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PAL

TRAINING OF TRAINERS LEGAL PROTECTION OF CHILDREN



“Fighting discrimination and anti-Gypsyism in education and employment in EU” (PAL)

Publication edited by SRDA & IED and represented officially by SRDA & IED at November 2016

28.11.2016, Second Version

“This publication has been produced with the financial support of the Justice Rights, Equality and Citizenship Programme and Pilot Projects 2014 of DG Justice of the European Union. The contents of this publication are the sole responsibility of UC Limburg and can in no way be taken to reflect the views of the European Commission.”



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I: The European Legislation and the Family

Keywords: children's rights/ child-friendly justice/ family life/ children with disabilities/ protection against violence and harm

Starting questions

1. Under which EU law are the children's rights protected and assured?
2. What are the best interests of a child, according to this law?
3. Family life and confliction of children's rights: how the legislation is dealing with this?
4. How the states can provide adequate legal framework for child protection?
5. What is foreseen within the EU legislation for children with disabilities?
6. Why it is important to make EU justice system more child-friendly?

Definition of terms

Article 24 of the Charter of Fundamental Rights of the European Union is the main provision of the Charter that makes reference to children, including principles such as the best interests of the child. It establishes a right of children to protection and care and a right for children to have direct contact with his or her parents, unless contrary to his or her interests.

Family Life is protected by both the Charter and the ECHR; the provisions of each instrument provide protection to one's right to respect for his/her established family life within the same meaning and scope. Limitations may legitimately be imposed on this right, subject to the principle of proportionality. When the subject of this right is a child, case-law acknowledges that the content and exercise of this right may be conflicting.

Legal framework for child protection it is prescribed under EU and ECHR law that states have a duty to provide an adequate legal framework for child protection.

Children with disabilities should be able to enjoy the same rights as other children on an equal basis, as prescribed by EU law.



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Child-friendly justice is a key action item under the EU Agenda for the Rights of the Child, which aims at making the justice system more child-friendly in Europe.

Content of the chapter

The focus of the first chapter is to inform trainers for the legislative instruments of protection in place as well as the content of children's rights. This way they can learn to recognize instances of violation and either refrain from taking part in such situations – inadvertently even- or proactively try to ensure that the highest level of protection is in place. In order to achieve this, we should try to identify how much we know and if that knowledge is accurate.

Children's rights in the EU are guaranteed by a series of provisions under the Charter of Fundamental Rights, EU enacted legislation, and the ECHR. These provisions ensure a number of independent rights for children such as the right to family life and the right of the child to have their best interests as primary consideration. Sometimes though, as acknowledged by ECtHR case law, the exercise of these rights can be conflicting.

These rights entail a series of positive obligations on the part of the State. At the legislative level States have a duty to enact a comprehensive and effective system of legal protection of children in order to enable them to enjoy their rights in full. This includes putting in place a system of effective implementation and monitoring of her relevant laws and ensuring that allegations of child abuse, violence against children and harm to children, are thoroughly investigated.

All member states of the EU have signed the UN Children's Rights Convention. Importantly, the EU has also signed the Disability Rights Convention. This is the first time the EU has signed a United Nations Convention. It means all EU laws and policies must follow the rules of the UN Disability Rights Convention. The EU ensures the enjoyment of human rights by children with disabilities on a equal basis with other children. Their right to equal treatment should not remain theoretical but instead the EU must take specific measures to protect children with disabilities from abuse and exploitations.

The treatment of children in judicial proceedings is an important fundamental rights concern in the EU. Making the justice system more child-friendly in Europe is a priority action for the Union, which should ensure that all Member States ensure that children's best interests are the primary consideration in any action that affects them, during domestic legal proceedings. This consideration is of particular importance when children are involved in criminal and civil judicial proceedings.



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Among others, it is important to guarantee their right to be heard and their effective participation in actions that concern them.¹

When children are involved with justice systems that are not child-friendly, they can be subject to manifold restrictions or violations of their rights. Children can face obstacles with regard to legal representation or being heard by judges. Likewise, the information which is necessary for children and their representatives to exercise their rights or defend their interests in judicial proceedings can be inadequate. Children can be treated as adults without always being afforded specific safeguards in accordance with their needs and vulnerability, and may have difficulties coping with this situation. Effective access to justice and participation in administrative and court proceedings are basic requirements to ensure a high level of protection of children's legal interests.

Questions for thinking

1. Why it is important to make EU justice system more child-friendly?
2. What are the immediate advantages of a more child-friendly justice system?
3. What are the consequences on a non-child-friendly justice system?
4. How can we ensure the adaptability for children with disabilities?

II: The Integration of ROMA Children

Keywords: ROMA children/ discrimination/ special schools / social exclusions/ safeguards/ segregation

Starting questions

1. What is the situation of ROMA children in the EU?
2. What are the main characteristics of the social exclusion of ROMA children?
3. Are there any risks when children run away from home or from institutions?
4. Are there any tools that can be of help in case a child is missing?

¹ FRA, Child-friendly Justice Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States, Report published in May 2015, available at: <http://fra.europa.eu/en/publication/2015/child-friendly-justice-perspectives-and-experiences-professionals-childrens>



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5. How can we deal with the ROMA discrimination?
6. What is the situation of ROMA children in special schools?
7. Are there any safeguards specifically designed for and sensitive to the needs of ROMA children?

Definition of terms

Social exclusion of ROMA children is considered to take place when they are deemed at risk of missing out on an environment that protects them from violence, abuse and exploitation, or if they are unable to access essential services and goods in a way that threatens their ability to participate fully in society in the future, in comparison to other children.²

Trafficking is defined by EU law as ‘the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation’

Segregation is a form of discrimination in education which results in separating children to different schools, classes or study groups on the basis of their race or ethnic origin

Schengen Information System: The Schengen Information System (SIS) is a highly efficient large-scale information system that supports external border control and law enforcement cooperation in the Schengen States. The SIS enables competent authorities, such as police and border guards, to enter and consult alerts on certain categories of wanted or missing persons and objects. An SIS alert not only contains information about a particular person or object but also clear instructions on what to do when the person or object has been found.³

³ For more information, see : http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/index_en.htm



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SIRENE system of cooperation: SIRENE stands for Supplementary Information Request at the National Entries. Each state operating the SIS has set up a national SIRENE Bureau, operational 24/7, that is responsible for any supplementary information exchange and coordination of activities connected to SIS alerts. Efficient SIRENE cooperation is a key element for the effective functioning of the concept of the SIS. The cooperation between states may be one-to-one or one-to-many and always needs to be linked to a specific SIS alert. In order to ensure prompt, confidential and efficient follow-up of cases, communication is accomplished through the structured exchange of standardized forms via a secure network.

Discrimination: individuals who are in similar situations should receive similar treatment and not be treated less favorably simply because of a particular ‘protected’ characteristic that they possess (‘direct’ discrimination). Individuals who are in different situations should receive different treatment to the extent that this is needed to allow them to enjoy particular opportunities on the same basis as others. Thus, those same ‘protected grounds’ should be taken into account when carrying out particular practices or creating particular rules (‘indirect’ discrimination).⁴

Safeguards: when a measure of general application put forward by the State, disproportionately or even exclusively affects members of a particular ethnic group, then appropriate safeguards have to be put in place.

Content of the chapter

The content of this chapter will focus on the situation of ROMA children in the EU aiming to expose their particularly vulnerable position and indicate to trainers the points that require attention. More often than not, Roma people are living in conditions of poor health, poor housing and poor nutrition. These, along with other contributing factors often lead to social exclusion from their family, the community, the state, civil society, the media, or the private sector. The threat of social exclusion is particularly important, especially at an early age, as it relates to the development of the individual: it is evident that personal development cannot be fully achieved unless children are growing integrated in the society.

⁴ FRA, Handbook on European non-discrimination law, available at: http://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_EN.pdf



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Furthermore, members of the Roma community are often confronted with discrimination, violence and exclusion from education and training.

It is important to indicate the particular circumstances that often lead to social exclusion for ROMA children. To name a few examples: lack of birth registration, low participation in early childhood and higher education (these two are inter-connected), high school drop-out rates, trafficking and labour exploitation.

Access to a high-standard education is crucial for social integration. In that aspect, segregation is one of the main barriers which prevent access to quality education for ROMA children.

Another phenomenon that poses serious risks for the social inclusion and personal development of children is the frequent disappearance – often voluntary – of Romani children from their homes and settlements. Children may go missing regardless of their age, gender or social status.

There is little knowledge about the reasons why children run away from home or from institutions in which they live, but we do know that this situation entails enormous risks for their mental and physical health and life.

Missing children can suffer violence and abuse; they can be trafficked or exposed to begging and prostitution. Particularly when it comes to trafficking, Article 5 (3) of the EU Charter of Fundamental Rights contains an express prohibition of trafficking in human beings. The contribution of the EU is valued here, as this is an area with cross-border dimensions. While the EU has enacted secondary legislation in that field, it is largely up to the Member States to ensure enforcement of these provisions with the cooperation and monitoring of designated European bodies and agencies. However, cooperation and information exchange is still important between different member states, especially in cases of criminal abductions of children through child alert mechanisms.

The Commission has identified a number of **tools** that can be of help in case a child is missing.

For several years now, some Member States have been introducing **public alert systems** in cases of child abduction or disappearances of children in circumstances, which could pose a serious risk to



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the safety, and well-being of the children concerned. In order to enhance cooperation in this field, the Member States agreed, in June 2009, on better use of the Schengen Information System, and the related SIRENE Bureaux based in each Member State, in the search for the missing children.

Roma discrimination: It is well established both by law and jurisprudence that race and ethnic origin are prohibited grounds of discrimination. At an international context, both the EU and the CoE have legislation in place, which aims to tackle discrimination of the ROMA in the areas of education, employment, healthcare and housing.

In the field of education, discrimination takes the form of overrepresentation or segregation of children belonging to a specific ethnic group in special schools or classes or even particular study groups within the same class. Also, misdiagnosis of learning disabilities can lead to segregation of otherwise fully capable children and in effect their social exclusion and their receiving sub-par education in comparison to mainstream population. Such difference in treatment can only be objectively justified if appropriate safeguards for referring children to these schools or classes are put into place.

In the absence of effective anti-segregational measures, prolonging the educational segregation of ROMA children in a mainstream school with a regular programme could thus not be justified. It is therefore important to correctly assess the educational needs of Roma children on an individual basis. Appropriate tests, specifically designed for and sensitive to the needs of ROMA children should be in place along with appropriate evaluation methods and monitoring systems of progress.

Integration in ordinary classes should take place as soon as learning difficulties have been remedied; in addition, positive measures should be implemented to address learning difficulties.

Questions for thinking

1. What are the main factors that create a negative situation of ROMA children in the EU?
2. What are the main characteristics of the social exclusion of ROMA children?
3. What are the risks when children run away from home or from institutions?
4. Which are the tools that can be of help in case a child is missing?
5. What are the measures against the discrimination of ROMA children?



6. What is the situation of ROMA children in special schools?
7. Which are the safeguards specifically designed for and sensitive to the needs of ROMA children?

III: Links

1. Institutional information:

Fundamental Rights Agency, Roma : <http://fra.europa.eu/en/theme/roma>

European Commission, Directorate General Justice & Consumers, Roma:
http://ec.europa.eu/justice/discrimination/roma/index_en.htm

2. Relative publications:

FRA, Handbook on European law relating to the rights of the child, published November 2015, available at: <http://fra.europa.eu/en/publication/2015/handbook-european-law-child-rights>

UNICEF, breaking the cycle of exclusion, Roma children in the South East Europe, Report of 15.05.2013, available at: https://www.unicef.org/ceecis/070305-Subregional_Study_Roma_Children.pdf