that prevents further violence.*

More proactive procedures or protocols on avoiding violence or how to act upon cases of violence are only mentioned in a couple of responses⁵².

Cyprus: *According to the regulations, any disciplinary measure should abide with the following: emphasis is given to positive reinforcement, rules are drafted with children's participation and the consequences are clear to the child. Any measure taken should be a logical consequence of the child's behaviour, is decided by the director and the responsible staff member, taking into consideration the age, maturity and behaviour of the child. The measures are discussed with the child, are fair and applied to all without discrimination or exceptions. Staff members help children to take responsibility through dialogue. All taken measures should be supervised and recorded in a special Disciplinary Book (with all the detailed info of the incident and measure).*

6.2. Protection from discrimination (art. 2)⁵³

Although no reported law would allow any discrimination in this area, several ombudsmen report a certain overrepresentation of specific, socially vulnerable groups of children in our societies. The child care system as such is not set up to be prejudiced or specifically aimed at these groups, but reality shows that children in care seldom have an affluent background, highly educated parents, a strong support network, knowledge of nor access to general and preventative types of help and support or either one of the above.

Although the UN Guidelines⁵⁴ reaffirm that poverty or social vulnerability in itself cannot be a reason for placement, children from such families still seem to form the majority in institutional care⁵⁵. Other backgrounds of placed children are linked to immigration, parents with drug dependency problems, abuse or neglect, dysfunctional and/or abusive families and Roma children. It is clear that different types of family support to socially marginalised families don't by far suffice to change this picture. Luxembourg responded that there seem to be proportionally more adopted children ending up in care as well.

Ireland: *Standards state that staff should support children to understand the nature of discrimination and build their capacity to deal appropriately with any discrimination they experience.*

⁵² E.g. Andalusia, Cyprus, Denmark, Madrid, Poland, Serbia, Vojvodina.

⁵³ UN Guidelines, par. 10: Special efforts should be made to tackle discrimination on the basis of any status of the child or parents, including poverty, ethnicity, religion, sex, mental and physical disability, HIV/AIDS or other serious illnesses, whether physical or mental, birth out of wedlock, and socio-economic stigma, and all other statuses and circumstances that can give rise to relinquishment, abandonment and/or removal of a child.

⁵⁴ UN Guidelines, par. 15: Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family.

⁵⁵ E.g. in Flanders 57% are children from families in financial difficulty, 30% come from one-parent families and 30% have an immigrant background.

6.3. (Legal) aid and support⁵⁶

In most countries systems of legal support⁵⁷ or persons of trust are described in the regulations. Children can turn to legal aid centres, legal guardians, an appointed lawyer, a guardian ad litem, social welfare centres or other instances. But here as well, some ombudsmen noted irregularities or non-existence of this kind of support in reality⁵⁸. While the child will have a right to a lawyer or a guardian ad litem during court proceedings (at least on paper) this will often not be the case when the placement was decided on a 'voluntary' basis. In this last modality, it is the parents, as legal representatives of the child who will agree on the placement proposal, leaving the child with no real legal aid for him/herself. It seems that, since the placement is always deemed to serve the child's best interest, independent legal aid or external support services do not seem as necessary.

***Flanders:** although children and young people have a legal right to free legal counsel, many of them complain that this is not the case in reality. When they get a lawyer appointed for the judicial proceedings it is not always a lawyer of their choice and some don't really act on their behalf (or some even don't appear during the court session).*

In some countries, mostly in cases where the placement decision was made by the court, the child has some kind of legal capacity to contact the prosecutor or the court. In Denmark, for example, children over 12 get their own lawyer and as of 15 they become party in the proceedings and can get free legal counsel for debates concerning removal or discharge of the placement. In Lithuania the municipal welfare agency represents the child but as of 14 the child may go to court individually to protect his/her rights and legal interests in certain cases. In Portugal the child can contact the prosecutor, the protection commission, the judge or a lawyer; the public prosecutor can initiate proceedings if this serves the child's best interest.

(In many other European countries where the public prosecutor has a mandate to protect children's rights and interests, practice shows that this doesn't happen very often for children in care.)

Most respondents say that even if there would be some access to legal aid during their stay in institutions, this rarely happens in practice.

***Serbia:** A child older than 10 may address the state authorities with a petition or complaint and accept legal assistance in the sense of obtaining information on his/her rights, but*

⁵⁶ UN Guidelines, par. 19, 98, 101-104: (19) No child should be without the support and protection of a legal guardian or other recognized responsible adult or competent public body at anytime.

(98) Children in care should be offered access to a person of trust in whom they may confide in total confidentiality. This person should be designated by the competent authority with the agreement of the child concerned. The child should be informed that legal or ethical standards may require breaching confidentiality under certain circumstances.

(101) In situations where the child's parents are absent or are incapable of making day-to-day decisions in the best interests of the child, and the child's placement in alternative care has been ordered or authorized by a competent administrative body or judicial authority, a designated individual or competent entity should be vested with the legal right and responsibility to make such decisions in the place of parents, in full consultation with the child. States should ensure that a mechanism is in place for designating such an individual or entity.

(102) Such legal responsibility should be attributed by the competent authorities and be supervised directly by them or through formally accredited entities, including non-governmental organizations. Accountability for the actions of the individual or entity concerned should lie with the designating body.

(103) Persons exercising such legal responsibility should be reputable individuals with relevant knowledge of children's issues, an ability to work directly with children and an understanding of any special and cultural needs of the children to be entrusted to them. They should receive appropriate training and professional support in this regard. They should be in a position to make independent and impartial decisions that are in the best interests of the children concerned and that promote and safeguard each child's welfare.

(104) The role and specific responsibilities of the designated person or entity should include: (a) Ensuring that the rights of the child are protected and, in particular, that the child has appropriate care, accommodation, health-care provision, developmental opportunities, psychosocial support, education and language support; (b) Ensuring that the child has access to legal and other representation where necessary, consulting with the child so that the child's views are taken into account by decision-making authorities, and advising and keeping the child informed of his/her rights; (c) Contributing to the identification of a stable solution in the best interests of the child; (d) Providing a link between the child and various organizations that may provide services to the child; (e) Assisting the child in family tracing; (f) Ensuring that, if repatriation or family reunification is carried out, it is done in the best interests of the child; (g) Helping the child to keep in touch with his/her family, when appropriate.

⁵⁷ E.g. Andalusia, Denmark, France, Lithuania, Luxembourg, Madrid, Malta, Poland, Portugal, Srpska, Vojvodina and Wales.

⁵⁸ E.g. Catalonia, Croatia, Flanders, Norway, Slovakia.

he/she will not be authorized to file a formal claim, suit or court motion or engage a legal representative independently. However, addressing the state authority is not frequently done.

In practice, most of the children in care still (need to or choose to) rely on the staff members, or their social worker, as their support persons (other than legal counsel)⁵⁹.

6.4. Complaint procedures⁶⁰

All but three⁶¹ out of the twenty-two responding ombudsmen do receive complaints from children in care. In some countries several complaint procedures exist, either internally in the youth care sector, or in public law and administration as well as with the children's ombudsman. In some countries, rather informal complaint systems do exist within the institution as well⁶². Some ombudsman can act upon any complaint received, others need to forward it to other complaint mechanisms if they are in place, as a sort of 'first instance'.

Croatia: In case of complaints, we talk to the institution's staff and inform the competent minister. We then request the implementation of supervision and reporting back on what has been found, as well as any measures taken.

Most offices are directly accessible for children and young people and some make extra efforts to make their services known in institutions, have workshops⁶³, meetings with children or visit institutions⁶⁴ to get in touch with placed children. However several comments were made about the lack of information on this possibility for complaints⁶⁵ and no office can really make founded statements on the effectiveness.

Ireland: the need to inform young people about external complaint-handing systems - including the OCO – is outlined in the (draft) new standards.

As to the numbers of complaints to the children's ombudsmen, these vary quite a bit. Where in Cyprus e.g. the ombudsman received one (sic), some other offices handle complaints from children in care up to approximately 50 a year.

7. FAMILY⁶⁶

Given the fact that a child has the right to be cared for and educated by his/her parents and placement therefore is the exception, the parent-child relation in this context needs to be preserved as much as possible⁶⁷.

⁵⁹ E.g. Catalonia, Cyprus, Malta, Vojvodina.

⁶⁰ UN Guidelines, par. 99: Children in care should have access to a known, effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement. Such mechanisms should include initial consultation, feedback, implementation and further consultation. Young people with previous care experience should be involved in this process, due weight being given to their opinions. This process should be conducted by competent persons trained to work with children and young people.

⁶¹ Bosnia-Herzegovina, Denmark, Norway.

⁶² E.g. complaint boxes in Cyprus.

⁶³ E.g. Srpska.

⁶⁴ E.g. Croatia, Slovakia.

⁶⁵ E.g. Cyprus, Luxembourg, Norway.

⁶⁶ Apart from the guidelines on the promotion of family support and on avoiding family break-up (par. 32-52), other paragraphs deal with the family issue. UN Guidelines, par. 81: When a child is placed in alternative care, contact with his/her family, as well as with other persons close to him or her, such as friends, neighbours and previous carers, should be encouraged and facilitated, in keeping with the child's protection and best interests. The child should have access to information on the situation of his/her family members in the absence of contact with them.

⁶⁷ UN Guidelines, par. 11-12: (11) All decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life.

Placement usually does not put an end to the legal parental authority, but it does in fact limit real parental involvement in the child's life. Daily decisions are taken by the institution but in most states, efforts are made to keep parents involved in fundamental decisions for the children, such as health and schooling (unless the court decides, in the best interest of the child, that deprivation of parental authority is necessary. This is, however, rather exceptional.)

Some respondents mention that this parental involvement is often impossible due to their lack of interest in their children⁶⁸.

Srpska: *...less than half of the placed children communicate with their parents, contacts being rare and irregular; parents are simply detached and disinterested to take any activity regarding issues that influence their children's lives.*

According to some respondents, the parents are not at all involved in their children's lives and the choices that need to be made⁶⁹. And in a few countries, parents do lose their parental authority⁷⁰ but they can still be informed about their children.

Luxembourg: *as placements are until now generally decided by the court, the parents don't have the parental authority any more, which is immediately delegated to the director of the institution. (The Luxembourg ombudscommittee has advised against this, stating that removal of parental authority is not in the best interest of the child.)*

Most of the ENOC members state that different kinds of measures are being taken to keep the parents as involved as possible in the child's life, unless this would not be in the best interest of the child (e.g. in cases of severe abuse). Regulations on child-parent contact exist in most countries, sometimes described as a right⁷¹ in internal legislation as well.

Consultation of parents in drafting the specific care plan, arranging for regular contact, visits, telephone calls, weekend and holiday stays at home etc. are encouraged but not always successful. A lot will also depend on the distance between the home and the institution⁷², the type of problematic background and whether there is ongoing parental support during the child's placement. In some countries financial support is available for parents to cover travelling costs to visit the child⁷³.

Ireland: *Standards state that residential centres need to facilitate reasonable access and contact between the children in the centre and their parents, relatives, friends or any other persons who have a bona fide interest in the child.*

In most states the support of and working with the families continues during placement, even though most Enoc members admit that this is often far from satisfactory. This is due to lack of

(12) Decisions regarding children in alternative care, including those in informal care, should have due regard for the importance of ensuring children a stable home and of meeting their basic need for safe and continuous attachment to their caregivers, with permanency generally being a key goal.

⁶⁸ E.g. Bosnia-Herzegovina, Croatia, France, Luxembourg, Srpska and Vojvodina. We should however be aware of the fact that, not showing a clear interest in their children, may have a lot to do with underlying feelings of shame, of incompetence, of not trusting the institution or social workers (due to earlier experiences).

⁶⁹ E.g. Andalusia, although it is also mentioned that institutions are obligated to work towards a fluent relationship with the parents.

⁷⁰ E.g. Madrid, Luxembourg. In Wales, when a care order is taken, parental authority is shared between parents and the local authority.

⁷¹ E.g. Flanders, Norway, Portugal, Serbia

⁷² In some countries the child needs to be placed in an institution as close as possible to the home (e.g. France, Ireland, Poland, Portugal, Slovakia...) See UN Guidelines, par. 11: All decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life.

⁷³ E.g. Andalusia, Norway, Poland, Vojvodina.

funding and personnel, a too heavy workload, and lack of parental commitment. Some ombudsmen formulated clear concerns on this issue⁷⁴.

8. ROLE OF OMBUDSMAN

As said before, the majority of children's ombudsmen handle complaints from children in care, including investigation of the complaint, mediation, referral and/or advice. Some ombudsmen also invest in other methods of contact with these children: confidential discussions and visits to institutions⁷⁵, training sessions on children's rights⁷⁶ or as part of their monitoring competence in institutions⁷⁷.

***Vojvodina:** ...but children rarely complain because of their lack of knowledge of this procedural possibility and because of their scepticism regarding the effectiveness of their complaints.*

On a more structural level ombudsman can play a specific role as policy advisor, drafting recommendations, or conducting research to report on care settings⁷⁸, organising campaigns.

When asked for their possible added value, the following characteristics of their work were mentioned:

- The strength of combining individual complaints and the content of the recommendations on institutional care.
- The holistic children's rights approach and placing the child's interest in the centre,
- Speaking out for vulnerable children, being their only 'watchdog'.
- The strong independent status and combination of powers, such as the right to have free access to institutions or the right to demand responses from the authorities when questioned on certain practices.
- Improving care standards.
- Awareness raising and campaigning.
- Publicising reports and denouncing problematic issues in institutional care.
- Taking up an inspection or monitoring function where this doesn't exist.
- Informing the UN Committee on the rights of the child through alternative reporting.

Aside from the 'regular' ombudswork, some offices also setup specific projects or activities for and with children in care:

- In Cyprus and Serbia, a few children in care are members of the ombudsman's Youth Advisory panel.
- The French ombudsmen has regular consultations with children and young people in care.
- In Malta there is the 'Rights 4U' project, a kind of children's rights training where in which children in care are encouraged to participate for free.
- Catalonia drafted a specific report (2009) to parliament with many recommendations which are now being followed up.
- In Bosnia-Herzegovina as well, over 2000 children in care took part in a research project, of which the results led to several recommendations to all competent bodies.
- The Welsh ombudsman is working with young people leaving care and made a guide, 'My planner', to give care leavers some support to find their way in independent living.
- In Vojvodina a research among high school children a pronounced distrust in institutions was registered.

⁷⁴ E.g. Norway, Portugal.

⁷⁵ E.g. Catalonia, Croatia, Cyprus, France, Portugal, Srpska, Vojvodina.

⁷⁶ E.g. Croatia, Srpska.

⁷⁷ E.g. Cyprus, Portugal.

⁷⁸ E.g. Wales, mentioned Waterhouse report 'Lost in care' (2000), Cyprus (2009), 'Study on ensuring the right to participation of children who live in care institutions'.

- The Irish ombudsman has good working relations with the Irish Association of Young People in Care, who can refer children to the ombudsman in case of complaints.

9. GOOD PRACTICES

Several respondents mentioned good practices in their countries. We cannot publicise all of them but here is a selection.

Croatia

A Master Plan for Deinstitutionalisation and Transformation of Social Welfare Institutions (2010-2016) has been produced. The idea is to reduce the numbers of children and young people in institutions and refer them to new forms of care, by stimulating family reintegration with guarantees of local family support systems. More concrete targets are:

- change the ratio of institutional vs. non-institutional care for children and young people without parental care to 19/81% by 2016,
- providing non-institutional care for 40% of the children placed for behavioural problems, along with necessary training and supervision for service providers,
- reducing the number of children with developmental problems in systems of weekly or permanent placements by 40%.

Flanders

In 2004, the Flemish legislator reorganised several sectors of youth care and in this process a separate decree was voted, specifically on the rights of children in youth care, including the residential settings. At first, this initiative encountered quite some resistance (from parent groups, from professionals, from politicians...) but reference to the obligations of the Convention of the Rights of the Child finally made the decree possible.

In this decree, the Convention of the Rights of the Child is translated as much as possible and the general idea is to safeguard all children's rights to the fullest degree even though the fact of being in care does limit some of these rights in practice. With this decree, the child under 18 acquired a fully-fledged legal status within youth care.

Although its implementation could still improve, it caused a certain change in mentalities of youth carers and it also contains the obligation to invest in ongoing children's rights training for all professionals involved.

France

In the French report, several good practices on a more local or regional level were mentioned, such as:

- (Rhône): The childhood commission of the Lyon Lawyers Association has been called upon to encourage practitioners to develop a better understanding of the need to take the child's vision into account.
- (Bas Rhin): a specialist team can intervene in cases where parent-child meetings cause difficulties for the institution to give necessary support.
- Some institutions have produced child friendly versions of information on the centre's way of working, with cartoons, and others organise previous visits or some kind of 'trial' stay before the child is admitted.
- Local initiatives have developed mitigating measures, such as the choice of an extended period of support, the formulation of a specific support programme, the development of partnerships with other bodies and associations, the networking of the institution with the external monitoring service, the establishment of a mediation tool regarding the child's capacity to assume responsibility for him/herself, the development of "committees of young

people who have reached the age of 18" (so that they can define their own rules and are able to reach a stage of maturity), etc.

Certain institutions have also set up specific accompanying structures to help the children to become more independent, either within the same placement facility or in the form of a semi-independent arrangement in individual or collective accommodation in the town centre.

Ireland

In Ireland, the quality standards have been revised and a Draft National Quality Standards for residential and Foster care Services for children and young people are ready to be formally adopted. These new standards were developed with an advisory group, including an OCO representative and are based upon the Convention of the Rights of the Child, the European Convention on human Rights as well as on the Un Guidelines.

Madrid

Like in Flanders, the regional community of Madrid has explicit legislation on the rights and duties of children and young people residing in care centres. More specifically:

A) Rights:

1. To be treated without discrimination based on sex, race or religion, ideology or any other personal or social situation or circumstance.
2. To be treated fairly by the centre staff and all residents.
3. To have their right to professional secrecy protected and their record and other information used with judicious discretion.
4. To maintain contact with their family and receive visits at the Centre within the framework laid down by the Civil Code.
5. To have sufficiently gratified the basic needs of life to achieve effective personal development.
6. To have access to services that are not available at the Centre, but are relevant to meet their needs and ensure proper development of their personality.
7. To demand respect for their personal privacy and personal belongings in the educational context at the Centre.
8. To enjoy balance between sleep, leisure and work time in their every-day life.
9. To participate actively in the drawing up of rules, as well as in programming and developing internal and external activities at the Centre.
10. To be aware at all times of their legal status and participate in the development of their individual project.
11. To have their views heard and influence important decisions, if they are more than 12 years old, and, when younger than that age, if they are mature enough.

B) Duties:

1. To obey and comply with the operational and co-habitation rules governing the Centres.
2. To respect the dignity and authority of staff members and residents.
3. To take part in school, work and other educational activities with commitment and dedication.

Another initiative in Madrid is the creation of a 'Representation Commission for Children in residential care' by the Madrid Institute for Children and Families. This commission aims at encouraging and promoting the participation of children and young people in residential placement. It has become the formal channel for expressing their views and interests, without prejudice to the existence of other additional mechanisms. It seeks to represent all protected children placed in residential institutions and help boost democratic and tolerant practices among all children and young people.

Serbia

Every institutional placement decision is reviewed every six months, and even every three months if the child is younger than 7.

The family law gives children as of 10 years of age the right to, individually or through an representative, address the court or an administration on order to have his/her rights protected. The child's opinion is obtained in co-operation with a psychologist in the presence of a person of trust, chosen by the child.

Srpska

There is only one institutional care centre in the republic of Srpska, the Children's Home. In this centre children participate and get together in the so-called Children's home association, a sort of student organisation of residents of the Children's Home, with (currently) 82 students with a leader chosen by the group as a representative. This association can also be a channel for children to use for complaints. The association deals with life in the Home, rules, their rights and all other issues concerning the children and young people in the Home.

UN Guidelines

An unreported working method is suggested by the Guidelines in par. 100: To promote the child's sense of self-identity, a life story book comprising appropriate information, pictures, personal objects and mementoes regarding each step of the child's life should be maintained with the child's participation and made available to the child throughout his/her life.

Some links:

ENOC members

www.centrosdemenoeres.com

<http://www.childcomwales.org.uk/en/review-of-advocacy/>

<http://www.childcomwales.org.uk/en/my-planner/>

<http://www.childcomwales.org.uk/uploads/publications/250.pdf>

http://www.nkmr.org/english/lost_in_care_the_waterhouse_report.htm

http://www.tfal.org.mt/MediaCenter/PDFs/1_A%20Fair%20Deal.pdf

<http://www.boerneraadet.dk/files/Brd.dk%20Filbibliotek/PDF%20FILER/EKSTERNE%20RAPPORTER/Ideally%20you%20need%20a%20good%20childhood.pdf>

<http://www.defensor->

[and.es/opencms/opencms/DMA/portal/v_institucional/Consejo_de_Menores/index.html](http://www.defensor-and.es/opencms/opencms/DMA/portal/v_institucional/Consejo_de_Menores/index.html)

Council of Europe

[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2005\)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2005)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)

http://www.coe.int/t/transversalprojects/children/publications/RightsChildrenRisk_en.asp