



**2008 Sixtieth Anniversary of Bice**

**2009 Twentieth Anniversary of the  
Convention on the Rights of the Child**

**Position Paper**  
-  
**Europe-CIS Region**

**June 2008**

## Tomorrow, which world for our children?

### Position Paper of Europe and the Community of Independent States (CIS) Region

*“The impatient waiting for what will be diminishes the value of what is.” (Janusz Korczak)*

#### SUMMARY

The Europe – CIS<sup>1</sup> Position Paper brings together the contributions of an expert group who associated their various fields of competence. Their goal was to analyze the situation of child rights in the Europe-CIS region, and to evaluate contributions and challenges twenty years after the adoption of the Convention on the Rights of the Child.

The document integrates several approaches, but keeps as its main reference the **universality, indivisibility, interdependence and inalienability of the rights enshrined in the Convention**. Our starting point was to examine the impact of the provisions of the Convention on childhood public policies, and the changes occurred within civil society since its adoption. The text points out the founding rules and values which sustain it and place them in the human rights system through an enlightening and, perhaps provocative formula, “children too” and not, as it would be expected, “children first”.

**The document is articulated around three axes**, which put forward:

- Basic commitments related to the implementation of the principles and standards contained in the Convention, including listening carefully to each child when determining his/her best interests;
- Phenomena like exclusion, risky behaviors and the precariousness of family ties which affect in a particularly disturbing way children and adolescents in our society;
- Groups of children who suffer from systematic violations of their dignity and fundamental rights: in particular, we identified cross-border children, children inappropriately taken care in institutions, children victims of domestic ill-treatment and children in conflict with the law.

The text also presents **six major appeals to the consideration of public authorities** of Europe and the CIS and other concerned actors. We aim at offering orientations and suggestions so that the respect and the realization of the rights of the child become more concrete. As NGOs, our obligation is nevertheless to ensure that the Convention continues to be a living instrument at the service of childhood.

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<sup>1</sup>The Europe – CIS region is made up of the following countries: Belgium, Denmark, France, Ireland, Italy, Luxembourg, Norway, the Netherlands, the United Kingdom, Sweden, Greece, Turkey, Iceland, Germany, Austria, Cyprus, Switzerland, Malta, Portugal, Spain, Liechtenstein, San Marino, Holy See, Finland, Hungary, Poland, Bulgaria, Estonia, Lithuania, Slovenia, Czech Republic, Slovakia, Romania, Andorra, Latvia, Albania, Moldavia, Macedonia, Ukraine, the Russian Federation, Croatia, Georgia, Armenia, Azerbaijan, Bosnia-Herzegovina, Serbia, Monaco, Montenegro, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, Moldavia, Georgia, Turkmenistan.

## APPEALS

- **To ensure the effective implementation of the fundamental freedoms and rights** contained in the Convention on the Rights of the Child, which are based on the universality of human rights, the principles of freedom, justice, equality and non-discrimination.
- **To always seek the best interests of the child** which presupposes to consider the general context (legislative, political, economic and social), his / her specific situation, and to take into account his / her view point through careful consultation and listening.

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- **To develop at the local, national and regional level, family policies** that recognize, accompany, and fully support families, with a particular focus on single-parent families whose place must be duly recognized in the dialogue with public institutions.
- While preserving the principle of due diligence that each State should show in any circumstance, **to implement the principle of subsidiarity**. In the areas, which are not of their exclusive competence, States should intervene only if the family or people close to the child cannot satisfactorily achieve the proposed objectives. The respect and the effective promotion of the primacy of the human person and the family will thus be guaranteed.

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- **To adopt prevention policies**. While being respectful of the various developmental stages of the child and of his/her family and cultural background, they will bring a pertinent response to societal challenges and the abuses which continue to be perpetrated against the dignity and the rights of the child.
- **To recognize the importance of resilience** in childhood protection mechanisms. Whenever necessary, to strengthen families, and to rely on social networks and social supports (schools, communities, health services, social services) that should benefit from adequate financial resources.

## SOME HISTORICAL REFERENCES

Undoubtedly, the year 1989 marked a turning point in the world history and of Europe in particular. As incredible as it may appear, this revolution was not bloody, but took place in the light of candles that children lit among soldiers and police officers in the night from November 9 to 10: it was in front of the Berlin Wall whose collapse opened the way to democratization in the countries of the old communist bloc. A few days later, on November 20, the United Nations General Assembly unanimously adopted the Convention on the Rights of the Child<sup>2</sup>.

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<sup>2</sup> See document: Res. AG 44/25 appendix, 44 UNGAOR Supp. (No 49 to 167), Doc. A/44/49) (1989). All UN Member States, except the United States and Somalia, ratified this instrument. Two Optional Protocols respectively on the sale of children, child prostitution and child pornography, and on the implication of children in armed conflicts have then been adopted by the General Assembly on May 25th, 2000 (A/RES/54/263). It is also interesting to note that on December 15th, 1989 the General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. But, let us not forget that in Beijing, the manifestations of the Tian'anmen Square (April 15 to June 4, 1989) calling

This treaty generated deep positive changes in the legislation of several countries. To date, it has been ratified by all the European and CIS countries.

### *Twenty vibrant years*

Several historians recognize that, during these last twenty years, “old” Europe is the continent, which knew more upheavals, major events of geopolitical, economic, cultural and social nature that reconfigured it:

- In 1991, Russia becomes independent from the Soviet Union. Germany is reunified;
- The treaty of Minsk gives birth in 1991 to the Community of the Independent States (CIS);
- Between 1991 and 2000, ethnic cleansing, massacres, forced disappearances and populations displacement make rage in former Yugoslavia;
- The International Criminal Court is created after the adoption in 1998 of the Rome Statutes that 39 countries of the Europe – CIS region have at present already ratified<sup>3</sup>. The Court is entrusted to judge the crimes of genocide, war crimes and crimes against humanity. It constitutes a strong signal in the fight against impunity and the respect of the rule of law;
- The new European Court of Human Rights, a unique and permanent organ, is established in 1998;
- In 2002 the Euro is put in circulation;
- The troops of various European countries have been fighting in the Gulf war, in Iraq, in Afghanistan,... but are also engaged in several peace keeping missions all over the world;
- Since the establishment of the European Union in 1993, 18 new countries adhered to it bringing the number of its Member States to 27; moreover, once into effect, the 2007 Treaty of Lisbon will allow the creation of more adapted institutions to the functioning of the Union;
- Between 1990 and 2007, 24 new countries became member of the Council of Europe, including 22 of Central and Eastern Europe.

It is also necessary to underline **other deep changes** that occurred in Europe and the CIS:

- **The new demographic chart:** in 2005, the Council of Europe estimated that, compared to 1995 figures, in 2050, due to the inevitable ageing, the European population would decrease from 13 to 22%. A particularly important decline will take place in Eastern Europe - especially in Russia – as these countries combine a birth deficit compared to the number of deaths with a negative migratory balance. Contrary to some generally accepted ideas, this demographic decline will not be counterbalanced by immigration because 1,8 million migrants per year from now to 2050 would be needed for Europe to maintain its population on its 1995 level;
- **The fight against terrorism:** the attacks of September 11th, 2001 also caused in Europe and the CIS, the adoption of more security and repressive policies which question a certain number of basic human rights principles. An obvious example: the quasi silence of the European States on the atrocities committed in the name of this fight by the Russian army in Chechnya;
- **The effects of globalization:** whereas the living standard of some of the inhabitants of Europe and the CIS experienced material improvements, many others continue to have

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for political and democratic reforms, ended with a very heavy balance: at least 1500 people killed, 10000 others wounded by the army as well as dozens of people sentenced to heavy prison terms after unfair trials.

<sup>3</sup> To date, 105 countries are party to the Rome Statutes.

difficulties related to unjust wealth distribution and the fluctuations of a globalized market economy. At the same time, the development of communication technologies highlights the differences of assets and opportunities, accentuating the social and political repercussion of inequality.

## **“CHILDREN TOO”: TO RALLY AROUND THE CONVENTION ON THE RIGHTS OF THE CHILD AND ITS FOUNDING VALUES**

The Convention on the Rights of the Child is the result of a consensus obtained 20 years ago between various legal, political and cultural sensitivities, which allowed its ratification by States. It is a founding treaty, including in the same text civil, cultural, economic, political and social rights, and which two Optional Protocols have supplemented (see p. 5, note 3). In the future, the work of the Committee on the Rights of the Child to which NGOs are closely associated will continue to deepen its interpretation.

### *Welcomed progress*

Undeniably, the Convention had several positive effects:

- **The gradual establishment of a child rights culture.** Admittedly, some grey areas and gaps continue to exist in the effective implementation of the provisions of the Convention. However, the Europe – CIS region found in the text, its two Protocols and in the deliberations of the Committee on the Rights of the Child, the references to ensure the respect, protection and realization of child rights within the framework of the indivisibility and the interdependence of universally recognized human rights. Regional national standards gradually integrated the provisions of the Convention. This was mainly due to the awareness created around this treaty compared to other international human rights instruments and to the advocacy efforts of many institutions. Periodic reports which examine the situation of childhood in the different countries of the region are overall presented on time. The Committee, which adopts General Observations and recommendations at the time of the Days of General Discussion, **makes the Convention a living legal corpus, source of inspiration for various actors.** It is also important to welcome the Committee efforts to address to States party concrete and specific recommendations in order to facilitate their implementation on the field and to check easily their degree of application. Thus, we can affirm that in 20 years, the standards of the Convention succeeded in constituting a framework of reference accepted by all.
- **Child-friendly initiatives.** The child rights culture, which gradually developed, is greatly due to the work of the Committee, UNICEF and NGOs. It generated several child-friendly national and regional initiatives: **reforms in the field of juvenile justice, the creation of ombudsman** or similar independent institutions of child protection, various prevention campaigns initiated by national and local NGOs as well as their engagement in the preparation of alternative reports to the Committee, granting more prominence to child rights in the political agenda, a stronger willingness to adopt a human rights based approach in children’s programs.
- **A new perspective on childhood.** A new perspective on childhood has developed since the adoption of the Convention: children are no more regarded as “less valued beings” who would reach their blooming only in the future, but as rights-holders, **true subjects and not any more objects of rights. This recognition requires consulting**

**children**, becoming aware of their point of view<sup>4</sup> both in daily life, at home, in the street, at school, on the playing grounds, between friends, as well as at the time of more exceptional events which affect them deeply. In particular, one should learn how to listen to children in the family, a family which gives place to the word of the child while allowing each one of its members to play his/her role, and with the parents as the first educators of their children. In parallel, according to the circumstances, this requirement should be appropriately extended to all public policy decisions that might have an impact on children at the local or national level.

*Approximate interpretations*

Paradoxically, the success of the Convention also carried some difficulties:

- **Children first/children too.** By isolating for the good cause child rights (“children *first*”) from human rights issues, a **form of assistantship with respect to children is perpetrated**. More than ever, in this year 2008 when we commemorate the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights, it is necessary to highlight the principle “children *too*” according to whom children are rights-holders as every human being. Everyone, because of his/her existence, enjoys in an inalienable way human rights and fundamental freedoms, without discrimination or distinction. This principle is universal and it applies to children as to anyone else.
- **Needs / Rights.** The success of the concept of child rights sometimes results in calling rights what in reality are **children’s fundamental and indeed essential needs, but not falling into the category of law**. Such an attitude weakens the Convention. For example, in the name of the Convention, some organizations assert the right of each child to a family. Actually, neither the Convention nor any other international text currently in force guarantees such a right and, moreover, they cannot do it. Many other fundamental needs (love, happiness, respect) cannot be subject of a legal recognition; their satisfaction depends upon our ethical responsibility. Similarly, the fact of **invoking in an absolute way and without much understanding “the best interests of the child”** stipulated in article 3 of the Convention reduces the scope of this principle. The best interests of the child are not unique; they are a complex set of interests which must take into account the present context of the child, the possible evolution of his / her situation in the short and long-term, his/her maturity and his/her opinion.
- **Promotion/Protection.** The promotion of child rights is fully supported by all concerned actors; it generates a consensual acceptance, significant financial resources are allocated to it. On the other hand, the **most serious violations of children human rights are not always sufficiently examined**; collection of precise factual data, which would support prevention policies, is weak due to a lack of resources. In the same way, very often there is a lack of political will to redress the most obvious violations and to implement effective child protection policies. For example, if, within the framework of juvenile justice, one must welcome the introduction of alternative measures to imprisonment, it should be noted that capital punishment, life imprisonment and the obstacles to defend people detained for crimes committed when they were under the age of 18 are too often overlooked. On the contrary, States and all child rights advocates should vigorously condemn these practices.

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<sup>4</sup> Articles 12 to 16 and Article 31 of the Convention call States party to guarantee children the right to express their views freely, to enjoy freedom of thought, conscience and religion, freedom of association and the right to privacy, honour and reputation as well as the right to leisure and to participate freely in cultural life.

Today, the necessary re-mobilization around the Convention implies the respect and full application of the standards contained in this treaty and its two Protocols in every European and CIS country. Twenty years after the adoption of the Convention, we must be unequivocally committed to the effective implementation of the principles enshrined in it and to the consequent harmonization of national legislations.

#### *Founding values*

Based on this requirement, the interpretation of the articles of the Convention that the Committee has developed so far in its General Observations and in the recommendations issued at the time of the Days of General Discussion should be widely disseminated. It will emphasize the scope of the provisions of the Convention and will inspire childhood public policies.

In a society of materialism and hard competition, the re-mobilization for child rights requires to go back to the principles underlying the Convention and that can already be found in the Declarations that preceded it. These values inspired the text of the Convention and are its ultimate expression:

- The value of **present**: children are not the people of tomorrow, they are people today;
- The right to **life**, the most fundamental human rights, and the right to **physical and moral integrity** call for the full respect of the child;<sup>5</sup>
- The **dignity** of the child which implies **self-esteem and the pride to be a person**;<sup>6</sup>
- **The child specific identity** enabling him/her to explain his/her history, to have a present and, perhaps, to leave a trace in the future;
- **The spiritual dimension**, recognized by the Convention, and that we regard as an essential component of the integral development of the child;<sup>7</sup>
- **The respect of the child, and the confidence in him /her** as a human being;
- **The mutual aid and the solidarity** which allow the child to deal with the most difficult situations by developing strong ties with his/her family, close relatives, the community and his/her environment. This is what we call **resilience**;
- The coexistence and the respect of every child, according to the principle of **non-discrimination**.

### **PARTICULARLY DISTURBING SOCIAL CHALLENGES**

#### ***- Exclusion, in particular of rom children<sup>8</sup>***

Poverty and exclusion of children and their family are a multifaceted phenomenon. To examine it appropriately, it would therefore be desirable to take into account all aspects of a child life, including housing, access to education and health care, his/her parents' employment or his/her need to keep a contact with the members of his/her family. This is even truer as **poverty and exclusion often generate a decline in his /her self esteem, physical disorders, behavioral disturbances and a disappointing school performance.**

This challenge relates in particular to children belonging to minority groups, migrant children, and children living in single-parent families or with one or the two parents unemployed or sick. It is a growing concern in Europe and the CIS. Recent reports estimated that **18 million**

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<sup>5</sup> See Article 6, and Articles 19, 24, 32 and 37 of the Convention.

<sup>6</sup> See Articles 28 and 39 of the Convention.

<sup>7</sup> See Articles 17, 23, 27 and 32 of the Convention.

<sup>8</sup> Roms include a number of initially nomad populations coming from the North Western part of the Indian sub-continent.

**children under the age of 15 live in a situation of extreme poverty in South Eastern Europe and the CIS.** And, in the European areas with stronger income, the percentage of children living in a family with an income lower than half of the national average is increasing. It even exceeds 15% in the United Kingdom, in Ireland, Italy, France, Germany, Spain and Portugal. Poverty, which, nowadays, threatens 19% of the children living in the European Union, determined the European Commission to proclaim 2010 “European Year for Combating Poverty and Social Exclusion”. The purpose of this initiative is to urge the Union citizens and all interested public, social and economic actors to eradicate this scourge.

According to the studies published so far on the factors reducing social exclusion and on the strategies to deal with it, it is essential to be better informed on the way children<sup>9</sup> perceive their rights. Useful indicators for the implementation of child-friendly policies and services could be defined. This approach is important because it is mainly through contacts with their peers that children learn the significance of poverty and discrimination in their life.

#### *The Roms, a European people*

As part of our work, rom children deserve a special attention. Their access to the right to education, inter alia, is precarious. **Out of the more than 4 million rom children in Europe, it is estimated up to 2 million those who will never attend school in their life.**

Roms live in almost all of the Council of Europe Member States; in some Central and Eastern European countries, they represent more than 5% of the population. However, even if they are present in Europe since the XIVth century, Roms are not often recognized by the majority as a European people. They have suffered from constant rejection and persecutions, which culminated in the attempted extermination perpetrated by the Nazis.

As a result, today, Roms experience difficult conditions; often at the margin of the countries where they live, their participation in public life is extremely limited.

Given the requirements of primary schools before 1989 and the resulting selection process, the majority of rom children attended specialized schools intended for persons with mental deficiencies. Nowadays, as the Advisory Committee of the Council of Europe Framework Convention on the Protection of National Minorities affirms in its report of October 26th, 2005, Roms continue to represent up to 70% of students enrolled in special schools.

#### *A discriminatory teaching*

The Council of Europe Human Rights Commissioner, Mr. Thomas Hammarberg, has also observed in his final report of February 15th, 2006 on the human rights situation of Roms, Sintis and travelling people in Europe: “It is common that Rom children are placed in classes for children having special needs, without adequate psychological or educational evaluation, the only criterion being their ethnic origin”. This is even truer for countries of Central Eastern and South Eastern Europe. As they have not adopted a uniform national definition of “deficiency”, they apply definitions based on the link between deficiencies and children socio-cultural origins opening the way to long-term discriminatory practices.<sup>10</sup>

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<sup>9</sup> For example, it is interesting to note that in Ireland, a detailed study, conducted in the Nineties, and that associated children to the choice of indicators, showed that children did not consider material goods and leisure as a priority. According to them, the main factors of wellbeing were the relationship with their family, then their friends, school, and pets. For more information, see: *Overall picture of the wellbeing of the children in the rich countries*, UNICEF, Innocenti Research Center, Assessment Innocenti 7, 2007.

<sup>10</sup> According to UNICEF studies (Innocenti Insight, 2005) and Save the Children (Denied a Future: the Right in Education of Roma, Gypsy and Traveler Children, 2000), the excessively high placement of certain categories of

Legislation is necessary to effectively protect from the inequality of treatment as regards education. It is also essential that it is adequately applied in order to combat direct or indirect discrimination exerted against rom children and to support a change of mentalities within civil society. Finally, in certain communities, it would be critical to sensitize rom parents to the importance of quality education for their children.

### **- Adolescents' behavioral risks**

The media and labor markets globalization influences more and more young people's perceptions, choices and behaviors. Today, many adolescents have more opportunities and disposable incomes, but, at the same time, they are more vulnerable to consumer products and to potentially harmful substances like alcohol and drugs. Social and economic transition in the Central and Eastern European countries, poverty, important emotional neglect, and conversely, hyper family protection and excessive expectations vis-à-vis children in our societies of performance<sup>11</sup>, carry destructive behavioral risks for many adolescents.

#### *Learning to "be"*

These developments lead to behaviors, which produce situations of addiction, dependency and danger. In most cases, these young people suffer from the incapacity of adults to create social justice contexts. They must integrate the idea that in order "to be", it is necessary "to have", or, even worse, that "to be" and "to appear" are synonymous. These young people suffer from isolation even if, apparently, they give the impression of being socially integrated. Among the most alarming manifestations, we have noted:

- **The drug consumption**, whose market offers an increasingly wider choice, and of **alcohol** which becomes generalized and trivial: daily or weekly use by an increasingly younger public. According to the World Health Organization, the trend of testing high-risk practices such as drunkenness and intoxication as well as the concomitant consumption of alcohol with other psychotropic substances is increasing. Obvious links have been established between the consumption of alcohol, tobacco and illicit drugs on the one hand and, on the other hand violence, risky sexual behaviors, traffic accidents, permanent disabilities and deaths.
- **The wandering**, which can take multiple forms depending on the context: young people wandering in their town, runaways lured by big towns, young backpackers moving from town to town, isolated foreign minors living clandestinely. These adolescents who often run away from domestic ill-treatments or living in institution have in common a life spent at school and society margins and, often resort to crime to survive and/or adults' exploitation. **Many of these fragile young people are usual consumers of drugs or alcohol and suffer from psychological disorders.**
- **The virtual world of video games**, which walks more and more adolescents into imaginary universes of which they can become the heroes, into ultra-violent cyberspaces, whose ultimate objective is the enemies' total destruction. In particular, this phenomenon

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pupils in special schools is due to a combination of several factors, including: "unconscious racial prejudices of school authorities, major inequalities of resources, an unjustified recourse to IQ and the differential power between parents belonging to a minority and school authorities".

<sup>11</sup> According to Professor Jean-Yves Hayez, "not only each family await too much from the child, but, most often, society, including groups of adults and lobbies often put their desires well ahead the child welfare ... and claim that their desires correspond to the good of the child".

becomes the “refuge” of boys breaking-up with their family, friends, and school and reflects the loss of reference to reality and values. New forms of communication, which allow to exchange by building an imaginary image, exploring unknown or prohibited worlds particularly attract adolescents and young adults. The absence of limits to this kind of communication and weak parental control **often leave adolescents alone in their exploration. A process of alienation starts.** Each one, with his/her computer and his/her cell phone, has the opportunity to watch or play scenes of violence, or visit pornographic sites. Adolescents can also become prey to predatory who finds, in the forums dedicated to youth exchanges, new hunting grounds.

- **Self-mutilation and suicide attempts** are the expression of a discomfort when violence is turned against oneself. Adults often regard these demonstrations as a cry for help or the consequence of social isolation or lack of attention. It is also important to remind that there is a strong propensity with the repetition of the suicidal gesture (approximately 15%)<sup>12</sup>. Thus, to help better adolescents, **it is essential that the family and the educational and medical staff accompanying them, tries to help them regaining self-esteem** namely by valuing their competences and providing appropriate structures as of first care support.

#### **- Precariousness of family ties / Families' precariousness**

Families' dispersion, increasing separation of couples, family re-composition are the manifestation of a major change in European societies. The precarious nature of family ties affects children who have difficulties in finding a balance after their parents' separation, in particular if conflictive. It can also lead parents to neglect and even abandon their children, as we can notably see today in Russia or Romania.

Because of the dismantling of the socialist social protection system, a very significant number of Russian children are homeless, in the street and uneducated. According to official figures, 3 to 5 million children are thus abandoned, of which only 700 000 are orphans or children of parents deprived of their authority. The other children are neglected by their parents or likely to find themselves in dangerous living conditions, without protection or education<sup>13</sup>.

Isolated families, mostly resulting from parents' separation, are more affected by insecurity and poverty. These families are in great part headed by women living in social isolation, and facing the challenge of combining their children's education and their job. The question of children's custody can complicate the situation and keep families in the systems of social assignments. Precarious and part time employment contributes to maintain them in poverty situations. Social isolation is, then, an aggravating factor.

#### *Helping parents to help children*

In general terms, transmission mechanisms are weakened today, impeding young parents to find in their close family environment the benchmarks to take care of their children. At the beginning, they often need counseling and support to take up their new role. The assistance they find during the child first years will be useful to them.

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<sup>12</sup> See: Parliamentary Assembly of the Council of Europe, the Suicide of Children and Adolescents in Europe: Serious Public Health Concerns, Doc. 11547, March 27th, 2008.

<sup>13</sup> Dorena Caroli “Social Abandoned Children or Orphans? Evolution of Social Policy in Perestroika and Post-Communist Russia (1989 - 2004)”, Sociétés et jeunesses en difficultés, N° 4 - Fall 2007.

In a number of Western European countries, public policies have started to integrate **support measures for parents**. They consider them as actors and partners in protecting their children, thus breaking with traditions of substitution or indifference.

However, these experiences remain punctual both in time and in relation to the low number of concerned families. In addition, professionals who work with such families are rarely trained in this approach.

Meanwhile, in Europe, a discourse on parental responsibility as a new axis of prevention policies to fight against delinquency is developing. It considers parental failure as the source of some of the problems related to juvenile delinquency. Parents are called to monitor their children and comply with laws, in particular those on compulsory education<sup>14</sup>. At present, the effectiveness and the cost of these new practices and mechanisms governing them are little evaluated. Important challenges remain to be addressed in order to ensure child-oriented protection measures.

## CHILDREN WHOSE RIGHTS ARE SERIOUSLY VIOLATED

Even if theoretically the adoption of the Convention guarantees to each child the enjoyment of higher protection standards and better defined rights, some of them continue to find themselves in extremely dangerous situations. These children pose a particular challenge for the implementation and proper articulation of child rights.

In Europe and in the CIS, these children are mainly those under the direct responsibility of the State. They are - or should be – at the core of article 19 (Protection against all forms of violence) and articles 22, 30, 32-36, 37b-d, 38-40 of the Convention. The Committee on the Rights of the Child mentions them under the heading “Special protection measures”.

### - *Cross-border children*

Since the Nineties, a new group of countries, Spain, Greece, Ireland, Italy and Portugal started recording a high immigration rate due to their growing economic prosperity and the redirection of migratory flux due to more restrictive policies in traditional European destination States. At the same time, former communist countries bordering the European Union and those of South Eastern Europe became transit countries. Thereafter, some others like Cyprus, Hungary, the Czech Republic, Slovakia and Slovenia became countries of destination. Inside sub-regional areas of the former Soviet republics, the Caucasus or the Balkans, many movements of people, including very young children took also place. While **displacements due to family or protection reasons** (in particular from former Yugoslavia, Iraq and Iran) remained relatively **stable**, those **economically motivated** considerably **increased** compared to 20 years ago. Another new trend is the growing rate of irregular migration, which can take

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<sup>14</sup> Many European countries adopted measures aiming at “restoring juvenile delinquents parents in their educational functions”:

- Implication in the legal procedure when their child is accused;
- Incentive or obligation to achieve a training course or to follow a “parental” program;
- Contractual parents’ engagement on educational objectives or educational monitoring;
- Questioning parents’ civil or penal responsibility.

Sentences, thus, were issued against parents considered passive or even complacent with their child. Generally, the aim is to encourage parents to take up again their role in their child education while putting forward their parental authority and developing their educational and sometimes social and emotional competences.

the form of an irregular entry or of a not - authorized extension of the period of stay in a given country. Criminal networks of traffickers<sup>15</sup> often manage these kind of situations.

### *Uprooted children*

By cross-border children, we mean children who cross territorial borders (States or intra States), with or without their family. They are out of their traditional community, often uprooted and exposed to violations of their fundamental rights.

These children belong primarily to three categories:

- Migrants who are invariably voluntary and irregular with the exception of those who have been previously accepted within the framework of family reunification;
- Asylum seekers including good faith applicants who flee persecution and other similar situations, victims of human trafficking and for whom return would be highly risky, all those who demand asylum rather than trying to emigrate irregularly (“voluntarily”);
- Victims of human trafficking whose situation is more complex: that these children migrated or not voluntarily, their “assent” is vitiated. But if it is reasonably possible that they are exploited against their will, their displacement is not forced per se.

Serious violations of child rights are documented at all stages: the treatment at the moment of arrival, conditions of accommodation and access to basic services, criteria to decide on the residence permit, considerations on the best interests of the child when ruling if he/she should return to his/her country of origin, protection services to be granted to those who remain in an irregular situation<sup>16</sup>. Similarly, when determining the practices to follow and the measures to adopt, especially in the case of migrants and victims of human trafficking, it is important to **take into account not only the obligations of the countries of destination, but also the responsibilities of the countries of origin** and the diligence they owe children.

### *To emigrate, immigrate: a series of shocks*

Even if there is not a “typical profile” of cross-border children and their family, the majority of them undergo highly traumatic processes. Children interiorize the pain and the stress experienced in the community of origin, as well as the experiences faced during their journey, even if they finally end up in a “secure” place or country. The collapse of family, community and social links often consecutive to the displacement, whether it is wished or forced, might break of the natural “bandage”, in particular the bonds of attachment necessary to calm the pain. It reinforces traumatizations.

For cross border children, the shock of immigration rests on the precariousness in which they are obliged to survive in the destination countries (not often very much welcoming), generally perceived as richer and more “democratic” than the place of origin. A double discourse evokes child rights while pushing them to be assimilated to the destination culture in order to become “like the others”. **This discourse sends back to the child a negative image of his/her parents and of his /her own culture**, he/she is confronted to inequality of treatment and discriminatory attitudes. Indifference, which generates uncertainties and great insecurity for the

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<sup>15</sup> See: *Migrations in an Inter-Connected World: New Prospects of Action*, World Commission on International Migrations Report, December 2005.

<sup>16</sup> Preconceived ideas, such as that regularization and integration rather than return to the country of origin correspond necessarily better to the best interests of the child, emerge when the concerned child is not consulted and that an attentive and exhaustive examination of his/her case does not take place.

future, develops in closed retention centers, the obstacles in administrative procedures or the deficiencies of protection policies for exiled children.

For “newcomer” children as for “hosting” children and their families, it is thus urgent to **develop proactive accompanying policies as a result of the dialogue between countries** of origin, countries of destination and the representatives of civil society. In so doing, for cross border children, it will not be any more “their” problem, but “our” common history where respect and solidarity will become a reality in view of “living together”.

#### **- Children inappropriately cared in institutions**

The question of children and in particular of disabled children living in institutions is common to Europe and the CIS. However, in former communist countries, the situation continues to be particularly serious<sup>17</sup>. Children are victims of prejudices and discrimination and kept away from society. In spite of some positive changes, children’s abandonment and placement in institution continue, especially due to the economic difficulties met by families, the absence or the insufficiency of social security and the difficulty in changing mentalities; the victims of these practices are very often children belonging to minority groups.

#### *Governmental gaps*

Governments poorly finance services in favor of children and families at risk though studies show that the cost of keeping a child in an institution is much higher than the creation of alternative services or the realization of early interventions if the child remains at home<sup>18</sup>.

**In order that a genuine “deinstitutionalization” movement develops, and that, at the same time, preparation to exit be possible**, it would be necessary to deploy proportionate resources to the gravity of the phenomenon and its repercussions on the present and the future of children. It would be necessary to implement a number of measures, namely:

- **Intergovernmental cooperation programs in favor of children in institutions.** They should develop alternative ways to institutionalization, political measures in favor of families aiming at preventing abandonment, or at integrating young adults, who have only known the institutional world, in the labor market<sup>19</sup>;
- **The creation of bodies entrusted to supervise and advise institutions** (residences, groups of life, communities, children’s villages, etc), as well as fostering or adoptive parents, in order to protect child rights. These bodies should elaborate indicators and guidelines with the participation of all interested actors, to check if targeted assistance is well provided;

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<sup>17</sup> With the collapse of the Soviet Union and in spite of the rapid economic growth of this region, the rate of children placed in institutions did not decrease. On the contrary, it stagnated or even increased. In 2005, in Central and Eastern Europe and in the CIS, it was estimated that out of the approximately 1, 5 million children formally cared (institutions, tutors and fostering parents), approximately 795.000 children lived in institutions. In Russia, the rate of children left without parental care has more than tripled since the beginning of the Nineties.

<sup>18</sup> For example, as from the Nineties, in Lithuania, the alternative system of early intervention community services was developed. Currently, there are more than 30 teams all over the country and their mission is to implement alternative measures in order to prevent institutionalization. However the budget to allow their development was frozen and rerouted to institutions.

<sup>19</sup> Parliamentary Assembly of the Council of Europe, Recommendation 1698 (2005), Rights of the Child in Institution: a Follow-up to Recommendation 1601 (2003).

- **Intersector cooperation programs** in Europe and in the CIS and also between Western Europe and the other countries of the region: they should highlight bad practices (persistence of a boarding school culture, children's gathering in places where everything is collective, with no respect of their intimacy nor their individuality, and without training their autonomy), and to accelerate the exchange of best practices (development of small hosting structures, parents' support, early and concerted interventions by various official and community-based actors). In particular, in the CIS region, they should underline the urgency to modify the present system<sup>20</sup>.

All the above confirms the need of developing social community services to support parents, as well as to train medical staff when the child institutionalization is nevertheless necessary.

#### **- Children victims of domestic ill-treatment**

The first approach to the question of ill-treated childhood was medical: physical ill treatments were highlighted and it is within families, where these violations occur most and question parental capacities, that they were first studied. This allowed to register simultaneously "committed" acts such as violence or abuse, and "omitted" acts like negligence, and to differentiate between direct and indirect forms of ill-treatment, namely an unstable or dangerous environment.

The concept of ill-treatment was recognized and studied in the Sixties and Seventies. Very quickly, concerned actors rally around this issue and the Convention played a key role by pointing out States obligations and due diligence while sensitizing civil society on this matter.

During the last twenty years, especially in Western Europe, various measures improved babies' care by supporting the parent-child bond and by developing structures mitigating possible deficiencies while proposing positive models. Childbirth tends to be natural, breast feeding is promoted, the father's role is better recognized, and pre-school education develops. **Children's care and stimulation during the first three years of life have been positively valued for the development of a healthy brain** to answer constructively to life challenges.

#### *Very exposed babies*

At the same time, with inequalities growing between social environments, sometimes these projections only seem a luxury accessible to some families. Alternatively, support services are just granted to families called "at risk", instead of becoming generalized measures benefitting any child from 0 to 3 years.

Children of parents having parental incapacities present clear indicators of suffering due to underlying aggressions, wounds caused by attachment and socialization disorders<sup>21</sup>, and educational deficits. As for the family environment created by incompetent parents, social isolation and the absence of restorative experiences make it hard for children to develop resilient aptitudes.

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<sup>20</sup> If, in Russia, the new Code of the Family (1995) declares that children should as much as possible remain with their family – which indicates a welcomed legislative evolution – the willingness to reverse the tendency is weak and the State does not provide with the necessary tools to carry out this reform.

<sup>21</sup> Parents generating psychic suffering in their children establish a relationship based on an emotional model of disorganized attachment, because they have not the required empathy to understand their children's needs, and resources to take care of them. These disturbances make children wary, with violent behaviours, incapable to grow with and for the others. Regarded as responsible of their suffering when they disturb the social order, they are punished and excluded.

On the contrary, children are submitted to a stress, which blocks the formation of their identity, **preventing them from reaching considered and altruistic behaviors**. Moreover, when structure and family dynamics are rigid and closed to the environment, children have very few possibilities of getting alternative messages that might compensate those received from their parents.

In addition, protection and therapeutic support of ill-treated children proved its effectiveness in preventing “the trans-generational transmission of ill-treatment”. This is why to **evaluate in advance parental competences is essential** to decide protection and accompaniment measures for children victims of ill-treatment and their families or on the exercise of “social parenthood” by fostering family or residential centers. On the other hand, we frequently assist to interventions intended “to protect”, “to help” ill-treated children in their families. These measures do not take into account their needs of attachment, and cut out their history in “sections” of specialized interventions<sup>22</sup>. Children move from their biological family to emergency centers, and then to various residential centers or fostering families. Very often, in Western Europe, they come back to their families of origin. These attempts generally fail because parents have not benefitted from a support program to parental competences. Conversely, in Eastern Europe and in the ex-Soviet Union, a child placed in an institution has little hope to return one day at home because the recourse to the final deprivation of parental rights is extremely frequent.

#### *The essential role of prevention*

Moreover, both at the socio-educational and at the psychiatric and psychotherapeutic levels, the different treatments are not yet applied regularly and competently in comparison to children’s sufferings. In addition, these models, based on the theories of unconscious, or on behavioral changes, are not sufficient per se to deal with the consequences of ill-treatment. They contribute to the negation, trivialization or distortion of ill-treatment consequences on children’s development and existence<sup>23</sup>.

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<sup>22</sup> In many cases protection interventions aggravated, actively or by omission, child suffering in his/her family:

- The late detection of situations of domestic ill-treatment;
- Prolongation of the diagnosis’ periods;
- The slowness and inconsistency of protection measures;
- Ignorance of the instruments used to evaluate parental competences and their possibilities of readjustment in a reasonable time;
- Lack of structured programs for the rehabilitation of parental competences;
- Insufficient resources for family and residential centres in order to take into account children’s needs, including those due to the damage resulting from ill-treatment;
- Arbitrary criteria for the regulation of visits to children by their biological parents. Visits’ modalities are often established on the basis of administrative or legalist criteria which take into account neither children’s status nor their needs.

Generally, the concept of parental authority is also interpreted as being an absolute right of the parents and it is not considered from the point of view of the best interests of the child.

<sup>23</sup> Currently, the creation of more adequate educational and therapeutic methods to help children meets the following difficulties:

- Lack of emotional ties and relational implication of professionals vis-à-vis children, and often a lack of continuity in therapeutic or educational relationships;
- Lack of empathy, or on the contrary hyper-identification with children’s pain and hyper protective answers, ignoring resilience resources while “condemning” biological parents;
- Very few reflections on the role of representations and each professional’s role at the time of his/her interventions;
- Weak projections in the explanation of parents’ harmful behaviours: while recognizing the injustices and the damage they caused, they give them an acceptable understanding for the construction of children’s identity, beyond the experienced ill-treatment;
- Difficulties in managing authority in educational and therapeutic processes.

Also, it is important **to move from the concept of ill-treatment to that of “good-treatment”**. Supporting the early identification of risk situations, will facilitate the prevention of abusive behaviors in particular through the establishment of **support programs to parental competences** for parents, and of formation to the observation and development of these competences for professionals. Accordingly, it would also be desirable to put the rights of the child and his/her best interests at the heart of the development of more balanced and powerful mechanisms of intervention. In addition, preventive measures should be respectful of the child and his/her family’s private life, adapted on a case-by-case basis and targeting each child and each family.

#### **- Children in conflict with the law**

The “judicialisation” of social and family relations takes a considerable amount of children to court, in particular within the framework of their parents’ separation, situations of danger or acts of delinquency. Child rights are taken better into account by these bodies. The word of the child is more and better listened, in particular when he/she is victim of ill-treatment. Legal procedures remain however thought by or for adults and largely not child-friendly.

**In the majority of European countries, the juvenile justice system is different from the adults’ one.** It attenuates or adapts penal answers to the acts of delinquency of minors. Very often, sanctions to offenses or crimes take into account the age of the minor, his/her personality, his/her environment and the necessary continuation of his/her education.

Juvenile delinquency is an important concern for European countries. More than in number, **juvenile delinquency evolves in its forms**, with a clear decrease in offenders’ age, an aggravation of violence (in particular joint acts) and the appearance of new offenses linked to the evolution of society (happy slapping and others...).

#### *States’ attitude hardens*

Since the beginning of the Nineties, Western European countries hardened their answers to juvenile delinquency. They broke-up with the twenty years-long primacy of education over a repressive approach while strong institutionalization logics continue to characterize former Eastern European countries.

Citizens’ increasing security demands, the development of violence in society, a more meaningful place granted to victims and the loss of values among young people **contributed to reinforce the penal dimension of juvenile justice**. The accent is put on the sense of responsibility of young people, the learning of standards and social values and on the revalorized role of the deprivation of liberty. Meanwhile, alternative measures developed to support minors’ reintegration and rehabilitation. However, legal systems are especially characterized by the decrease in the age of penal responsibility, aggravation of inflicted sanctions, development of immediate appearances, progressive rapprochement with the adult justice system since the age of 16 or 17, reintroduction of closed centers for young delinquents... The signals of this alarming evolution, which marginalizes education and reintegration of young people, are indeed numerous.

#### *“Victimizing” procedures*

At the same time, another phenomenon draws our attention: the process of child victims' increased victimization, being witnesses or authors of offenses, during legal procedures. It appears in particular by:

- The use of witnessing child in the indictment, including of relatives;
- The process of multiple victimization of witnessing children or victims during expertise and counter-evaluations, the interrogations and the examinations authenticating their testimonies;
- Children's difficulty in being listened and proving the causality of the events;
- Pressure on the juvenile offender to obtain a confession by manipulations or even ill treatments to avoid investigative efforts and, possibly, leading to unjust judgments.
- The frequent absence of a lawyer to defend child rights and interests, as well as the lack of assistance and psychological support for the child during legal procedures.

The serious repercussions of these acts on the enjoyment of child rights call upon us to monitor that **police and legal practices are based on the respect and the rehabilitation of children in conflict with the law**, and not on repressive models which nourish the repetition of violence and crimes. Countries that have not yet established a juvenile justice system based on child rights, as stated in the Convention and other relevant international instruments, should be urged to implement those provisions at the earliest. The promotion of restorative justice based on child rights and needs should also constitute a work axis to be better explored.

## Expert Group Europe-CIS

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Christina Anglès d'Auriac is a jurist and, since 2003, Regional Co-Delegate for Europe – CIS at Bice. She coordinates the elaboration, realization and follow-up of projects that the organization implements with its members and partners in the region. In particular, she started several activities related to juvenile justice, disabled children, sexual abuse and prevention of juvenile violence. Previously, she was project coordinator at Caritas-France and worked for the European Commission within the Program LIEN dedicated to NGOs' social projects in Central and Eastern Europe and in the former Soviet Union.

- Jorge Barudy

Jorge Barudy is a specialist in neuropsychiatry at the Catholic University of Louvain with a specialization in childish neuropsychiatry. In Belgium, in 1976, together with other Latin American experts, he founded the Center Exil for the medico-psychosocial care of political refugees and victims of torture. Since 2000, he also directs Exil Spain in Barcelona. During 12 years, he has been a professor of a post grade program on Systemic Family Therapy at the Faculty of Medicine of the Catholic University of Louvain where he also directed the Program on Prevention and Care of Ill-Treatments against Children. Since 1990, he has been a consultant in charge of different therapeutic programs for victims of organized and domestic violence in Spain, Chile and Belgium. He published in many reviews and books some of his experiences as a therapist for victims of ill-treatment.

- Pascale Boucaud

Pascale Boucaud is Doctor in Law, Dean of the Faculty of Law at the Catholic University of Lyon, – Qualified Professor to direct researches. She is also the director of the Institute of Family Sciences, the only institute in France entirely devoted to academic and multidisciplinary training on family issues. Since its establishment in 1985 and up to 1995, she directed the Human Rights Institute of the Catholic University of Lyon. She is the author of many reports, articles and documents on the international legal protection of children, medical ethics, foreign children's adoption, the situation of children in custody.

- Nigel Cantwell

Nigel Cantwell is consultant on child protection, namely in the field of children deprived of parental care, the protection of the rights of the child in international adoption, and juvenile justice. After his 5 years long collaboration with the International Union for Child Protection, in 1979, he founds Defense for Children – International in Geneva and directs the organization during the following 15 years. During the 80s, he coordinates, together with Bice, the NGOs input to the process leading to the adoption of the Convention on the Rights of the Child and actively participates in the drafting of this treaty. In December 1994, he joins Unicef as a consultant and, then, since 1998, he is in charge of the Implementation of International Standards Unity at the Unicef Innocenti Research Center in Florence. In 2003, he comes back to Geneva as an independent consultant.

- Jordi Cots

Jordi Cots is Doctor in Law (thesis on the Universal Declaration on the Rights of the Child of 1959). He practiced as a lawyer and directed three primary schools. He has performed different functions in the Department of Social Affairs of the Catalan autonomous government and has been deputy to the Catalan Ombudsman for issues related to childhood (1997-2004). From 1980 to 1997, he has been member of the Bice Board in his capacity of representative of the Justice and Peace Commission on Childhood. And from 1995 to 1997 first Vice-President. He has also taken part in the establishment of the Foundation Pro Pueris, which supports Bice's initiatives.

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Séverine Jacomy is an independent consultant with academic background in Soviet Studies and International Relations. She has worked as program manager for several international NGOs – starting with Bice from 1995 to 2002 – developing community-based pilot projects, child rights reporting and advocacy at European and UN levels. Her areas of work include juvenile justice, prevention of torture, sexual abuse and exploitation of children, children deprived of parental care and child rights monitoring.

- Valérie Löchen

Valérie Löchen graduated in Political Sciences, History and International Relations. Since September 2007, she is the Director of Monitoring and Strategy Department at the Fondation d'Auteuil. At the same foundation, she has

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Francis Swartele is a criminologist and has been professor at the Erasmus Hogeschool (Brussels), the Sociale Hogeschool (Heverlee) and the Hoger Instituut Gezinswetenschappen (Brussels). He is the founder and present coordinator of the Rights of the Child Home in Alken (Belgium).

- Jan Van Gils

Jan Van Gils is the founder and President of the European Child Friendly Cities Network and, since 2005, President of the International Council for Children's Play. Before, he chaired the International Play Association promoting the right to play of every child. In his scientific work, he takes a multidisciplinary approach looking at children as social actors and assessing the social value of children's experiences and opinions. Both at the local and at the national level, he advocates for the adoption of more oriented policies towards the needs and the rights of the child.

- Stefan Vanistendael

Stefan Vanistendael graduated in sociology at KUL (Leuven), obtained a master degree in Demography at UCL (Louvain-la-Neuve) and received spiritual education in Belgium and Switzerland. He has been a researcher at the Study Center of Population and Family (Dutch-speaking) in Brussels before joining Bice in 1979 as assistant to the Secretary General and, afterwards, in charge of the department of Research and Development. In this capacity, he has contributed to elaborate and diffuse the concept of resilience in more than 15 countries over 4 different continents. He has been member of the Scientific Committee on resilience with the Fondation pour l'enfance (1999-2004). He is the author of several articles, booklets and of a book on resilience as well as of multiple contributions to books published in a dozen of languages.

- Jean Zermatten

Jean Zermatten is the founder and Director of the International Institute on the Rights of the Child in Sion (Switzerland) and since 2005, he is a member of the UN Committee on the Rights of the Child of which he is the Vice-President. In 2002, he was the initiator of a Master on the Rights of the Child in collaboration with the University of Fribourg and the Academic Institute Kurt Bösch. During 25 years, he has been juvenile judge and President of the Juvenile Court of Valais as well as a trainer in the framework of international projects for several organizations, including Unicef.