



Blighted Lives: Romani Children in State Care

CHALLENGING DISCRIMINATION PROMOTING EQUALITY



Copyright: ©European Roma Rights Centre, January 2021

Please see www.errc.org/permissions for more information about using, sharing, and citing this and other ERRC materials

Authors: **Bernard Rorke**

Researchers: This work is based on field and desk research carried out by: **Atanas Stoyanov** (Bulgaria), **Forum for Human Rights** (Czech Republic), **Natalia Duminica** (Moldova), **Eugen Ghita** (Romania), **Lýdia Mirgová** (Slovakia)

Expert input by: **Judit Gellér**

Cover Design: **Sophio Datishvili**

Layout: **Dzavit Berisha**

Cover photo: © **ERRC**

This report is published in English

Address: Avenue de Cortenbergh 71, 4th floor, 1000 Brussels, Belgium

E-mail: office@errc.org

www.errc.org

SUPPORT THE ERRC

The European Roma Rights Centre is dependent upon the generosity of individual donors for its continued existence. Please join in enabling its future with a contribution. Gifts of all sizes are welcome and can be made via PAYPAL on the ERRC website (www.errc.org, click on the Donate button at the top right of the home page) or bank transfer to the ERRC account:

Bank account holder: **EUROPEAN ROMA RIGHTS CENTRE**

Bank name: **KBC BRUSSELS**

IBAN: **BE70 7360 5272 5325**

SWIFT code: **KREDBEBB**

Table of Contents

Introduction	5
Executive Summary	11
Deinstitutionalisation	12
Disaggregated Data and Overrepresentation of Romani Children in State Care	13
How and why Romani Children end up in Care	14
The Impact of Institutionalisation on Romani Children and Families	16
Note on Methodology	19
International Legal Standards	21
Protection of Children and the Family in National Law	23
EU Policy Recommendations and Funding	23
Bulgaria	25
Population Profile	25
Child Protection Policy Context	25
Deinstitutionalisation	26
Child Endangerment	27
Romani Children in the Childcare System	28
Overrepresentation and Ethnically Disaggregated Data	28
How and why Romani Children end up in Care Institutions	30
Treatment, Experiences of Romani Children in Care and how it Differs from Other Kids	31
Czech Republic	33
Population Profile	33
Child Protection Policy Context	34
Deinstitutionalisation	36
Definitions of Children at Risk and Legal Grounds for Removals	38
Structure of the Child Protection System	41
Romani Children in the Childcare System: Overrepresentation, Deficits, and Data	42
Moldova	47
Brief Profile of Roma in Moldova	47
Child Protection Law and Policy Context	48
Deinstitutionalisation	49
General Legal Framework	50
Definitions of Children at Risk	51
Organisational Structure of the Child Protection System	52
Types of Childcare	54
Main Reasons for the Placement of Romani Children in State Care Institutions	55
Experience of Romani Children in Care	58
Romania	59
Population Profile	59
Child Protection Law and Policy Context	60
Deinstitutionalisation	60
Children at Risk System Definitions	61
Overrepresentation and Ethnically Disaggregated Data	63

TABLE OF CONTENTS

How and why Romani Children end up in Care Institutions	64
Experiences of Romani Children in Care	66
Slovakia	69
Brief Profile of Roma in Slovakia	69
Child Protection, Poverty, and General Policy Context	70
Deinstitutionalisation	70
Institutional Care and the Legal Framework	72
Overrepresentation and Data	73
How and why Romani Children end up in Care Institutions	74
Experience of Romani Parents with Social Care	75
Conclusions	77
Recommendations	81

Introduction

On 23 November 2020, the European Committee of Social Rights (ECSR) found the Czech Republic responsible for large-scale and discriminatory institutionalisation of children with disabilities and Romani children in early childhood care institutions. This finding came three years after three organisations, the European Roma Rights Centre (ERRC), the Validity Foundation, and the Forum for Human Rights, filed a collective complaint documenting the violations.¹

Maroš Matiaško, Chair of the Prague-based Forum for Human Rights said: *“The Committee’s message is very strong. Institutions are harmful to children, and from the legal point of view, the Government must take all necessary steps to deinstitutionalise the existing system of early childhood care. This systemic change must be built on the principle that all children have the right to benefit from a family environment, regardless of their situation or needs.”*²

While the Czech Republic bears the ignominious distinction of being amongst the least child-friendly OECD countries, it is not alone in its failure to do right by its most vulnerable children. Since 2011, the ERRC has been at the forefront in highlighting the plight of Romani children taken into state care. The overrepresentation of these vulnerable children in care institutions has long been the source of profound official neglect, and the issue of their fundamental rights and well-being did not register as a priority when the EU Roma Integration Framework was launched in 2011.³

As the EU pushes forward with its *EU Roma strategic framework for equality, inclusion and participation for 2020–2030*⁴ across member states and the enlargement region, the ERRC repeats its call for a more complex, child-centred approach that pays close attention to the rights and the needs of the most vulnerable; and that the revised national strategies become fully inclusive, so that no child is left behind.

Furthermore, the ERRC reminds state parties of their obligations under international law to respect the right of the child to family relations; to ensure children are not separated from their parents against their will (except when competent authorities subject to judicial review

1 European Committee of Social Rights, Decision on the Merits of European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic. Complaint No. 157/2017. 23 November 2020. Available at: [https://hudoc.esc.coe.int/eng#?%22sort%22:\[%22ESCPublicationDate%20Descending%22\],\[%22ESCDcIdentifier%22:\[%22cc-157-2017-dmerits-en%22}\]}.](https://hudoc.esc.coe.int/eng#?%22sort%22:[%22ESCPublicationDate%20Descending%22],[%22ESCDcIdentifier%22:[%22cc-157-2017-dmerits-en%22}]})

2 ERRC, Press Release: Council of Europe body finds Czech Republic responsible for violating rights of children with disabilities and Romani children through institutionalisation, 23 November 2020. Available at: http://www.errc.org/press-releases/council-of-europe-body-finds-czech-republic-responsible-for-violating-rights-of-children-with-disabilities-and-romani-children-through-institutionalisation?fbclid=IwAR3PX12tvKlZwXs1LRmHDAbc7Mlga5PtqIuzZX4UscHXU8_IzoBqp6MEow.

3 European Commission, EU Framework for National Roma Integration Strategies up to 2020. Available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu/roma-integration-strategies-2020_en.

4 European Commission, *EU Roma strategic framework for equality, inclusion and participation for 2020–2030*. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1813.

determine this is in the best interests of the child); and to render appropriate assistance to parents in the performance of their child-rearing responsibilities.⁵

To date, the ERRC has conducted research and published reports and legal action briefs in 10 countries, including EU member states and accession countries. The organisation has also provided legal support to families and, in some instances, taken action against the authorities. This latest round of research, which covers five countries (Bulgaria, the Czech Republic, Moldova, Romania, and Slovakia), aims to provide data and information to allow for more legal interventions to prevent unnecessary removals; to stimulate public debate at both national and European level to push for substantive reforms in order to root out both deliberate and unwitting discriminatory practices; to advocate for increased social support for families in difficulty; and to ensure that children are not removed from their families primarily because of poverty and prejudice.

The 2011 ERRC research report *Life Sentence*, revealed that Romani children were overrepresented in institutional care compared to their proportion of the population as a whole in Bulgaria, the Czech Republic, Hungary, Italy, Romania, and Slovakia.⁶ Despite specific laws governing child protection matters, the lack of detailed descriptions of child endangerment and clear assessment guidelines allowed much opportunity for the mis-application of relevant provisions by child protection and social workers. The extent to which Romani children were overrepresented in the systems is illustrated in the graph 1.

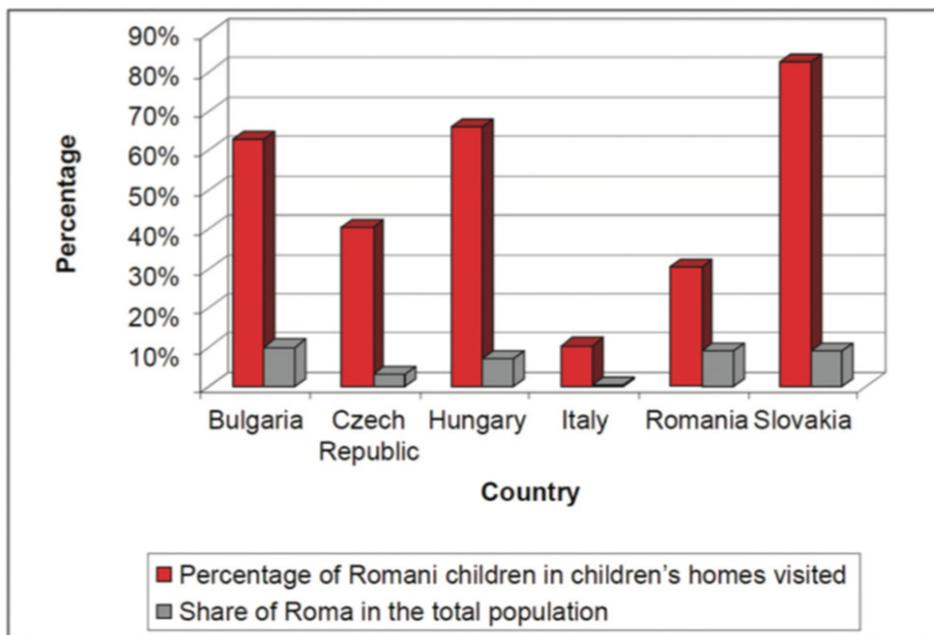
Preventative measures were found to be inadequate, there were insufficient skilled social workers, and no community level support services in isolated Romani neighbourhoods due to insufficient funding. The research found that Romani children experienced physical abuse, ill-treatment, and ethnic discrimination in and out of the homes. The vast majority of Romani children in institutional care had little prospect of being returned to their biological families, and many spent their whole childhood in an institutional setting.

Many factors contribute to the overrepresentation of Romani children in institutional care, including discrimination, poverty and material conditions (such as unemployment, indebtedness, and inadequate housing), school absenteeism, single parenthood and unwanted pregnancies, and migration. Child abuse was considered a very small factor in the placement of Romani children in state care. The reasons for the overrepresentation of Romani children in institutional care largely fell into two main categories: those related to the situation of the family, and those related to the child protection system itself.

⁵ Article 7 of the United Nations Convention on the Rights of the Child (CRC) accords the child “as far as possible, the right to know and be cared for by his or her parents”. In Articles 8 and 9 respectively, States undertake to respect the right of the child to “family relations as recognized by law without unlawful interference” and to “ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine this is in the best interests of the child”. Article 18 also recognises that “[p]arents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child”, that “[t]he best interests of the child will be their basic concern”, and that “States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children”. United Nations Convention on the Rights of the Child. Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

⁶ ERRC, *Life Sentence: Romani Children in State Care*. June 2011. Available at: <http://www.errc.org/reports-and-submissions/life-sentence-romani-children-in-institutional-care>.

Graph 1: Roma Representation in Children's Homes in Bulgaria, the Czech Republic, Hungary, Italy, Romania and Slovakia
(based on information from field research)



The research confirmed that widespread discrimination against Roma in all spheres of daily life, compounded by social exclusion and deep poverty, were key factors contributing to disproportionate numbers of children being taken from their families and placed in state care. The situation common to marginalised Romani communities in all the countries surveyed was concisely summed-up by one respondent in Romania:

“The main problem is that society rejects Roma and their children, pushing them very easily into the trap of the child protection system. It is well-known that Roma are discriminated against if they want to work, no one will give them a job and they are forced into poverty ... No one gives them a chance to get out of misery. Then the child protection people come and tell them that they need to give their children up because they are incapable of taking care of them and that they can take them back later, without knowing that emotionally and physically they will lose them [the children] forever.”⁷

Despite legislation prohibiting the removal of children from their families solely on the grounds of poverty or lack of means, the 2011 research found that, according to Romani parents and child protection workers in the Czech Republic, Hungary, and Romania, poverty among Romani families was the most common reason for child removal. As one Romani family from Hungary told researchers, their new-born child was removed and placed with foster parents, because their “house was in bad condition since the storm in the summer damaged the roof. One of the rooms got damp and the child welfare service told us that it was no place to receive a new-born baby.”

⁷ *Ibid.* p. 39.

This family received no financial help and no social support to remedy the situation.⁸ Some child interviewees confirmed that poverty was the cause of their removal: *“we were taken from our family because there was little food and no proper clothing in our family.”*

In the Czech Republic, inadequate housing conditions resulting from poverty and indebtedness were the factors most frequently mentioned by Romani families, and children were often removed after electricity and water were cut off, or in the course of forced evictions from rental accommodation. Many of the most vulnerable were single parent families, where Romani mothers were in even worse housing and financial situations due to family break ups, or less able to support their children following their partners’ imprisonment.

In addition to family circumstances, there is the aspect of system failures that prejudice outcomes for Romani children at risk, which include discriminatory attitudes and practices which permeate the agencies and courts, as well as inadequate prevention measures and very low rates of return by children to their biological families once they are taken into care.

Interviews with childcare professionals revealed a wide range of attitudes from the well-informed and socially aware, to prejudiced social workers who blamed “Roma subculture,” or the “thinking, attitude and customs” of Roma for the endangerment of Romani children and their placement in institutional care. One Hungarian interviewee stated: *“Poverty is mixed with the family’s unsuitability to care for the child. Crime is common too – these Romani families have not learnt how to work although they do not get work either. And this is topped with the subculture.”*

School absenteeism featured as a significant factor leading to children being taken from their families in all countries of the study. Absence from school prompts educators to inform child protection authorities that children are at risk of endangerment. Several Romani children interviewed in children’s homes had been placed in institutional care due to school absenteeism. A key system shortcoming according to some child protection workers was that the regulations completely failed to address some of the root causes of school absenteeism, which include harassment and humiliation of Romani pupils by teachers and peers, segregation, poverty, and marginalisation.

In Romania research findings revealed discriminatory attitudes in the Commission for Child Protection and in court proceedings concerning the removal of Romani children from their families. Romani parents reported that some judges were dismissive and disrespectful of them, and most parents felt pre-judged due to their ethnicity, noting that judges lacked any understanding of their situation. In many cases, parents had little understanding of the workings of the system and the proceedings, which left them powerless in the face of official hostility. As one mother explained to researchers:

“At the trial no one talked to me. The judge never told me what was happening, in fact she did not allow me to talk and she shouted at me that if I did not stop talking, she would throw me out of the court. I stayed quiet because I did not know what to do and what to say. I did not have a lawyer nor could I understand anything. Later, the judge asked me if my child was 10 years old and I said “Yes”. Then she asked my son

⁸ *Ibid.* p. 44.

⁹ *Ibid.* p. 46.

if he wanted to stay with me; he said “Yes” and that he wanted to come home. The judge told him that he would return soon. But my children never come back to me. They took them without asking me if I agreed or at least letting me know why.”¹⁰

In all countries covered by the 2011 study, researchers documented the inadequacy of preventative measures by child protection authorities in relation to the needs of Romani families at risk of separation. Romani families reported that many social workers did not offer or help to identify solutions to their problems; rather they set requirements to be met, and then left families to fend for themselves in their effort to meet those requirements.

Legal professionals indicated that judicial procedures for child removal were often initiated due to a lack of direct intervention by social services, and were reported by law enforcement officers in the course of forced evictions or ordinary streets patrols when Romani children are found begging. As a result, judicial authorities often intervened in situations that would rather require a social intervention.

In most of the countries a combination of a shortage of suitably qualified social workers, inadequate funding, and heavy caseloads were identified by social workers as obstacles to the provision of adequate support to Romani families at risk of child endangerment. In Hungary, most social workers reported being responsible for at least double the number of cases prescribed in law. In Slovakia, respondents noted: *“One or two workers can hardly do prevention activities when they have 1800 endangered families in their region. It is impossible. The only things they can do is record statistics and take the children away [...]”¹¹*

In all the countries surveyed back in 2011, Romani children were disadvantaged on multiple grounds when it comes to child protection placement, in-care treatment and leaving; they experienced multiple discrimination on grounds which included ethnicity, poverty, disability, and institutionalised child status.

In Bulgaria, Hungary, Romania, and Slovakia, child protection professionals reported that the rate of return of children to their families is extremely low. Several child protection workers observed that: *“It is very easy to enter institutional care but it is almost impossible to leave it.”* In essence, the research found that once forcibly inducted into the state care system, Romani children were sucked into a cycle from which there was little prospect of escape until they came of age; a cycle of ‘care’ that rendered them extremely vulnerable, and woefully unprepared for life beyond the institution.

Ten years on from the first round of research into the overrepresentation of Romani children in institutional state care, the evidence from this latest 2020 five-country review suggests that too little has changed for the better; the issue is still not a priority for policy makers and EU officials responsible for framing Roma inclusion priorities up to 2030. Very many at-risk Romani families do not have access to social supports and preventative measures remain scarce, often non-existent. As a consequence, underfunding combined with institutional discrimination results in removals of Romani children from their families being a first rather than final option for the authorities. Despite the declared lack of ethnically disaggregated

¹⁰ *Ibid.* p. 47.

¹¹ *Ibid.* p. 48.

data, the research confirms that hugely disproportionate numbers of Romani children still end up in state care institutions.

The ERRC maintains that institutionalisation of young children is a form of violence, and the disproportionate overrepresentation of Romani children in state care amounts to a form of racist violence. Supporters of institutional care for children commonly argue that since conditions have significantly improved, these institutions should be regarded as safe and suitable places for children. As the ERRC and Validity asserted in their successful ECSR collective complaint against the Czech Republic, deprivation and suffering is caused predominantly by emotional, mental, or physical neglect, the non-existence of a primary caregiving person, and the lack of stability. This is especially the case with regard to children under three years of age, because *“their long-term stay in institutional care is always accompanied by emotional neglect, which is a form of violence – and therefore should not be tolerated.”*¹²

12 European Committee of Social Rights, *Complaint: European Roma Rights Centre & Mental Disability Advocacy Centre v. the Czech Republic: For failure to ensure social and economic protection of young children who are segregated in child-care institutions*. 26 October 2016. Available at: <https://rm.coe.int/complaint-157-2017-european-roma-rights-centre-mental-disability-advoc/1680761626>.

Executive Summary

This five-country wide round of research into the situation of Romani children in state care marks the latest in a decade-long series of interventions by the European Roma Rights Centre.¹³ The research covers four EU Member States: Bulgaria, the Czech Republic, Romania, and Slovakia, as well as neighbouring Moldova. As was mentioned in the introduction, the plight of these most vulnerable children, and the issue of their fundamental rights and well-being, did not register as a priority when the EU Framework for National Roma Integration Strategies was launched in 2011.

The publication of this research followed the launch of the European Commission's EU Roma strategic framework for equality, inclusion and participation for 2020–2030. It also coincided with the finding by the European Committee of Social Rights (ECSR) in November 2020, that holds the Czech Republic responsible for large-scale and discriminatory placement of children with disabilities and Romani children in early childhood care institutions. ERRC Legal Manager, Senada Sali, welcomed the Committee's acknowledgement that

“Both Romani children and children with disabilities are faced with disproportionate care risks in comparison with the majority population, and that in that regard – States must ensure appropriate social and economic protection to young children, with particular attention paid to the situation of disadvantaged and vulnerable groups of children.”¹⁴

The ERRC's research and interventions over the last decade provide clear evidence of how widespread the problem is. While many have been effusive in their praise of this 'new improved' EU Roma framework, it is a matter of grave concern that the disproportionate over-representation of Romani children removed from their families and placed in state care has yet to register as an issue of concern with those framing Roma inclusion priorities up to 2030. There is an urgent need to remedy this deficit; it's time to join the dots and ensure that effective deinstitutionalisation action plans surface as a priority in revised Roma inclusion strategies, which need to adopt a comprehensive rights-based and child-centred approach.

This omission is all the more striking in the wider context of the European Commission's active stance on child poverty reduction, which included the 2013 recommendation that all member states draft and implement strategies that ensure child wellbeing, and include targeted approaches to support the most and multiply disadvantaged. The recommendation included the strengthening of community-based and support services to avoid separating children from their families, and thus preventing new entries into the public care system, with specific mention of a

¹³ The research covers four EU Member States: Bulgaria, the Czech Republic, Romania, and Slovakia, as well as neighbouring Moldova.

¹⁴ ERRC, *Press Release: Council of Europe body finds Czech Republic responsible for violating rights of children with disabilities and Romani children through institutionalisation*, 23 November 2020. Available at: http://www.errc.org/press-releases/council-of-europe-body-finds-czech-republic-responsible-for-violating-rights-of-children-with-disabilities-and-romani-children-through-institutionalisation?fbclid=IwAR3PXl2tvKlZWxS1LRmHDAbc7Mlgca5PtqIuzZX4UscHXU8_IzoBqp6MEow.

special focus on “children deprived of parental care and protected in the special protection system as well as on children living in poverty, Roma children, children with disabilities, and other children in need.”¹⁵

Deinstitutionalisation

That same year (2013), the ad-hoc expert group, originally convened by European Commissioner Vladimir Špidla to address the issues of institutional care reform in the European Union, published *Common European Guidelines on the Transition from Institutional to Community-based Care* which provided practical advice on how Member States could set a full process of deinstitutionalisation in motion. In 2014, the Commission also issued detailed guidelines on how to operationalise the ‘policy theory’ so that structural funds could support a wide range of measures to accompany reforms in the Member States.¹⁶ Billions of Euro were subsequently made available for the 2014-2020 period to support the transition from institutional care to community-based living as “a mandatory change process to ensure citizens’ rights are respected.”¹⁷

Despite the undoubted progress made in reducing the number of children in state institutions across the five countries, there are increasing concerns about the process itself. There can be no doubt that the fall in numbers has been dramatic: for example, over the past decade there has been an 80% drop in the number of children in institutional care in Bulgaria; the number of children living in institutions in Moldova has decreased by 90%: from 11,500 in 2006 to less than 1,100 in 2017; in Romania in 2018 the total number of children housed in institutions was 6,632 compared to the estimated 100,000 children that were in such institutions in the year 2000.

However, deinstitutionalisation is more than simply the closure of institutions; it should be understood in terms defined by UNICEF as “the full process of planning transformation, downsizing and/or closure of residential institutions, while establishing a diversity of other child-care services regulated by rights-based and outcomes-oriented standards.”¹⁸ This ‘full process’ has been found wanting in the five countries surveyed.

In Bulgaria, experts have expressed concern about the lack of coordination, consultation, and monitoring mechanisms at central level; on the ground, severe under-resourcing of the child protection has led to poor quality of alternative care placements, acute staff shortages, and a

15 The European Commission’s Social Investment Package and Recommendation “Investing in Children: Breaking the Cycle of Disadvantage”, February 2013. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:059:0005:0016:EN:PDF>; and the EC Communication on Early Childhood Education and Care: “Providing all our children with the best start for the world of tomorrow”, February 2011. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011DC0066>.

16 European Commission, Draft thematic guidance fiche for desk officers: Transition from institutional to community-based care (de-institutionalisation - di) version 2 – 27/01/2014. Available at: <http://enil.eu/wp-content/uploads/2016/09/Guidelines-01-16-2013-printer.pdf>.

17 Neil Crowther et al. *Opening up communities, closing down institutions: Harnessing the European Structural and Investment Funds*. Structural Funds Watch. November 2017, p. 17. Available at: https://eustructuralfundswatchdot-com.files.wordpress.com/2017/11/cle-sfw_opening-up-communities-november-2017_final.pdf.

18 UNICEF (2010) *At Home or in a Home?: Formal Care and Adoption of Children in Eastern Europe and Central Asia*, p.52. Available at: <http://www.socialserviceworkforce.org/resources/home-or-home-formal-care-and-adoption-children-eastern-europe-and-central-asia>.

high turnover of social workers who lack training and supervision. Progress has been further jeopardised by a “backlash against children’s rights (which) raises concerns around national policies becoming hostage to speculation, disinformation and fake news.”¹⁹

In the Czech Republic, progress on deinstitutionalisation has been stalled by political resistance from within an obsolete childcare system where, as one Labour minister put it, “the interests of the employees prevailed over best interests of children”. Characterised by a lack of coordination between ministries and constant delays with the systemic reforms, the number of children in institutional care has only reduced from 10,000 to 9,000 since 2008 in a country known for being among the least child-friendly and most discriminatory of the OECD countries.²⁰ In Romania, progress on deinstitutionalisation stalled in the wake of the global economic crisis, deepening poverty meant that more parents handed over their children into state care, and austerity cutbacks left the childcare system underfunded and understaffed, thus depleting its capacity to carry out reforms. Similarly, in Moldova – the poorest country in Europe, where massive emigration has resulted in a dramatic increase in the number of children deprived of parental care – there are serious concerns over inadequate human and financial resources, poor implementation, and weak inter-sectoral cooperation in the childcare system. A visiting delegation from the European Parliament to Slovakia reported a “lack of implementation of the existing good strategies and the strikingly slow speed of the deinstitutionalisation process.”²¹

Disaggregated Data and Overrepresentation of Romani Children in State Care

Across the surveyed countries, and despite denials concerning ethnically disaggregated data, the evidence leaves little doubt that a disproportionate number of Romani children end up in institutionalised state care. A major difficulty in ascertaining the extent to which Romani children have been removed from their families, or are overrepresented in childcare institutions, is the official stance in each of the countries that “it is illegal to collect ethnic data”. Our research showed that in Bulgaria, despite official denials, the Social Assistance Agency (ASA) does in fact gather ethnic data: initial at-risk assessments and individual care plans for children admitted to institutions include information on the child’s mother tongue and ethnicity, information deemed important for prospective foster or adoptive parents. It is also clear from childcare professionals surveyed that Romani children are in fact over-represented in the childcare system: estimates ranged widely according to geographical regions from 80% to 30%. Allowing for the wide regional variations, the professionals’ estimates do clearly suggest that Roma, who account for just over 10% of the population, are over-represented in the childcare system.

19 Quote from George Bogdanov, Executive Director of National Network for Children. National Network for Children Annual “Report Card 2020”, 25 June 2020. Available at: <https://nmd.bg/en/national-network-for-children-introduced-the-annual-v-report-card-2020v/>.

20 Opening Doors for Europe’s children: Czech NGOs call for an immediate action to change the care system for children at risk. Available at: <https://www.openingdoors.eu/czech-ngos-call-for-an-immediate-action-to-change-the-care-system-for-children-at-risk/>.

21 European Parliament Committee on Petitions, *Mission Report and Recommendations following the Fact-finding visit to Slovakia of 22 - 23 September 2016*. Available at: <https://www.europarl.europa.eu/cmsdata/113106/1113278EN.pdf>.

Public authorities in the Czech Republic maintain that gathering ethnically disaggregated data would be in breach of the Czech Personal Data Protection Act. However, official data about the ethnicity of children is available for infant homes and homes for children under the age of three, and nationally Romani children constituted on average between 27% and 32% of institutionalised children aged three and under.²² Considering that Roma account for less than 3% of the total population, this represents a significantly disproportionate number of institutionalised children.

Similarly, in Romania, despite official denials of the existence of ethnically disaggregated data, it became clear to researchers that childcare institutions gather such data for their adoption files. In the counties surveyed where Roma constitute less than 15% of the total population, it was estimated that nearly 60% of children taken into state care in the counties are Roma (or “half-Roma”). Estimates ranged from 35% to 75% depending on the geographical regions and the reference sources.

In Slovakia, according to information received from one source in the Ministry of Labour and Social Affairs, an estimated 63% of children in state care are of Romani origin. Regional variations range from estimates of 70% in Kežmarok to 50% in Poprad. Despite the lack of official disaggregated data, officials confirmed that the ethnicity of children is held on file, and for prospective adoptive parents the files even record whether one or both of the parents is of Romani origin.

How and why Romani Children end up in Care Institutions

“I can’t say whether Romani children are treated differently, but I will answer with a question: Do you think there would be so many children in orphanages if family support services were in any way adequate?”

(Civil society respondent)

In Bulgaria, the main reason cited for removals of Romani children from their families is deep poverty, compounded by the inability of social workers and the state care system to provide adequate support for parents. Children are at risk of neglect in hazardous overcrowded dwellings, often without electricity or heating, or access to clean water and sanitation; exposed to such high-risk environments, they are often malnourished and have missed compulsory medical examinations and vaccinations. Another increasingly significant factor is parental emigration, where the children are left in the care of grandparents who become ill or unable to properly care for them. Such acute deprivation and vulnerability heighten the risk of discriminatory behaviour and practices towards Romani parents, many of whom do not know their rights, or are unaware of community-based organisations that could provide assistance.

In the Czech Republic, the UNCRC, in its Concluding Observations, noted that the best interests of the child was not the decisive factor in cases concerning children, and expressed its concern about the lack of preventative services, which resulted in “*large numbers of children, especially children with disabilities and/ or of Roma origin*”, being placed in institutional care and that

²² Institute of Health Information and Statistics of the Czech Republic, *Activity of institutes for infants and homes for children up to 3 years of age and other institutions for children in 2009, Actual Information 13*, Prague (11 May 2010). See: ERRC, *Doživotní trest*, Zpráva Evropského centra pro práva romů p. 9. Available at: http://www.errc.org/uploads/upload_en/file/dozivotni-trest-romske-deti-v-ustavni-peci-v-ceske-republice-20-june-2011.pdf.

the financial situation of the family in the majority of such cases has been the main basis for such removal.²³ Nine years later in November 2020, the ECSR findings confirmed that little has changed, that placements in institutional care remain discriminatory, are not a ‘measure of last resort’, and violate children’s fundamental rights.

The Lumos submission to the ECSR found that 441 children resident in the ‘baby institutions’ were there not because of necessity, but because they were born in a region where the regional authority had failed to develop and ensure alternatives to institutional care for young children. Also, a legal loophole that allows for babies to be placed in institutions based on a voluntary contract with parents, bypasses controls in the child protection system, acts as de facto ‘a measure of first resort’, and does not oblige the public authorities to first attempt to provide support to child’s birth family or find placement in a substitute family.²⁴

In Moldova, the most significant factor that leads parents to place children in residential care is gruelling poverty in the poorest country in Europe, ranking at 107 out of 189 on the 2019 UNDP Global Human Development Index.²⁵ As with Bulgaria and Romania, over recent years the numbers of children left without adequate parental care due to migration has increased in Moldova. Similarly, in Romania child poverty tends to be persistent and accompanied by severe material deprivation, with Roma disproportionately represented among the very poor: *“Thus, the persistent poverty rate (for three to four years long) is nearly 30% among children, a percentage which, since 2010, has put Romania consistently among the worst EU countries.”*²⁶

In the case of Romani children in state care, denials that ethnicity plays any role in removals must be set against what Alston describes as the “official state of denial” when it comes to anti-Roma racism in Romania.²⁷ Officials and care-workers interviewed by our researchers attributed removals to a combination of poverty accentuated by living conditions, abandonment in health institutions, domestic violence, segregation in ghettos, drug use, parents convicted and incarcerated for crimes, and parental emigration.

A key structural risk factor identified was unstable family accommodation, home evictions, and homelessness. Some 60% of children in the Romanian system are from rural areas, from communities described as *“marginalised, consisting of improvised houses or former dormitories, often not*

23 UN Committee on the Rights of the Child, *Fifty-seventh session, Concluding observations: Czech Republic*, 30 May 2011. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsrpiCE%2Fy0jVxzg5%2BV8i7pht4H4a4pAWsJL3pa%2FvZCeSaVBbp1g77ZAaHTDQ9mJG8Vti46tzmjcvP%2FVoFNzfm%2F1WVG%2BKM%2Fced2V99WuxIcPh>.

24 European Committee of Social Rights, *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic* Complaint No. 157/2017. Available at: <https://hudoc.esc.coe.int/eng#%7B%22sort%22:%5B%22ESCPublicationDate%20Descending%22%5D,%22ESCDIdentifier%22:%5B%22cc-157-2017-dmerits-en%22%5D%7D>.

25 United Nations Development Programme, *Human Development Index Ranking, 2019*. Available at: <http://report2019.archive.s3-website-us-east-1.amazonaws.com>.

26 UNICEF, *Romania: Children in Public Care 2017*. Bucharest 2017. Available at: https://www.unicef.org/romania/sites/unicef.org.romania/files/2019-04/Romania_Children_in_Public_Care_2014.pdf.

27 Philip Alston, *End-of-mission statement on Romania*, by Professor Philip Alston, *United Nations Human Rights Council Special Rapporteur on extreme poverty and human rights*. Bucharest, 11 November 2015. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16737&LangID=E>.

*connected to utilities, with very poor roads, and deficient in basic social services.*²⁸ It must be noted that the extreme deprivation that renders so many Romani families vulnerable is a function of historical oppression and contemporary policies of racist neglect, exclusion, and discrimination.

Similarly, in Slovakia the most common causes cited by officials for removing Romani children from their families included discrete incidents such as school truancy, a tragedy such as the death of a parent, and wider issues related to extreme poverty, lack of income, and precarious housing conditions in segregated settlements. Despite the legal system prohibiting the placement of children into care on the grounds of poverty or deprivation, the European Commission's 2020 Country Report also found that child poverty among Romani communities and poor housing conditions are one of the most frequent reasons for removing Romani children from their biological families in a system that lacks financial resources, an integrated approach to deinstitutionalisation, and where access to healthcare and social services *"remains relatively poor and uneven."*²⁹

When asked about the reasons for children being taken into care, social agency heads and social workers alike deny that ethnicity plays any role in removals, and go on to cite parental neglect, truancy, theft of firewood and potatoes, healthcare concerns, family tragedies, and 'other pathological phenomena in the locality' including drug and alcohol abuse. As in other countries, the structural racism that reproduces such extreme poverty that puts many Romani families 'at risk' goes largely unquestioned, and the system which dumps hugely disproportionate numbers of Romani children into state care institutions goes effectively unchallenged.

The Impact of Institutionalisation on Romani Children and Families

In his submission to the ERRC/Validity collective complaint, UN Special Rapporteur Mr. Dainius Pūras, noted that a systematic review of a number of studies showed that children with disabilities and those from ethnic minorities suffered more than others from the effects of institutionalisation, resulting in more severe developmental delays or disturbed behaviours than their peers. He submitted that:

"institutional care has devastating effects on nearly every domain of functioning, and yet children, including very little and especially vulnerable children, are still being brought up in institutions. All the efforts should be made to ensure that infants and young children do not enter institutional settings."

Back in 2013 the Czech Ombudsperson conducted monitoring visits into medical early childhood care institutions and found the predominant reason for placement was an 'inappropriate social environment'; that 72% of all institutionalised children stay in the institutions longer than six months; and concluded that *"the less than ideal situation of placement of a small child into an institution has been further worsened by an aspect of depersonalisation and inadequate physical contact ... children have anything but love."*³⁰

²⁸ UNICEF, p. 40.

²⁹ European Commission, *Commission Staff Working Document Country Report Slovakia 2020*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX%3A52020SC0524>.

³⁰ Public Defender of Rights Report on systematic visits of health care facilities, including institutions for children under three, p. 61. The report is available (in Czech) at: https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2013/NZ-25_2012-kojenecke-ustavy.pdf.

In Romania, a UNICEF study found that one in every five children aged between 15 and 26 who were in the system as of November-December 2014 had spent their entire lives in the system, and almost one in every three had spent 90% of their lives: *“Therefore, the ‘system’ is the only family they know.”*³¹

As regards prospects for family reintegration, the study found that half of all separated children never contacted their parents or carers after separation. For those children separated at a very young age, the short time spent together did not allow for a strong bond to form with their parents. This was further exacerbated by a lack of any support or counselling for these parents, which means that many stop communicating with their children; and as time passes, prospects of family reintegration become more remote:

*“The frequency of the children’s interactions with their family decreases significantly if there is no stable relationship with the mother, the mother has little education, or if the household is located in a marginalized community. The more of these factors that apply, the lower the chances of the separated child to reunite with his or her family of origin.”*³²

After three years of separation, their chances of leaving the system drop dramatically. After six or seven years of separation, if no adoption takes place, their chances of exiting the system diminish even further, while the likelihood of being reintegrated into their own family is reduced to virtually zero.

When it comes to adoption and fostering, social workers told researchers that prospective foreign parents were more likely to adopt a Romani child than Romanian adoptive parents. One manager stated that in his county, *“the adoption of Roma children is almost non-existent”*. In a similar vein, an NGO president said: *“I had the experience of seeing that Roma children are not adopted, and the first question of the families is whether the child to be adopted is of Roma ethnicity. Non-Roma kids are more accepted because they are whiter.”*

Similarly, in Moldova, centre directors recounted the difficulties they experienced trying to place Romani children for adoption or in family-based alternative care. According to one, many potential adopters and professional parental assistants openly expressed their discriminatory prejudices that these children would go begging, breaking the law, and use violence against them.

As the Special Rapporteur recalled, children have a right to thrive, develop in a holistic way to their full potential, and enjoy good physical and mental health in a sustainable environment, and it is especially important for all concerned to fully comprehend the harmful effects of institutional care in early childhood. This report fully concurs with the Rapporteur’s conclusion that:

*“It is of crucial importance to eliminate institutional care for children and to promote investments in community-based services for families at risk, including for families living in poverty, Roma families and those with young children with developmental and other disabilities.”*³³

31 UNICEF, Romania: *Children in Public Care 2017*. Bucharest 2017, p. 44. Available at: https://www.unicef.org/romania/sites/unicef.org.romania/files/2019-04/Romania_Children_in_Public_Care_2014.pdf.

32 UNICEF, p.44.

33 European Committee of Social Rights, *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic* Complaint No. 157/2017. Available at: <https://hudoc.esc.coe.int/eng#%7B%22sort%22:%5B%22ESCPublicationDate%20Descending%22%5D,%22ESCDclIdentifier%22:%5B%22cc-157-2017-dmerits-cn%22%5D%7D>.

Note on Methodology

Research for this study included a desk review of law and policy in each of the target countries. Researchers reviewed relevant national legislation and policies related to child protection and adoption in the country, protection against discrimination, and data protection regulations. Roma-specific policy documents such as strategies, programmes, and national action plans were reviewed, as well as reports on their implementation and reports published by international bodies and NGOs. Through this research a map of the national child protection system was created and potential gaps in the protection of Romani children were identified. Field research included interviews with Romani families at risk of child removal or whose children were already in institutional care, representatives of international organisations, Government officials, child protection professionals, social workers, NGO representatives, children's rights advocates, academics, school officials, school mediators, and the persons responsible for administrative or civil decisions concerning child placement.

In each country, five locations were selected for field research: four locations were known to have a greater proportion of Roma in the local population while one location was chosen with a relatively smaller proportion of Roma. To the extent possible, researchers were instructed to seek a balance in terms of geographical representation, institutions present (i.e., large and small sized homes), rural and urban settings, as well as economic and intra-ethnic group diversity.

Limitations of the study

The research on which this report is based is qualitative in nature and is not representative. Data disaggregated by ethnicity on child protection is not systematically collected in any of the target countries, therefore the data presented on the number of Romani children in institutional care are based on the limited official data that is available and on the perception of respondents working in the field and children living in the homes. Child protection professionals in some locations refused to provide estimates about the representation of Romani children in institutional care, or answer researchers' questions. The research team did not attempt to interview Romani children in foster care or other forms of alternative placement: where information is presented on these topics it is based on information provided by professionals during interview. Due to the sensitive nature of this topic, the names of respondents are not included in this report.

International Legal Standards

Children's rights are protected in numerous international human rights treaties of the Council of Europe, the European Union, and the United Nations. Bulgaria, the Czech Republic, Romania, and Slovakia are all bound by the Charter of Fundamental Rights of the European Union (EU Charter), which states, in Article 24, "*Children shall have the right to such protection and care as is necessary for their well-being*" and that "*in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.*" In addition, Article 33 of the EU Charter ensures that families "*shall enjoy legal, economic and social protection.*"³⁴

The United Nations Convention on the Rights of the Child (CRC) establishes comprehensive protection of the rights of children.³⁵ The Convention establishes four core principles that States must consider in the fulfilment of children's rights, including protection against discrimination and all forms of neglect and exploitation, the best interests of the child, the right to life, survival, and development, and participation in decision-making processes. As concerns child protection, the CRC states at Article 9:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Article 18(2) further provides that "*States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.*" With a view to preventing the removal of children from their families, Article 19(1) of the CRC establishes that "*States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child [...]*".

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) require State Parties to ensure protection

³⁴ European Union, *Charter of Fundamental Rights of the European Union* (30 March 2010). Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>.

³⁵ United Nations, *Convention on the Rights of the Child*. Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

and assistance to families.³⁶ The ICESCR and the ICCPR also establish the right of children to measures of protection and assistance without discrimination.³⁷

At the Council of Europe level, Bulgaria, the Czech Republic, Romania, Slovakia, and Moldova are all party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).³⁸ The protection of children's rights falls within the scope of the ECHR, including Article 3 (freedom from torture, degrading and inhuman treatment), Article 6 (fair trial), Article 8 (respect for private and family life), Article 13 (legal remedy), and Article 14 (non-discrimination). Jurisprudence of the European Court of Human Rights has established various principles concerning the placement of children in institutional care, family reunification, contact between children and parents, and other child protection related issues.³⁹

The Revised European Social Charter (RESC) establishes at Article 17 the right of children and young persons to social, legal, and economic protection to encourage *“the full development of their personality and of their physical and mental capacities.”* To achieve this, State Parties *“undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:*

- a. *To ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;*
- b. *to protect children and young persons against negligence, violence or exploitation;*
- c. *to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support.”*⁴⁰

Article 16 of the RESC also protects the right of the family to social, legal, and economic protection, including through social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.

Recommendation (2005) of the Council of Europe's Committee of Ministers on the rights of children living in residential institutions points out that parents have the primary responsibility for the upbringing and development of children. The separation of children from their families should be the last resort and only happen when it is unavoidable, as a temporary

36 Article 10, 12, *International Covenant on Economic, Social and Cultural Rights*. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Article 23, *International Covenant on Civil and Political Rights*, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

37 Article 10, *International Covenant on Economic, Social and Cultural Rights*, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Article 24, *International Covenant on Civil and Political Rights*, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

38 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

39 T.P. & K.M. v. United Kingdom, European Court of Human Rights, unreported, 10 May 2001; W v United Kingdom (1987) 10 E.H.R.R. 29; See for example, K and T v. Finland (2003) 36 E.H.R.R. 255; Olsson (No. 2) v. Sweden (1994) 17 E.H.R.R.; Eriksson v. Sweden (1989) 12 E.H.R.R. 183; and Johansen v. Norway, (1997) 23 E.H.R.R. 33; Andersson v. Sweden, Series A, No. 226 (1998) 14 E.H.R.R. 615 or Olsson v. Sweden, Series A, No. 130, (1989) 11 E.H.R.R. 259; Couillard Maugery v. France, 1 July 2004.

40 Council of Europe, *Revised European Social Charter* (May 1996) Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf93>.

measure. States are obliged to identify family-based solutions, to address the root causes of family separation, and to ensure contact between parents and children.⁴¹

Protection of Children and the Family in National Law

The Constitutions of all five countries guarantee the protection of the child and the family without discrimination. Bulgaria, the Czech Republic, Moldova, Romania, and Slovakia have all adopted specific laws which govern child protection matters.

If parents fail to fulfil their obligations towards the child as proscribed by law, parental rights may be temporarily restricted or permanently removed. Court orders are required prior to the suspension or termination of parental rights and the placement of children in institutional care on a temporary or permanent basis in Bulgaria,⁴² the Czech Republic, and Slovakia.⁴³ The situation is similar in Romania, where the institutionalisation of children under the age of three was prohibited in 2014.⁴⁴ Similarly, in Moldova parents can be deprived of their parental rights only through a court decision.⁴⁵

EU Policy Recommendations and Funding

There is a broad political commitment, at the European and international level, for deinstitutionalisation understood as a sustained transition from institutional to community-based care for all user groups; and in relation to children, a clear understanding that family-based care should come before any alternative care arrangements. In 2013, the European Commission (EC) recommended that all of its members should draft and implement policies to reduce child poverty and social exclusion, using multidimensional strategies aimed at ensuring child wellbeing and fostering equal opportunities so that all children can realise their full potential.⁴⁶

41 Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions* (16 March 2005). Available at: <https://www.refworld.org/docid/43f5c53d4.html>.

42 Bulgaria, Child Protection Act, as amended in July 2010 (13 June 2000), Article 26, available at: <http://lex.bg/bg/laws/ldoc/2134925825>.

43 Czech Republic, *Charter of Fundamental Rights and Freedoms as a part of the constitutional order of the Czech Republic, No. 2/1993 Coll., as amended by constitutional act No. 162/1998 Coll.*, Article 32. Available at: https://www.legislationline.org/download/id/6478/file/Czech_Constitution_am2013_en.pdf.

44 UNCR Office of the High Commissioner, *Committee on the Rights of the Child considers the report of Romania*. Geneva 2017. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21658&LangID=E>.

45 Republic of Moldova, National Report on the Implementation of the United Nations Convention on the Rights of the Child. Available at: <https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.MDA.1.pdf>.

46 The European Commission's Social Investment Package and Recommendation "Investing in Children: Breaking the Cycle of Disadvantage", February 2013. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013H0112>. The Council of Europe Strategy for the Rights of the Child 2012-2015 also provides Member States with guidance and support on child protection policies. Available at: <https://rm.coe.int/168048e627>.

The Commission also recommended maintaining an appropriate balance between universal policies, aimed at promoting the wellbeing of all children, and targeted approaches, aimed at supporting the most disadvantaged of children, particularly children at high risk due to multiple disadvantages, such as those with special needs or disabilities, those in alternative care, Romani children, and those living in low-income households.

General Objective #1 sets out priorities for developing and strengthening the capacity of community-based prevention and support services – one of the main responsibilities of public local authorities – while also aiming to avoid separating children from their families and thus preventing new entries into the public care system. It also focuses on enhancing support for families in their role as primary caregivers and helping them to develop parenting skills in a non-stigmatizing way in order to prevent child-family separations.

General Objective #2 includes a special focus on children deprived of parental care and protected in the special protection system as well as on children living in poverty, Romani children, children with disabilities, and other children in need.⁴⁷

The same year the European Expert Group published its *Common European Guidelines on the Transition from Institutional to Community-based Care (the Guidelines)* to provide practical advice about how to expand the range of community-based services, including prevention in order to eliminate the need for institutional care, and provide a tool-kit on the use of EU funds for deinstitutionalisation.⁴⁸

According to *Structural Funds Watch*, the regulatory framework governing the use of ESIF for the 2014-2020 period “clearly embraced the view that the transition from institutional care to community-based living is a mandatory change process to ensure citizens’ rights are respected.” Supporting Thematic Objective 9 “social inclusion”, a total amount of €15.6 billion was available under the ERDF and €31.1 billion under the ESF. In December 2015, the Commission advised that “€4.5 billion ERDF investments planned in social infrastructure will include support targeting community-based social services for vulnerable groups (disabled, children, elderly, mental health patients).”⁴⁹

Considering this broad commitment to, and not inconsiderable EU investment in, deinstitutionalisation, it remains difficult to comprehend how the plight of Romani children disproportionately removed from their families and placed in state institutions failed to register among the many and varied policy priorities in the 2011 EU Roma Framework and its 2020 successor. It stands as testament to the wider failure of Roma inclusion strategies to adopt a holistic and rights-based approach when it comes to children and youth, one that ensures services and systems that are child-friendly and non-discriminatory; that prioritises the elimination of all forms of violence against Romani children; that guarantees the rights of those in vulnerable situations; and promotes the participation of Romani children in policies that affect their lives.

47 Commission Recommendation of 20 February 2013. Investing in children: breaking the cycle of disadvantage. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013H0112>.

48 European Expert Group on the Transition from Institutional to Community-based Care, *Common European Guidelines on the Transition from Institutional to Community-based Care*. LUMOS, 2013. Available at: <http://enil.eu/wp-content/uploads/2016/09/Guidelines-01-16-2013-printer.pdf>.

49 Neil Crowther et al. *Opening up communities, closing down institutions: Harnessing the European Structural and Investment Funds*. Structural Funds Watch. November 2017. P. 13. Available at: https://eustructuralfundswatchdot-com.files.wordpress.com/2017/11/cle-sfw_opening-up-communities-november-2017_final.pdf.

Bulgaria

Population Profile

According to data cited by the European Commission, an estimated 750,000 Roma live in Bulgaria, which amounts to 10.33% of the total population. They face severe discrimination in a country where ECRI found racist and intolerant hate speech continues to escalate, and Roma are often subjected to racial violence. Election campaigns are frequently marred by hate speech targeting Roma.⁵⁰ The junior partner in the government coalition is the United Patriots, a far-right alliance notorious for its anti-Roma racism.

A 2019 Pew Research poll found that 68% of the Bulgarian population holds an unfavourable view of Roma.⁵¹ Many local municipalities actively discriminate against Roma in terms of access to education and housing. Forced evictions remain all too common. The Roma Civil Monitor reported that, according to the data collected from 61% of municipalities, 399 out of all 444 orders (89%) concerning the demolition of residential buildings issued by local administrations refer to the homes of Roma. Often prompted by anti-Roma demonstrations and extremist demands for the expulsion of Roma, such demolitions serve to heighten inter-ethnic tensions.⁵²

The EU-Midis II survey reported that 86% of Roma in Bulgaria were at risk of poverty, which was almost four times higher than that of the general population, and 27% were living in households where in the previous month at least one person went to bed hungry. In terms of access to clean water and sanitation, 23% of Roma were living in households without tap water inside the dwelling, and 44% were living in dwellings without an inside toilet and shower. NEET (Not in Education, Employment, or Training) rates among Roma aged 16-24 are very high (79% for women; 52% for men), as are rates for early school leaving (77% for women; 57% for men).⁵³

Child Protection Policy Context

In Bulgaria in 2019, amendments to Bulgaria's Child Protection Act and the Social Services Act were placed in jeopardy in the wake of what the National Network for Children described as

⁵⁰ ECRI Report on Bulgaria (fifth monitoring cycle). 16 September 2014. Available at: <https://rm.coe.int/fifth-report-on-bulgaria/16808b55d8>.

⁵¹ Pew Research Centre, *Global Attitudes & Trends*, October 14, 2019. Available at: <https://www.pewresearch.org/global/2019/10/14/minority-groups/#many-in-europe-view-roma-unfavorably>.

⁵² Roma Civil Monitor. *A synthesis of civil society's reports on the implementation of national Roma integration strategies in the European Union*. Center for Policy Studies Central European University. August 2018, p. 32. Available at: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3034/rcm-civil-society-monitoring-report-1-synthesis27-2017-eprint-fin-2.pdf>.

⁵³ Fundamental Rights Agency, Second European Union Minorities and Discrimination Survey Roma – Selected findings. 29 November 2016. Available at: <https://fra.europa.eu/en/publication/2016/eumidis-ii-roma-selected-findings>.

a “backlash against children’s rights (which) raises concerns around national policies becoming hostage to speculation, disinformation and fake news.” Public discussion around the draft National Strategy for the Child 2019-2030 (the Strategy) quickly soured as far-right organisations and religious groups mobilised against it; and the Protection Act “*was subjected to extreme propaganda, accompanied by a massive disinformation campaign by radical religious and political organisations*”.⁵⁴

Initially, public debate focused on opposition to any bans on corporal punishment, with the Bulgarian Orthodox Church initially weighing in to insist that parents have the right to slap their children in order to discipline them. Then followed false and provocative claims that the Strategy is “*diminishing the rights of the parents and that the state and the social services will be able to take away children from their families ‘based on the Norwegian model of child protection’.*” The attacks went beyond the Strategy to target the entire child protection system, and public debate was flooded with bogus narratives “*claiming that Bulgarian children would be taken away from families for banal reasons, such as a refusal to buy a toy or ice-cream to the child and will be given instead to Norwegian gay couples for adoption.*”⁵⁵

As reported in September 2019, in the face of coordinated controversy, Prime Minister Boyko Borisov announced that the Strategy was withdrawn and would not be adopted. In its Annual ‘Report Card 2020’, the National Network for Children stated that “*The government has abandoned the development of politics supporting children and families*”, with the adoption of the Social Services Act postponed and still in doubt. This means that “*specific measures for supporting families and preventing the separation of children from their parents were postponed indefinitely. Issues regarding the quality of alternative care for children in residential services in the community remain unresolved.*”⁵⁶

Deinstitutionalisation

In its 2009, National Strategy “Vision for De-institutionalisation (DI) of Children in Bulgaria” Bulgaria committed to achieve a complete transition from institutional to family- and community-based care by 2025. Since then, over €100 million from the EU structural funds have been allocated to support the process of deinstitutionalisation. The process of transformation is additionally supported by a number of international and local organisations, private donors, and UNICEF. In September 2018, Bulgaria began implementation of a two-year project “Continuing support for deinstitutionalisation of children and young people”. The ambition of this €1.5 million EU-funded intervention is that all old-type institutions for children will be closed.

Some of the most important outcomes of the reform include an 80% decrease in the number of children placed in institutional care: from 7,587 children in 2009 to 979 children at the

54 Quote from George Bogdanov, Executive Director of National Network for Children. National Network for Children Annual “Report Card 2020”, 25 June 2020. Available at: <https://nmd.bg/en/national-network-for-children-introduced-the-annual-vreport-card-2020v/>.

55 National Network for Children, ‘Child Rights under Attack in Bulgaria’, 2 September 2019. Available at: <https://nmd.bg/en/child-rights-under-attack-in-bulgaria/>.

56 National Network for Children Introduced the Annual “Report Card 2020”, 25 June 2020. Available at: <https://nmd.bg/en/national-network-for-children-introduced-the-annual-vreport-card-2020v/>.

end of 2017. Of the 137 institutions that were identified for closure in the National Strategy “Vision for De-institutionalisation (DI) of Children in Bulgaria” in 2009, only 36 remained by 2017. As of 2017, all specialised institutions for children with disabilities have been closed, and there has been a 200% increase in the number of children in foster care.⁵⁷

However, according to expert civil society groups, problems include a lack of a clear division of responsibilities between relevant authorities; no consultation or multilateral coordination of activities with partners and stakeholders; and the national strategy lacks detailed planning, specific timelines, and monitoring mechanisms.

Civil society and expert groups also expressed concerns about the quality of all types of alternative care placements, and the ways that decisions in relation to children are made, implemented and monitored, as well as severe under-resourcing of the child protection system, an acute shortage of staff, poor material resources, and high turnover of social workers who lack competency-based standards, training, and supervision.

What is notable in the reports is the absence of any mention of Romani children in the care system; even the Commission’s call for better data only stresses the need for data disaggregated by age and by region “in order to establish conclusively that prevention of entry into formal care as a whole has been effective.” The issue of data disaggregated by ethnicity does not feature in the factsheets and reports.

When it comes to Roma inclusion, the EU Roma Framework lacked a child-centred perspective, and the issue of Romani children in the care system does not feature in the Bulgarian National Roma Integration Strategy (NRIS) up to 2020.

Child Endangerment

State interventions to remove children from their families and place them in institutional or other forms of alternative care is generally in response to a situation of perceived child endangerment. Legal definitions of child endangerment differ slightly but are quite general.

The Child Protection Act defines “A child at risk” as one: a) who does not have parents or has been permanently deprived of their care; b) who has become victim of abuse, violence, exploitation, or any other inhuman or degrading treatment or punishment either in or out of his or her family; c) for whom there is a danger of causing damage to his or her physical, mental, moral, intellectual, and social development; d) who is afflicted with mental or physical disabilities and difficult to treat illnesses.⁵⁸

57 Opening Doors for Europe’s Children, 2018 Country Fact Sheet: Bulgaria. Available at: <https://better-carenetwork.org/library/principles-of-good-care-practices/transforming-institutional-care/opening-doors-for-europes-children-2018-country-factsheets>.

58 National Legislation Bulgaria, Parental Responsibilities - Child Protection Act. Available at: <http://ceflonline.net/wp-content/uploads/Bulgaria-Parental-Responsibilities-Legislation.pdf>.

Romani Children in the Childcare System

According to the Agency for Social Assistance (ASA) about 2000 children are abandoned by their biological parents. In 2018, over 1000 children under the age of three were abandoned in institutions, of them 441 were abandoned at birth. Most cases were concentrated in the regions of Plovdiv, Stara Zagora, Pleven, Sofia City, and Montana.⁵⁹ The primary causes of child abandonment, as elsewhere in Europe, were found to be poverty or financial hardship, being a single parent, post-natal depression, mental illness and substance misuse, a lack of sexual health education, poor knowledge regarding family planning, restrictions regarding access to abortion, the child having some form of disability, the child being HIV positive, pregnancy as a result of rape or abuse.⁶⁰

According to psychologists “People, because of their lack of ability to provide the necessary standard to their child as they imagine it, decide that it is better the state or adoptive parents to take care of their child.”⁶¹

As for removals of ‘children at risk’ from their biological families, in addition to the above definition this category includes those children about whom Child Protection staff have received an alert. Every Bulgarian citizen is obliged to alert the authorities should they witness something that bothers them, and staff members are obliged to follow-up on every alert received. Alerts may come from medical professionals, often in cases of child malnutrition, or neighbours who report children who appear hungry, poorly-clad, dirty, or whose homes are overcrowded without water or electricity, or teachers reporting about poor personal hygiene, frequent absenteeism, or behavioural anomalies.

Overrepresentation and Ethnically Disaggregated Data

It is extremely difficult to ascertain the number of Romani children who have been separated from their families and the extent to which Romani children are overrepresented in childcare institutions. The formal response from the ASA to an Access to Information Request on this issue was that “they do not have ethnic data as they do not process personal data on the basis of ethnic origin.”⁶²

This is untrue. Based on the information survey and interviews conducted during the research, it turns out that the ASA does have ethnic data, but either does not process it or

59 Маркова. (2019). Над 1 050 български деца са изоставени от родителите си през 2018 г. Retrieved 14 March 2020. Available at: https://www.actualno.com/society/nad-1-050-bylgarski-deca-sa-izostaveni-ot-roditelite-si-prez-2018-g-news_723743.html.

60 European Commission, Child abandonment and its prevention. Available at: https://ec.europa.eu/justice/grants/results/daphne-toolkit/content/child-abandonment-and-its-prevention_en.

61 Какъв е профилаът на родителите склонни да изоставят дете? - По света и у нас. (2019). Retrieved 14 March 2020. Available at: <https://news.bnt.bg/bg/a/kakv-e-profil-na-roditelite-sklonni-da-izostavyat-dete>.

62 Response from Social Assistance Agency on Access to Information Request.

refuses to disclose information about it. We found that information on the ethnic origin of the children is in fact collected by the CPU staff in the primary social report for the assessment of the initial at-risk signal and for case-work preparation by the social workers.⁶³

In the social report, along with information on the basic needs, health, education, and emotional and behavioural development of the child, the form has a place to record the child's mother tongue, which includes Romany alongside Bulgarian and Turkish, and even has an option to specify which dialect. Ethnicity is also included in the category of belonging and identity: '*5.1. Description of belonging to a relevant gender, family, ethnic group, religious community*'.

It is clear from our respondents' answers that some of these social reports are available electronically, but most of them are in paper form. According to our information, not all social reports register the child's ethnicity, and it is recorded at the discretion of the social worker and/or the parent(s).

The ethnicity of children in state care is also registered in the Individual Care Plans completed when a child is first admitted to an institution and updated periodically. One of the eight categories of need is entitled 'cultural, religious, linguistic, ethnic needs'. Social workers who were interviewed also reported that children who trust them will share information about their ethnic origin. [Technical guidelines](#) for social workers on how to use the ASA electronic registers also contain a column concerning the child's ethnic identity.

Clearly information about the ethnic origin of children in care is available, despite ASA claims to the contrary, and denials of access to information are based on protection of personal data. Interestingly, the system states that "the online reference allows different filtering options": i.e., information on the ethnic origin of children in institutions can technically be processed and provided (if recorded). It is clear from the respondents' answers that information about the child's ethnic origin is important for foster parents or adoptive parents. The stated purpose is not to discriminate, but to meet the individual needs of children.

In short, the official reply from the Social Ministry to the ERRC's request for information, that they do not have such data as they do not process ethnic data, is demonstrably false. As we have shown above, it is plainly visible from the documentation that data on ethnicity is collected, and the electronic system allows for processing and filtering such information. The Ministry could in fact produce ethnically disaggregated information concerning the numbers of Romani children in state care, but chooses not to.

In the absence of clear statistical information, the number of Romani children separated from their biological families and placed in care can only be estimated from information gathered from social workers, community mediators, and non-governmental organisations working in the field of children's rights.

To the question "How many of the children that you work with are Roma?" 45% of the respondents said "50/50" or "more than half"; 35% of respondents said that Romani children in institutions were "overrepresented" and estimated the number to be about 80-85%; 10%

⁶³ A sample social report is set out in the Ordinance on the Conditions and Procedures for Implementing Measures to Prevent Abandonment of Children and Accommodation in Institutions, as well as for their Reintegration - see Annex 3 in Bulgarian (as of May 7, 2019).

of respondents put the number of Romani children at 60%; while another 10% said that 30% of the children they work with are of Romani origin.

Allowing for regional variations, it is clear that those professionals surveyed estimate that Roma, who account for just over 10% of the population, are over-represented in the childcare system. Once in the system, respondents indicated that age rather than ethnicity becomes the decisive factor when it comes to placement concerning adoption, fostering, or accommodation in residential care centres. Interviewees noted a trend where foster parents, and in some cases, adoptive parents have refused to care for children when they become teenagers, necessitating their return to institutional care which is a traumatising experience.

How and why Romani Children end up in Care Institutions

According to the respondents, the main reason for Romani children being removed from their families is deep poverty, compounded by the inability of social workers and the state care system to provide adequate support for parents. One social worker said:

“Romani children fall into institutions more often than Bulgarian children, but this is due to poverty, not because of parents’ lack of desire to take care of their kids. Speaking of lack of desire - rather Bulgarian families leave their children.” (Social Worker)

Social workers asserted that the reason Romani families face more difficulties in raising children is purely on a material basis, parents with no fixed income simply lack the resources to provide for their families:

“That’s why we talk about poverty - when there is no stable income. For example, construction work - the father works for two days, then again, he will not. And the lack of stability in housing - that’s where everything is difficult: moving, being chased away, flooding, documents get lost, and then these people cease to exist for the state.” (Social Worker)

For the poorest, with no source of income whatsoever, living conditions are hazardous, and children are at risk of neglect in overcrowded dwellings, lacking access to clean water and sanitation, where there is no electricity or heating. Children in such settings are often malnourished, have missed compulsory medical examinations and vaccinations, and many are exposed to high-risk environments.

“Most of the children are open-minded and tell their own stories. Parents cannot provide funds for them. I think that with the children I worked with, 90% were left behind by their parents. 50% know their parents, keep in touch with them, but parents do not have the financial means. I know this because I’ve been in the system for 20 years.”

(Director of an institution)

Other factors that were cited concerning removals include emigration, where the children are left in the care of ailing grandparents who are unable to properly care for them. Another cause for concern was reported to be the break-up of early marriages, and grandparents again being unable to care for the children after their parents split.

All of the interviewees are adamant that the removal of children from their families is only undertaken as a last resort when there is a real risk to the child, no matter how poor the families are. This is due to the lack of capacity and budget in the childcare system, but also to the extremely low financial support for child policies, regardless of ethnic origin.

In such cases, however, the risk of discriminatory behaviour and practices by social workers and institutions towards Romani parents living in marginalised poverty is extremely high. One Romani parent, from whom five children were removed and four subsequently returned, claims that his children had been removed because they did not attend school regularly. In an attempt to provide food, the parents were engaged in seasonal, irregular work from morning to night outside the home. He told the interviewers,

“When they took the children, I didn’t know, we were working with my wife. They collected the children from school as animals - some from school, some from the garden, others from the outside. The next morning, I was told that the children were taken and where they were. They did not tell me where they were being taken, I found out from the mayor where they were and the next day, I went to see them”.

(Romani father of removed children)

In this case, four of the children were returned, according to the father, *“because they broke the houses and kept running and coming home”*, but one of the boys was placed in foster care, and according to the father, no one from the family knows where he is or what happened to him.

In another case, the baby was taken from the mother immediately after birth. She claims that she was given the birth certificate, but that she did not really know what she had signed and that the child was subsequently taken and given into foster care.

In all cases, parents have the opportunity to visit their children according to a schedule. However, many Romani parents do not know their rights, nor do they know where to look for help to affirm those rights. There are few community-based Roma or other organisations to provide help and assistance. Very often, those Romani parents whose children have been taken away, face added discrimination within the Romani community on account of their low social status.

Treatment, Experiences of Romani Children in Care and how it Differs from Other Kids

Social workers who were interviewed emphasised that all children are considered equal and receive equal treatment; and that there are no quarrels between the children themselves regarding ethnic origin. The sense of ethnic identity of children in care is subsumed by another more pronounced identity, that of ‘children from institutions’. According to one social worker, ‘multiculturalism’ is not promoted in service provision:

“The children themselves understand each other perfectly. Having been removed from their families, the children become one community, they have the same problem, the same loss and pain – that they are abandoned, that they are not wanted. We have no questions about ethnicity or religion”

(Social Worker)

BULGARIA

According to the respondents, as well as from the observations during the interviews, living conditions are the same for Romani and non-Romani children in state care. Young people who grew up in institutions and social workers who were interviewed said that there is no discrimination between the children in their daily activities, and no direct discrimination by teachers and social workers against the Romani children. Rather, children in institutions face discrimination from other children and parents when they go outside to attend school.

Czech Republic

Population Profile

Roma make up the largest ethnic minority in the Czech Republic. According to official estimates in 2017, there were 240,300 Roma, which is approximately 2.2% of the entire population. The majority live in two regions; the Moravian-Silesian region (northeast) and Ústí nad Labem region (northwest).⁶⁴

According to the EU-Midis II survey, 58% of Roma in the Czech Republic had incomes below the national income poverty threshold, which was almost six times higher than that of the general population.⁶⁵ The Analysis of Socially Excluded Localities in the Czech Republic showed that the number of socially excluded localities has doubled between 2006 and 2015, with a total of 606 socially excluded localities reported in 297 municipalities. The analysis found that roughly half of the Roma in the Czech Republic are “socially excluded or are in danger of social exclusion.”⁶⁶

Roma in social exclusion often face discriminatory practices in accessing municipal housing. Testing carried out by the Public Defender of Rights in 2012 and 2013 confirmed discriminatory practices towards Roma are also present in the commercial rental market. These findings were further confirmed by the 2013 government housing report, which also confirmed that Roma cannot access the Czech housing market as a result of their ethnicity and lesser economic status.⁶⁷

Thirteen years after the European Court’s landmark ruling that ruled school segregation in the Czech Republic to be discriminatory and illegal, the practice persists⁶⁸ and in 2014 the European Commission launched an infringement procedure against the Czech Republic, targeting the existence of the “special” schools or classes where some 30% of Romani children are still educated.

According to many surveys of the Czech public, respondents like Roma the least of any group; typically, some 75% of the general public dislike Roma or would not agree to have a Romani neighbour.⁶⁹ A 2019 Pew Research poll found that 66% of the Czech population holds an unfa-

64 Zpráva o stavu romské menšiny v České republice za rok 2017. Available at: <https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/dokumenty/Zprava-o-stavu-romske-mensiny-2017.pdf>.

65 Fundamental Rights Agency, Second European Union Minorities and Discrimination Survey Roma – Selected findings. 29 November 2016. Available at: <https://fra.europa.eu/en/publication/2016/eumidis-ii-roma-selected-findings>.

66 Čada, K. et al. 2015. *Analýza sociálně vyloučených lokalit v ČR*. Available at: <http://www.esfcr.cz/file/9089/>.

67 Romea.cz, *Czech Gov’t report finds Roma cannot access ordinary housing*, 2 November 2016. Available at: <http://www.romea.cz/en/news/czech/czech-gov-t-report-finds-roma-cannot-access-ordinary-housing>.

68 European Court of Human Rights, *CASE OF D.H. AND OTHERS v. THE CZECH REPUBLIC*, 13 November 2007. Available at: [https://hudoc.echr.coe.int/fre#{"itemid":\["001-83256"\]}](https://hudoc.echr.coe.int/fre#{).

69 Poll conducted by the Public Opinion Research Centre (CVVM), March 2017. Available at: https://cvvm.soc.cas.cz/media/com_form2content/documents/c6/a4301/f77/ov170425_ENG.pdf.

avourable view of Roma.⁷⁰ Such negative perceptions are amplified by hate speech from both extreme and mainstream political parties, and ECRI noted with particular concern that the use of the term “inadaptable” to refer to Roma in particular has become a normal expression in public discourse, and has even been employed officially: “ECRI considers this form of expression extremely dangerous; by attempting to justify prejudice and intolerance against Roma, it perpetuates and increases them.”⁷¹ FRA found that the measure of harassment experienced due to being Roma over a 12-month period was 56% in the Czech Republic, the highest of nine EU Member States surveyed.⁷²

Child Protection Policy Context

The Czech Republic is considered to be amongst the least child-friendly OECD countries, with a history of discriminating against groups of children. Some sense of the policy context can be garnered from the collective complaint lodged with the European Committee of Social Rights (ECSR) by the European Roma Rights Centre, the Mental Disability Advocacy Centre (now *Validity*), and the Prague-based Forum for Human Rights in 2016, against the Czech Republic, specifically for its failure to comply with its obligations to refrain from the institutionalisation of young children, and in particular infants under the age of three.⁷³ The data showed that institutionalisation has a disproportionate impact upon the most vulnerable children; children of Romani origin and children with disabilities, and the Czech Republic has failed to put in place non-institutional and family-like alternative forms of care.

On 23 November 2020, the ECSR found the Czech Republic responsible for large-scale and discriminatory institutionalisation of children with disabilities and Romani children in early childhood care institutions, criticising the failure of the country to adopt and implement an appropriate deinstitutionalisation strategy. The Committee found violations of the rights of particularly vulnerable Romani children and children with disabilities under the age of 3, specifically the obligation to ensure appropriate social and economic protection to children, under Article 17 of the 1961 Charter.⁷⁴

This finding comes a full decade after ERRC research revealed that while Romani children accounted for around 3% of all children under the age of three in the Czech Republic, between 27%

70 Pew Research Centre, *Global Attitudes & Trends*, October 14, 2019. Available at: <https://www.pewresearch.org/global/2019/10/14/minority-groups/#many-in-europe-view-roma-unfavorably>.

71 ECRI Report on the Czech Republic (5th monitoring cycle). Published on 13 October 2015, p. 15. Available at: <https://rm.coe.int/fifth-report-on-the-czech-republic/16808b5664>.

72 FRA, A persisting concern: anti-Gypsyism as a barrier to Roma inclusion. 2018. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-anti-gypsyism-barrier-roma-inclusion_en.pdf.

73 European Committee of Social Rights, *Complaint: European Roma Rights Centre & Mental Disability Advocacy Centre v. the Czech Republic: For failure to ensure social and economic protection of young children who are segregated in child-care institutions*. 26 October 2016. Available at: <https://rm.coe.int/complaint-157-2017-european-roma-rights-centre-mental-disability-advoc/1680761626>.

74 ERRC, Press Release: Council of Europe body finds Czech Republic responsible for violating rights of children with disabilities and Romani children through institutionalisation, 23 November 2020. Available at: http://www.errc.org/press-releases/council-of-europe-body-finds-czech-republic-responsible-for-violating-rights-of-children-with-disabilities-and-romani-children-through-institutionalisation?fbclid=IwAR3PXl2tvKlZwXs1LRmHDAbc7Mlga5PtqIuzZX4UscHXU8_IzoBqp6MEow.

and 32% of children aged three and under placed in institutions were of Romani origin. While there was no official ethnically disaggregated data on children in institutional care after the age of three, according to unofficial expert estimates 30–60% of all children (up to 18 years) in the Czech institutional care system were Roma. Even though poverty was rejected by the Constitutional Court as a reason to put a child in state care, the research found that in 2010, poverty-related factors were most frequently reported as the reason for removing a child from their family in the case of Roma.⁷⁵

The UNCRC, in its 2011 Concluding Observations, noted that the best interest of the child was not the decisive factor in cases concerning children in the Czech Republic, and expressed the following concerns:

- a. *There is a lack of preventive services and admission criteria for placement into institutional care, which results in large numbers of children, especially children with disabilities and/ or of Romani origin, being placed in care outside their home, particularly in institutional care, and that in the majority of such cases, the material and financial situation of the family has been the main basis for such removal;*
- b. *There are inadequate community-based family-type services and foster care to avoid institutionalisation of children;*
- c. *There is no central mechanism for: (i) regulating institutional care providers, or (ii) coordinating the programming and provision of institutional care, resulting in inconsistent standards of care being provided;*
- d. *The standard of facilities as well as the numbers and level of training of personnel at many institutional care providers is low;*
- e. *The long duration for which children remain in institutional care, and that the majority of these children only leave institutional care after attaining the age of majority;*
- f. *Inadequate efforts have been made for children to maintain contact with their parents and to be reintegrated with their families.*⁷⁶

In early 2012, the Czech Ministry for Social Affairs published a National Strategy for the Protection of Children's Rights for the years 2012-2015. Then, in January 2013, the Czech Parliament overrode a presidential veto to push through an amendment of the Social-Legal Protection of Children Act, which introduced alternative measures to institutionalisation, giving priority to alternative types of childcare and professional fostering, with a view to transferring significant numbers of children from institutional care to foster families.⁷⁷

The subsequent 2016-2020 action plan included measures aimed at consolidating childcare and child protection authorities under one ministry; the Ministry of Labour, it foresaw increasing the minimum age at which children enter institutional care from zero to seven, and specified measures to limit capacity of institutions and promote development of family- and community-based support services, particularly for children under the age of three.

⁷⁵ ERRC, *Czech Republic: A report by the European Roma Rights Centre – Country Profile 2011-2012*, pp.30-31. Available at: http://www.errc.org/uploads/upload_en/file/czech-republic-country-profile-2011-2012.pdf

⁷⁶ UN Committee on the Rights of the Child, *Fifty-seventh session, Concluding observations: Czech Republic*, 30 May 2011. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsrpiCE%2Fy0jVxzg5%2BV8i7pht4H4a4pAWsJL3pa%2FvZCeSaVBbp1g77ZAaHTDQ9mJG8VIti46tzmjcvP%2FV6FNzfm%2F1WVG%2BKm%2Fced2V99WuxIcPh>

⁷⁷ Ministry of Labour and Social Affairs, *Press release – Lower chamber of the parliament passed the amendment of the social-legal protection of children act*. Available in Czech at: <https://www.mpsv.cz/web/en/family>.

In March 2017, the Minister of Social Affairs withdrew the proposal as several members of the Government disagreed with it.⁷⁸ The Ministry of Health, responsible for early childhood care institutions (*kojenecké ústavy*), openly disagreed with a ban on the institutionalisation of children below a specific age. Eventually, the document was introduced to the Government on 21 August 2017, but it was not adopted. The Ministry of Health voted against it.

The 2020 findings by the ECSR provide a damning indictment of policy neglect that amounts to discriminatory maltreatment of vulnerable children. The Committee found the State culpable on three major grounds:

- (1) The State's failure to reduce the number of young children placed in institutions, to provide young children with appropriate services in family-based and community-based services within a reasonable time, and to the maximum use of available resources, amounted to violations of Article 17 of the 1961 Charter. The European Committee found that existing legislation in the Czech Republic allowing for institutionalisation of young and vulnerable children, and the ongoing maintenance of residential children's centres under the Health Care Act, does not conform with obligations under Article 17 of the Charter.
- (2) Measures taken by the Czech Government to reform the existing system have failed to take significant and targeted steps to deinstitutionalise the existing early childhood care system, and instead provide young children with services in family-based and community-based settings. The Committee also found that this was in violation of Article 17 of the Charter.
- (3) The ECSR emphasised the importance of collecting relevant data which are indispensable to the formulation of an adequate policy and the adoption of appropriate measures. The Czech Government's failure to provide any evidence or relevant information on the adoption of measures to improve the provision of appropriate family and community-based services for Romani children and children with disabilities, was a violation of the 1961 Charter on this ground.⁷⁹

Deinstitutionalisation

Despite the adoption of a deinstitutionalisation strategy in 2012, progress has been stalled by what Czech NGOs describe as an obsolete childcare system characterised by a lack of coordination between ministries and constant delays with the systemic reforms:

“It's of great disappointment that deinstitutionalisation (DI) strategy in the Czech Republic was adopted in 2012 but has never been fully implemented. Previous action plan for DI ended in 2015; since then, there

⁷⁸ The minutes are available in Czech at: <https://apps.odok.cz/djv-agenda?date=2017-03-22>.

⁷⁹ ERRC, Press Release: Council of Europe body finds Czech Republic responsible for violating rights of children with disabilities and Romani children through institutionalisation, 23 November 2020. Available at: http://www.errc.org/press-releases/council-of-europe-body-finds-czech-republic-responsible-for-violating-rights-of-children-with-disabilities-and-romani-children-through-institutionalisation?fbclid=IwAR3PXl2tvKlzWxS1LRmHDAbc7Mlgca5PtqIuzZX4UscHXU8_IzoBqp6MEow.

have been four attempts to adopt an updated action plan but none of them were successful because the Ministries were not able to reach a coordinated agreement.”

(Andrea Safarik Fridmanska from [Vteřina poté](#))⁸⁰

In the Czech Republic in 2008 approximately 10,000 children were living in institutional care; in 2017, *Opening Doors* noted that the total was approximately 9,000 children. Out of these, 1,600 children live in baby and infant homes and 1,800 children are accommodated in correctional facilities with prison-like features:

“Last year, 95% of the children who lived in correctional facilities entered them under the Care order and only 5% of them were placed under the Criminal order. In other words, the absolute majority of these children do not belong to the correctional facilities. These types of settings are legally organised and run as isolation rooms/cells,”

(Michal Dord from [Vteřina poté](#))⁸¹

Below is a facts-and-figures snapshot from *Opening Doors* of the childcare system in the Czech Republic:

- Infant homes for children between the age of 0-3 (6) are managed by the Ministry of Health, some of which house over 100 children per one facility, with one nurse working in shifts and looking after 5 children on the average and even more for infants between 0-3 years of age.
- Early intervention social services, social welfare, homes for children with health disabilities, and facilities for children that require immediate help are managed by the Ministry of Labour and Social Affairs. Children’s homes under this Ministry have the average capacity for 20 children; children (usually between 3-18 years of age) live in groups of 4.
- Children’s homes, correctional facilities for children with risk behaviour, and diagnostic centres are managed by the Ministry of Education. These facilities house up to 48 children; children between 3 and 18 years of age live in groups of 6-8 and are looked after by one caretaker who works in 8-hour shifts.

More than simply a lack of coordination between ministries, open conflict and competition between ministries has ensured that the best interests of the child have taken a back seat. As Labour Minister Michaela Marksova explained back in 2017, while the Ministry of Labour supported the unification of care system under one authority: *“other ministries do not. I feel that a conservative attitude prevails there.”* She stated that the system of childcare and child protection in Czech Republic was not able to transform as *“the interests of the employees prevailed over best interests of children.”* Representatives from the Ministry of Health and the Ministry of Education, responsible for the infant homes and correctional facilities for children, defended institutional care settings run under their competences. They stated that institutions for babies and infants and the diagnostic centres are important and set a good practice of care for children deprived of parental care.⁸²

⁸⁰ Opening Doors for Europe’s children: *Czech NGOs call for an immediate action to change the care system for children at risk*. Available at: https://old.eurochild.org/media/eurochild-in-the-media/article/czech-daily-monitors-deinstitutionalisation/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=19474345062164fae5f59d38f4179d51.

⁸¹ *Op cit.*

⁸² Lidovky.cz, *Za dítě v ústavu platí stát ročně 778 tisíc. Třikrát víc než za pěstounskou péči*. 2017. Available at: https://www.lidovky.cz/domov/pobyt-v-kojeneckem-ustavu-je-30x-drazsi-nez-sluzby-pro-rodinu-stoji-778-tisic.A170515_165043_In_domov_ELE/tisk.

In their collective complaint against the Czech Republic, the ERRC and Validity offered a diametrically opposing perspective on the institutionalisation of young children:

Institutionalisation of young children as a form of violence is not dependent on material conditions because the culture of violence is inherent to even well-equipped institutions, as the deprivation and suffering is caused predominantly by emotional, mental, or physical neglect, the non-existence of a primary caregiving person, and the lack of stability. It has been observed that “*supporters of institutional care for children commonly argue that since conditions have significantly improved in institutional placements, these should now be regarded as safe and suitable places for children to stay*”. However, this argument has been rejected, especially with regard to children under 3 years of age, because “*their long-term stay in institutional care is always accompanied by emotional neglect, which is a form of violence – and therefore should not be tolerated.*”⁸³

Definitions of Children at Risk and Legal Grounds for Removals

The CRC expressed its concern about the continued lack of reference to the principle of the best interests of the child in most of the legislation concerning children, as well as in judicial and administrative decisions, and policies and programmes relevant to children. In its recommendation:

*“The Committee urged the State party to step up its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. The legal reasoning of all judicial and administrative judgments and decisions should also be based on this principle.”*⁸⁴

To date there is no explicit statement in the Constitution guaranteeing the protection of children, but Article 32 of the Charter of Fundamental Rights and Freedoms states that:

1. Parenthood and the family are under the protection of the law. Special protection is guaranteed for children and adolescents.
2. Children, whether born in or out of wedlock, enjoy equal rights.
3. It is the parents’ right to care for and bring up their children; children have the right to parental upbringing and care. Parental rights may be limited and minor children may be removed from their parents’ custody against the latter’s will only by the decision of a court on the basis of the law.⁸⁵

⁸³ European Committee of Social Rights, *Complaint: European Roma Rights Centre & Mental Disability Advocacy Centre v. the Czech Republic: For failure to ensure social and economic protection of young children who are segregated in child-care institutions*. 26 October 2016. Available at: <https://rm.coe.int/complaint-157-2017-european-roma-rights-centre-mental-disability-advoc/1680761626>.

⁸⁴ UN Committee on the Rights of the Child, *Fifty-seventh session, Concluding observations: Czech Republic*, 30 May 2011. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICaQhKb7yhsrpiCE%2Fy0jVxzg5%2BV8i7pht4H14a4pAWsJL3pa%2FvZCeSaVBbp1g77ZAaHTDQ9mJG8VIti46tzmjcvP%2FVoFNzfm%2F1WVG%2BKM%2Fced2V99WuxIcPh>.

⁸⁵ Charter of Fundamental Rights and Freedoms. Available at: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Listina_English_version.pdf.

There is no explicit statement defining ‘the best interest of a child’ in the Czech legal system. Nevertheless, section 907(2) of the Civil Code, which does mention ‘the interest of the child’, reads as follows:

“When deciding on entrusting the child to the care of another person, a court must decide in accordance with the interests of the child. In doing so, the court shall take into account the child’s personality, especially his talents and abilities in relation to the potential to develop and to the life situation of the parents, as well as the emotional inclination and family background of the child, upbringing skills of each parent, existing and expected stability of the upbringing environment in which the child is to live in the future, emotional ties of the child to his siblings, grandparents, or other relatives and unrelated persons. A court shall always take into account which of the parents has until that point properly cared for the child and properly provided for his emotional, intellectual and moral upbringing, as well as which of the parents is better suited to provide the child with healthy and successful development.”⁸⁶

The CRC expressed its concern about the continued lack of reference to the principle of the best interests of the child in most of the legislation concerning children, as well as in judicial and administrative decisions, and policies and programmes relevant to children. In its recommendation:

“The Committee urged the State party to step up its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative, and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. The legal reasoning of all judicial and administrative judgments and decisions should also be based on this principle.”

There are clear definitions of what constitutes child endangerment in both the Penal Code and the Protection of Children Act. Section 201 of the Penal Code stipulates that:

1. *Whoever, even out of negligence, endangers the intellectual, emotional, or moral development of a child by a) enticing them to an indolent or immoral life, b) allowing them to lead an indolent or immoral life, c) allowing them to obtain means for themselves or for others by a criminal activity or in another condemnable manner, or d) seriously breaching his/ her obligation to take care of them or another important obligation arising from parental responsibility, shall be sentenced to imprisonment for up to two years.*
2. *Whoever allows, even out of negligence, a child to play on vending machines equipped with a technical device affecting the outcome of the game and which provides the possibility of monetary winnings, shall be sentenced to imprisonment for up to one year, to a pecuniary penalty, or to prohibition of activity.⁸⁷*

Section 6 of The Protection of Children Act stipulates that that socio-legal protection is provided mainly to certain categories of children. These categories correspond to the ‘at risk’ concept and are as follows:

- a. Children whose parents have (i) died; (ii) failed to fulfil the obligations arising from parental responsibility, or (iii) fail to exercise, or actively abuse rights deriving from parental responsibility;

⁸⁶ Czech Civil Code, Parental responsibility and maintenance of minor children under Czech law. Available at: <https://www.ecovislegal.cz/en/czech-legal-news/parental-responsibility-and-maintenance-of-minor-children-under-czech-law/>.

⁸⁷ Child Rights International Network, Czech Republic: National Laws. Available at: <https://archive.crin.org/en/library/publications/czech-republic-national-laws.html>.

- b. Children who have been entrusted to another person responsible for the upbringing of the child, if that person fails to fulfil the obligations arising from the custody of the child;
- c. Children who have an idle or ill-fated life, in particular by neglecting schooling, who do not work, even if they do not have a sufficient source of livelihood, who drink alcohol or take addictive substances, who are in danger of addiction, who are working as prostitutes, who committed a crime, or in cases of children under the age of 15, who have committed an act that would otherwise be a criminal offense; who repeatedly or systematically commit offenses under the law governing offenses or otherwise endangering civic coexistence;
- d. Children who repeatedly abscond from parents or other natural or legal persons responsible for the upbringing of the child;
- e. Children who were subject to a criminal offense that has endangered their life, health, liberty, human dignity, moral development, or property, or if there is a suspicion that such crime could be committed;
- f. Children who, at the request of the parents or other persons responsible for the upbringing of the child, have been repeatedly placed in a childcare facility, or whose placement in such facilities exceeds six months;
- g. Children who are threatened by violence between parents or other persons responsible for the upbringing of the child, or by violence among other natural persons;
- h. who are applicants for international protection, asylum seekers, or persons enjoying subsidiary protection and who are unaccompanied in the Czech Republic by parents or other persons responsible for their upbringing; if these circumstances persist for such a period or are of such intensity that they adversely affect the development of children or are or may be the cause of the detrimental development of children.⁸⁸

Concerning child removal, Section 13a of the Protection of Children Act stipulates that if alternative measures prove unsuccessful, and the interests of the child require it, the courts can temporarily separate the child from parents and order the child be placed in an institutional setting for up to three months. Under Section 13a(2) of the Protection of Children Act a court can order a child be placed in an institution for children requiring immediate assistance, if proper protection and help cannot be provided otherwise and other forms of alternative family care cannot be provided, and if the child satisfies one of the following conditions:

- if the child is receiving insufficient due care, or if the child's life, normal development, or other vital interest is disrupted or threatened;
- if the child is left without care appropriate for his/her age;
- if the child is physically or mentally abused or mistreated;
- if the child is left in an environment or a situation severely threatening his/her fundamental rights.

Alternatively, a child can be placed within a healthcare providing institution under section 13a(4) of the Protection of Children Act if there are proceedings before a court on a dispute between parents concerning the upbringing of the child, medical conditions of the child require it, and if all of the following conditions are satisfied:

⁸⁸ *Ibid.*

- an urgent need to place the child in such institution is proven because of a child's interest and his/her further emotional, mental, and intellectual development;
- if other measures protecting the child are insufficient;
- if the court limits the time during which the child will be placed in the healthcare institution prior to the placement;
- if the court simultaneously orders the parents to avail themselves of a professional counsellor with the purpose of restoring family relations.⁸⁹

A court may also order institutional care for a child under section 971(1) of the Civil Code, if the upbringing of a child or the child's physical, intellectual, or mental condition, or their proper development are seriously threatened or disrupted to an extent contrary to the interests of the child, or if there are serious reasons for which the child's parents are unable to provide for their upbringing. Before ordering institutional care, a court is always obliged to consider whether entrusting the child to the care of a natural person is more appropriate.

Institutional care may be ordered for a period of three years maximum in accordance with section 972(1) of the Civil Code. It can be extended for a period up to another three years, even repeatedly, and in essence indefinitely, if the reasons for such a measure still exist.

Structure of the Child Protection System

The bodies of social and legal protection of children are:

- a. Municipal offices of municipalities with extended powers (town councils and town districts, district offices in Prague);
- b. Municipal authorities;
- c. Regional authorities (in Prague – Prague City Hall);
- d. The Ministry of Labour and Social Affairs;
- e. Office for the International Protection of Children;
- f. Labour Office of the Czech Republic - Regional Branch and Branch for the Capital City of Prague.

Socio-legal protection of children is also dealt with by: a) municipalities and regions in their own sphere of competence; and b) commissions for the social and legal protection of children and other legal and natural persons when they are authorised to exercise social and legal protection (section 4(2) of the Protection of Children Act).

Municipal authorities can immediately monitor the protection of the rights of the child and take all necessary measures in a timely fashion, acting on their knowledge of the problem and local conditions; they are legally obliged to ensure children are protected and parents and guardians receive all necessary assistance.

⁸⁹ Child Rights International Network, Czech Republic: National Laws. Available at: <https://archive.crin.org/en/library/publications/czech-republic-national-laws.html>.

Additionally, a commission for the social and legal protection of children is established by the mayor of a municipality with extended powers as a special body of the municipality.⁹⁰ It is intended only for the exercise of delegated powers in the field of social and legal protection of children. The commission is tasked to coordinate the exercise of social and legal protection on the territory of the administrative district of a municipality with extended competence, to design and assess socially preventive child protection programs, to assess individual cases of social and legal protection of children, and to issue opinions.

Regional authorities are vested with: (a) control and methodological activity; (b) almost the entire process of mediation of substitute family care; (c) decisions on the granting of a mandate to social and legal protection of children by natural and legal persons; and (d) decisions on state contribution to the founder of facilities for children requiring immediate help. In relation to municipal authorities and municipal offices of municipalities with extended powers, the regional authorities fulfil the function of the supreme control body and the function of the appellate body responsible for reviewing the decisions issued by the municipal authorities and municipal authorities of municipalities with extended powers in administrative proceedings.

The Ministry of Labour and Social Affairs has a general responsibility in family care and dealing with children at risk. The Ministry is the main creator of the legal regulation in this area and controls the execution of state administration in the field of social and legal protection of children by issuing regulations and directives. The Ministry also exercises the role of an appellate body in relation to the regional authorities and maintains a national register of natural and legal persons authorised to perform social and legal protection of children.

The Office for the International Protection of Children in Brno is an administrative authority with a nation-wide competence, which is responsible for dealing with the protection of children in relation to foreign countries. The Office is subordinate to the Ministry. The Protection of Children Act also allows for non-state actors (foundations, civic associations, churches, and other legal and natural persons) to fulfil certain tasks in the social and legal protection of children on the basis of a mandate issued by the regional authority or the Prague City Hall.

Romani Children in the Childcare System: Overrepresentation, Deficits, and Data

In its concluding observations, the UNCRC noted a widespread attitude of accepting institutionalised care as a primary alternative to the family environment. Regarding children of Romani origin, the CRC stipulated that there is a lack of preventive services and admission criteria for placement into institutional care, which results in large numbers of children, especially children with disabilities and/or of Romani origin, being placed in care outside their home, particularly in institutional care, and that in the majority of such cases the material and financial situation of the family has been the main basis for such removal.

⁹⁰ According to section 106 of the Act no. 128/2000 Coll., On Municipalities, as amended, and pursuant to section 38 of the Protection of Children Act.

As mentioned earlier the CRC was concerned at the low level of socio-economic support for vulnerable families, inadequate efforts to enable children to maintain contact with their parents or be reintegrated into their biological families, and that most children only leave institutional care after they attain the age of majority. The CRC was also concerned that there was no central mechanism to regulate care providers or coordinate programming and provision to ensure consistent standards of childcare.⁹¹

Concerning the collection of data disaggregated by ethnicity in the country and repeated calls from international bodies, the European Courts and Commission, and local civil society organisations, Czech public authorities oppose the regular collection of ethnically disaggregated data by stating that such surveys would be in breach of the Czech Personal Data Protection Act.

However, official data about the ethnicity of children is available for infant homes and homes for children under the age of three. In 2009, the Institute of Health Information and Statistics of the Czech Republic (UZIS) reported that nationally Romani children constituted on average between 27% and 32% of institutionalised children aged three and under.⁹² The highest proportions were found in the Karlovarský (49%), Plzeňský (44%), and Královohradecký (35%) regions.⁹³

It is clear from the following section, excerpted from the Collective Complaint by the ERRC and MDAC v. the Czech Republic,⁹⁴ that nothing of any substance changed in policy or practice in the half-decade that followed.

The following section concerning data is directly excerpted from the Collective Complaint by the ERRC and MDAC v. the Czech Republic.⁹⁵ Available official data show that, since 2010, the number of places in these institutions has gradually decreased; from 1,963 places in 2010 to 1,470 in 2015. There has been a decrease in the number of institutionalised infants; from 2,077 in 2010 to 1,666 in 2015. At the same time, the number of institutionalised Romani children remained almost the same; 433 in 2010, compared to 406 in 2015. The same applies to children with disabilities; 710 in 2011 compared to 694 in 2015. Moreover, reasons for admission show that the vast majority of children are admitted either solely for health reasons (958 in 2011, decreasing to 567 in 2015), or for social reasons (954 in 2010 to 568 in 2015). The remainder of the children are admitted on the grounds of health and social reasons combined.

91 UN Committee on the Rights of the Child, *Fifty-seventh session, Concluding observations: Czech Republic*, 30 May 2011. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICaQhKb7yhsrpiCE%2Fy0jVxzg5%2BV8i7pht4H4a4pAWsJL3pa%2FvZCeSaVBbp1g77ZAaHTDQ9mJG8VIti46tzmjcvP%2FVoFNzfm%2F1WVG%2BKM%2Fced2V99WuxIcPh>.

92 Institute of Health Information and Statistics of the Czech Republic, *Activity of institutes for infants and homes for children up to 3 years of age and other institutions for children in 2009, Actual Information 13*, Prague (11 May 2010). See: ERRC, *Doživotní trest*, p. 9. Available at: <http://www.errc.org/reports-and-submissions/dozivotni-trest-romske-deti-v-ustavni-peci-v-ceske-republice>.

93 ERRC, *Doživotní trest: Romské děti v ústavní péči v České Republice* [Life Sentence – Romani Children in Institutional Care in the Czech Republic], p. 25. Available at: <http://www.errc.org/reports-and-submissions/dozivotni-trest-romske-deti-v-ustavni-peci-v-ceske-republice>.

94 European Committee of Social Rights, *Complaint: European Roma Rights Centre & Mental Disability Advocacy Centre v. the Czech Republic: For failure to ensure social and economic protection of young children who are segregated in child-care institutions*. 26 October 2016. Available at: <https://rm.coe.int/complaint-157-2017-european-roma-rights-centre-mental-disability-advoc/1680761626>.

95 *Ibid.*

		2010	2011	2012	2013	2014	2015
Number of institutions		34	34	33	33	33	31
Number of places		1963	1783	1700	1638	1571	1470
Number of admitted children		2077	2131	1932	1740	1606	1666
Including	with special needs	358	710	720	698	714	694
	Roma	433	403	446	445	398	406
	abused	55	78	66	59	57	80
ground for admission	health reasons	743	958	881	701	567	567
	health + social	380	440	345	425	487	531
	social	954	733	706	614	552	568

It is clear from the data that Romani children and children with disabilities are grossly over-represented. Considering the data from the perspective of ethnicity and disability, Romani children consistently make up approximately 24% of all children placed in these early childhood care institutions for children under 3 years of age. Considering that approximately 1.4–2.8% of the population in the Czech Republic is Romani, this represents a significantly disproportionate number of institutionalised children. For children with disabilities, who consistently make up approximately 40% of the children in these institutions, the disproportionate representation appears to be even higher; children born with disabilities constitute approximately 4% of all children born in the Czech Republic.⁹⁶

In 2013, the Czech Ombudsperson (*Public Defender of Rights*) conducted monitoring visits into medical early childhood care institutions (*kojenecké ústavy*) and examined the files of 400 institutionalised children. According to his findings, the predominant reason for placement was an inappropriate social environment; placement for reasons of abuse was rare and only a few children had severe and multiple disabilities. Furthermore, he discovered that 72% of all institutionalised children stay in the institutions longer than six months. The Ombudsperson concluded that, with childcare organised in a collective rather than individual form; *“The less-than-ideal situation of placement of a small child into an institution has been further worsened by an aspect of depersonalisation and inadequate physical contact ... children have anything but love.”*⁹⁷

The collective complaint rejected the argument from supporters of institutional care that since conditions have significantly improved in institutional placements, these should now be regarded as safe and suitable places for children to stay. The complainants asserted that *“their long-term stay in institutional care is always accompanied by emotional neglect, which is a form of violence – and therefore should not be tolerated.”*⁹⁸

In conclusion, the complainants stated that the institutionalisation of children – especially Romani children and children with disabilities – causes emotional deprivation and suffering which constitutes a form of violence. These early childhood medical care institutions cannot

⁹⁶ *Ibid.*

⁹⁷ Public Defender of Rights Report on systematic visits of health care facilities, including institutions for children under three, p. 61. The report is available (in Czech) at: https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2013/NZ-25_2012-kojenecke-ustavy.pdf.

⁹⁸ European Committee of Social Rights, *Complaint: European Roma Rights Centre & Mental Disability Advocacy Centre v. the Czech Republic: For failure to ensure social and economic protection of young children who are segregated in child-care institutions*. 26 October 2016. Available at: <https://rm.coe.int/complaint-157-2017-european-roma-rights-centre-mental-disability-advoc/1680761626>.

be regarded as appropriate within the meaning of Article 17 of the European Social Charter. Combined with the failure of the State to remedy this situation, ban the institutionalisation of children, and put in place a sufficient network of family and community-based support services, the NGOs asked the European Committee of Social Rights to find:

- a violation of Article 17 of the European Social Charter;
- a violation of Article 17 of the European Social Charter read in conjunction with the principle of non-discrimination as enshrined in the Preamble to the Charter.⁹⁹

The collective complaint was fully vindicated in November 2020, when the ECSR issued its ruling. Some of the key concerns noted by the Committee in its decision on the merits of the complaint were:

- The high number of children placed in institutions is clearly linked to the practice known as “voluntary placement” assessed above, which unduly facilitates the placement of young children in institutions, allowing a complete bypass of the Civil Code provisions specifying that institutional care must be a measure of last resort.
- Furthermore in recent years, no adequate policies, nor financial or operational measures have been put into place to promote the realisation of services in family-based and community-based family-type settings.
- More resources are devoted to baby institutions than to community-based family support. The Committee considers that the process of deinstitutionalisation and promotion of community-based family-type services would require that funds currently spent on running baby institutions be transferred at least in part to cost-effective family-based and community-based alternatives.
- There is a lack of preventive services, especially field and outpatient services, that would enable children, if possible, to stay with their families. Support services for families whose children have been removed are even less available. Such services would help to return the children to their families quickly (social activation services). In addition, early detection services for families at risk are missing altogether.
- In all, the ECSR considered that *“the Government has failed to take significant and targeted steps to deinstitutionalise the existing system of early childhood care, and to provide young children with services in family-based and community-based family-type settings. For this reason, the Committee holds that the obligation to take appropriate measures to ensure the effective exercise of the right of young children to protection, has not been fulfilled and there is therefore a violation of Article 17 of the 1961 Charter in this respect.”*¹⁰⁰

⁹⁹ Op cit. p.21.

¹⁰⁰ European Committee of Social Rights, Decision on the Merits of European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic. Complaint No. 157/2017. 23 November 2020. Available at: [https://hudoc.esc.coe.int/eng#{}%22sort%22:\[%22ESCPublicationDate%20Descending%22\],\[%22ESCDcIdentifier%22:\[%22cc-157-2017-dmerits-en%22}\]](https://hudoc.esc.coe.int/eng#{}%22sort%22:[%22ESCPublicationDate%20Descending%22],[%22ESCDcIdentifier%22:[%22cc-157-2017-dmerits-en%22}]).

Moldova

Brief Profile of Roma in Moldova

Based on the 2014 census the Romani population in Moldova amounts to 13,900 people, but the real number is estimated to be significantly higher, with a Council of Europe estimate of 107,100. The discrepancy is explained primarily by the reluctance among Roma to self-identify as such in censuses for fear of stigmatisation and discrimination. The Romani population is younger than the majority population, recording a higher birth rate and lower life expectancy.

In its 2017 Annual Report UNICEF reported that children in Moldova remain disproportionately poor, with 86% of poor families living in rural areas, and that both the incidence and the depth of poverty are twice as high among Romani children compared to non-Romani children.¹⁰¹ ECRI in 2018 reported that Roma face multiple forms of discrimination, and noted with concern that racist and intolerant hate speech in public discourse is escalating with Roma, LGBT persons, and Black people being the main targets.

ECRI also notes that the public perception of Roma is negative in the country. A 2015 report indicated a drastic drop in acceptance of Roma, from 21% in 2010 to 12% five years later, meaning that only 12% would accept Roma as neighbours, colleagues, friends, or family members. Largely as a result of this prejudice on the part of the majority population, Roma continue to suffer from discrimination, notably in employment, education, and health, accentuating their socio-economic marginalisation.¹⁰²

While acknowledging government efforts on Roma inclusion, including the adoption of the National Action Plan in support of the Romani population for 2016-2020, ECRI pointed out that implementation is weak and the situation remains extremely difficult for the Romani community, and expressed concern at the appalling housing conditions of Romani communities with limited access to drinking water, canalisation, or a regular power supply, *“thus affecting children in particular.”*¹⁰³

Romani women remain particularly vulnerable in access to rights due to the multiple and intersecting forms of discrimination they face. Of particular concern were the inequalities in education for Romani women and girls, where an estimated 45% of Romani women have no formal education compared with 2% of non-Romani women and 33% of Romani men. Only 14% of Romani girls were enrolled in secondary education compared with 78% of non-Romani girls.¹⁰⁴

101 UNICEF 2017 Annual Report, Republic of Moldova. Available at: https://www.unicef.org/about/annual-report/files/Moldova_2017_COAR.pdf.

102 ECRI Report on the Republic of Moldova (fifth monitoring cycle). Adopted on 20 June 2018; Published 2 October 2018. Available at: <https://rm.coe.int/fifth-report-on-the-republic-of-moldova/16808de7d7>.

103 *Op cit.* p.27

104 UN Women/UNDP/UN High Commissioner for Human Rights (OHCHR) (2014): 30.

Child Protection Law and Policy Context

In the Republic of Moldova, major developments have taken place in terms of child rights protection. The national legislation has been adjusted to international standards. The legislative and institutional framework has been developed and improved through reforms in protecting different categories of children, including orphans, children at risk, and children separated from their parents.

In 2014, the Government adopted the *Strategy for Child Protection* for the period 2014- 2020¹⁰⁵ (Child Strategy), which was a continuation of the *National Strategy on Child and Family Protection 2003-2008*. A subsequent Action Plan on the implementation of the strategy is currently being realised by the Ministry of Health, Labour and Social Protection. The Child Strategy aimed to ensure the necessary conditions for raising and educating children in a family environment; preventing and combating child violence, neglect, and exploitation; and reconciling the family and professional life to ensure the child's harmonious growth. Furthermore, the document includes a number of actions that have a focus on children deprived of a family environment, such as prevention of child separation from family, reduction of gradual institutionalisation of children under the age of three, reduction of the number of children living in residential care, and reduction of the negative effects of parental migration.

Despite these positive developments, inadequate financing remains a concern, as does implementation. The Ombudsman Office stated that the implementation of child protection policies does not correspond with international standards. The national child protection system does not ensure that all groups of children are treated equally, and the needs of certain groups are not properly addressed. The Ombudsman recommended that the Ministry of Labour, Social Protection and Family improve the implementation of the Law on the Special Protection of Children at Risk and Children Separated from their Parents through allocation of adequate financing and sufficient human resources.¹⁰⁶

Civil society organisations also raised concerns in their alternative reports. The Alliance of NGOs active in the field of Social Protection of Family and Child highlighted the lack of funds and human resources at local level and poor inter-sectoral cooperation.¹⁰⁷ These concerns were reiterated by the UN Committee on the Rights of the Child, which stated that the lack of funding for services, inadequate qualified staff, and weak coordination among various service providers have a negative impact on the implementation of the Law on the Special Protection of Children at Risk and Children Separated from their Parents.¹⁰⁸

¹⁰⁵ The Strategy for Child Protection 2014-2020 was approved by the Government on 10 June 2014, published on 20 June 2014, Official Monitor No. 160-166. Available at: <http://lex.justice.md/md/353459/>.

¹⁰⁶ “Report on Respect of Children’s Rights in the Republic of Moldova”, Ombudsman Office, 2017, p. 17. Available at: http://old.ombudsman.md/sites/default/files/document/attachments/raport_copil_2017def.pdf.

¹⁰⁷ “NGO Alternative Report to the Republic of Moldova. Combined 4th and 5th periodic Report on the implementation of the UN Convention on the Rights of the Child”, Alliance of NGOs active in the field of Social Protection of Family and Child, 2016, pp. 4-5. Available at: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/MDA/INT_CRC_NGO_MDA_26229_E.pdf.

¹⁰⁸ “Concluding Observations on the combined 4th and 5th periodic report of the Republic of Moldova”, Committee on the Rights of the Child, 2014, p. 7. Available at: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/MDA/INT_CRC_NGO_MDA_26229_E.pdf.

Neither the Child Strategy, nor the Minority or Roma Action Plan provide any estimated costs; despite that both strategies state that implementation is financed from the State budget, budgets of districts, donations, sponsorships, or other types of contribution. The Committee on the Rights of the Child recommended the State to define strategic budgetary lines for all children, including those who may require social measures.¹⁰⁹ Furthermore, these positive measures (except for the Roma Action Plan), neglect the needs of the vulnerable groups of children, including poor children and Roma. The Roma Action Plan incorporates a number of measures in the education field, but does not address the specific problems of Romani children deprived of a family environment.

Deinstitutionalisation

According to the report from *Opening Doors*, as a result of the joint efforts of the Government, civil society, and international organisations, the number of children living in institutions in Moldova has decreased by 90%; from 11,500 in 2006 to less than 1,100 in 2017. The number of children in family-based care increased two-fold between 2006 and 2017, the number of professional foster care families increased 9 times, and the number of children placed in a protective family environment increased 15 times; from 47 children in 2006 to 1,017 in 2017. According to the report, *“This significant progress in the reduction of number of children living in institutions was achieved through efficient monitoring, providing access to services and appropriate family support to ensure adequate social inclusion and development of children. During 2017, more than 800 children were successfully reintegrated in their birth or extended families.”*¹¹⁰

In 2017, there were 1,390 children in 27 residential institutions, baby homes, and institutions for children with disabilities in Moldova, out of whom only 815 have residential placement; the remaining number access the day care services but stay with their families or alternatives. There are also 1,071 children in 45 Centres for Temporary Placement, a vast reduction since 2016 when 2,025 children were living in such facilities.

During 2017, there were 4,918 children at risk of separation from their parents registered and examined by the local gate-keeping committees. Out of them, 376 children have been placed in residential institutions; the remaining 4,542 children received prevention and family strengthening interventions or alternative care services. Work of the small group homes (SGHs) has been regulated by the legislation on community homes and the minimum standards of quality in Moldova. They are housing mainly people with disabilities and young people. Currently, there are 54 children at risk and children with disabilities placed in six small group homes for children across Moldova. The number of children in kinship care and foster care remains largely unchanged in 2017; 4,027 and 1,017, respectively.

In August 2018, the Government approved a minimum package of social services to be funded from the central budget and provided at local level. A major drawback was that the

¹⁰⁹ Concluding Observations of the Committee on the Rights of the Child, p. 2, *op. cit.*

¹¹⁰ *Opening Doors for Europe’s Children*, 2018 Country Fact Sheet: Moldova. Available at: <https://better-carenetwork.org/library/principles-of-good-care-practices/transforming-institutional-care/opening-doors-for-europes-children-2018-country-factsheets>.

package excluded the provision of foster care which, according to *Opening Doors* campaigners, was central to promoting deinstitutionalisation reform at national level.

According to the Alternative NGO Report to the CRC, concerning the transition to independent life of children leaving care, there is no system in place for those aging out of residential institutions and their situation remains unchanged: leaving the residential institution is difficult for most young people who came to Chisinau to work or study; some of them did not have any support and faced significant challenges because of differences between the life at the boarding-school and the life outside. Despite the adoption of the new Code of Education, which extended the compulsory schooling age from 16 to 18 years of age, allowing children to stay two years longer in the institutions, this has not solved the problem of preparation for independent life of children from residential care.¹¹¹

Opening Doors noted that no EU funding is spent specifically on deinstitutionalisation reform. Despite being the EU's main instrument to support political and economic reforms in its neighbourhood region during the 2014–2020 financial period, the European Neighbourhood Instrument (ENI) has not contributed to deinstitutionalisation reform in Moldova.¹¹²

General Legal Framework

Since its independence in 1991, the Republic of Moldova has passed various legislative enactments to protect and promote the rights of children, in particular the rights of orphans and children in need of special protection. Article 49 of the *Constitution*¹¹³ states that “*the State is entitled to maintain, upbringing and educate the orphaned children and those deprived of parental care*”. In addition, the State provides protection and special assistance to mothers and children born out of wedlock.¹¹⁴

The *Family Code*¹¹⁵ also incorporates child rights provisions. Chapter 10 of the Code encompasses the norms on the right to be raised and educated in a family; the right to communicate with parents and relatives; the right to be protected; the right to freedom of opinion; and the right to a family name.¹¹⁶ The rights to care and education, and protection of the children separated

111 NGO Alternative Report to the Republic of Moldova. Combined 4th and 5th periodic Report on the implementation of the UN Convention on the Rights of the Child, Alliance of NGOs active in the field of Social Protection of Family and Child, 2016, pp. 24–25. Available at: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/MDA/INT_CRC_NGO_MDA_26229_E.pdf.

112 Opening Doors for Europe's Children, 2018 Country Fact Sheet: Moldova. Available at: <https://better-carenetwork.org/library/principles-of-good-care-practices/transforming-institutional-care/opening-doors-for-europes-children-2018-country-factsheets>.

113 The Constitution of the Republic of Moldova entered into force on 27 August 1994, published on 29 March 2016, Official Monitor No. 78. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/41173/119453/F1236260695/MDA41173%20Eng%202003.pdf>.

114 *Ibid.*, Article 50.

115 The Family Code was adopted by the Parliament on 26 October 2000, published on 26 April 2001, Official Monitor No. 47–48. Available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=286119>.

116 *Ibid.*, Articles 51–55.

from their parents are ensured by their legal guardians.¹¹⁷ If their rights are violated by one or both parents, the child is entitled to report it to the local guardianship authority. The local guardianship authority or the specialist for child rights protection have the duty to report the cases of violence, neglect, and exploitation of children at risk to the territorial guardianship authority.¹¹⁸

The deprivation of parental rights takes place when parents avoid to exercise their parental rights; refuse to take the child from maternity or any other-related institution; make abuse of their parental rights; apply cruel and/or amoral behaviour; are addicted to drugs and alcohol; and commit pre-meditated crime against the life or health of their children or spouse.¹¹⁹ The procedure is initiated by the other parent, guardian, or local either territorial guardianship authority through law court. The parental rights might be restored if the conditions that led to the child removal have changed.¹²⁰

More specific provisions on the respect of children's rights are reflected in the *Law on the Rights of the Child*.¹²¹ The status of orphans and children without parental care is regulated by Article 22, which guarantees State protection and special care. Moreover, these children are subject to adoption, placement in a foster family, or placement in a specialised State institution for children. Adoption by foreign citizens is only permitted when the State cannot find a local solution. For the process of international adoption, personal files on the children contain details on their ethnic, religious, cultural, and linguistic backgrounds. If placement in a foster family is not possible, the child can, on the basis of a court decision, be taken into institutional care, where all necessary conditions are created for child development, through preserving their mother tongue, culture, and traditions.¹²²

The child who is separated from parent/s has the right to maintain the personal relation with the parent/s.¹²³ Also, the State should ensure that children deprived of a family environment are provided with education and free training in all education institutions, as well as housing maintenance until reaching the age of majority.¹²⁴

Definitions of Children at Risk

In 2013, the *Law on the Special Protection of Children at Risk and Children Separated from their Parents*¹²⁵ was adopted and has served as a guide for all institutions and professionals

¹¹⁷ *Ibid.*, Articles 51, 53.

¹¹⁸ *Ibid.*, Article 53.

¹¹⁹ *Ibid.*, Article 67.

¹²⁰ *Ibid.*, Article 70.

¹²¹ The Law on the Rights of the Child was adopted by the Parliament on 15 December 1994, published on 2 March 1995, Official Monitor No. 13. Available at: https://www.legis.md/cautare/getResults?doc_id=94939&lang=ro.

¹²² *Ibid.*, Article 23.

¹²³ *Ibid.*, Article 17.

¹²⁴ *Ibid.*, Articles 10, 19.

¹²⁵ The Law No. 140 on the Special Protection of Children at Risk and of Children Separated from their Parents was adopted by the Parliament on 14 June 2013, published on 2 August 2013, Official Monitor No. 167-172. Available at: <https://bettercarenetwork.org/sites/default/files/Moldova%20Law%20No.%20140.pdf>.

working in the childcare system. It establishes the procedures of identification, evaluation, assistance, referral, monitoring, and record keeping of children at risk and children separated from their parents. According to this law, the *child at risk* includes a wide range of subgroups such as children who are victims of violence or neglect;¹²⁶ children found to be participating in vagrancy, begging, and prostitution; without parental care and supervision because their parents are not at home for unknown reasons; parents have died; live in the streets, have run away, or been expelled from home; parents refuse to fulfil their parental duties; abandoned by parents; and parents have been deprived of their legal capacity. In addition, the law states that children are entitled to protection against discrimination on various grounds, including race, colour, and ethnicity.¹²⁷

A child will be removed from parents or caregivers if the local guardianship authority finds there to be an imminent danger to the child's life or health.¹²⁸ The authority will notify the prosecutor and involve the following stakeholders in the process: the specialist in child rights protection, a community social worker, a family doctor/nurse, and the local police officer.¹²⁹ A child can only be taken away from its family on the basis of a court decision regarding the deprivation of parental rights.¹³⁰ First, an endangered child is taken to an emergency placement (relatives or other families with whom the child has close relations, or either a family-type or residential institutional placement), which can last from 72 hours to 45 days¹³¹. The next step is called a scheduled placement; that can be kinship, residential, or family-type placement.¹³²

Organisational Structure of the Child Protection System

Three main categories of authorities are responsible for the enforcement of laws related to child protection: the central child protection authority, the territorial guardianship authority, and the local guardianship authority. They collaborate closely, and the territorial and local guardianship authorities take necessary measures to assist and support children and their families to prevent separation.

1. **The central child protection authority** is represented by the Ministry of Labour, Social Protection and Family, and responsible for the development, promotion, and monitoring of State policies on child protection. A special unit – the Directorate for the Protection of Family and Children's Rights Policies – was created and tasked to respond on

¹²⁶ Child neglect is defined in Article 3 as the “voluntary or non-voluntary omission or ignorance of responsibilities to raise and bring up the child, which endangers the child's physical, mental, spiritual, moral or social development, corporal integrity, physical and psychological health”. Also, the law identifies several forms of child neglect, such as food neglect, clothing neglect, hygiene neglect, medical neglect, educational neglect, emotional neglect and neglect in supervision.

¹²⁷ *Ibid.*, Article 2.

¹²⁸ *Ibid.*, Article 10.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*, Article 11.

¹³² *Ibid.*, Article 12.

relevant issues. In 2014, the ministry launched a 24-hour confidential freephone *Childhelp National Helpline*. To date, the hotline has dealt with 30,969 calls, mostly from children.¹³³

2. **The territorial guardianship authority** is the Social Assistance and Family Protection Department (in case districts) or the Municipal Department for Child Protection (in the cases of Balti and Chisinau). The territorial guardianship authority has the duty¹³⁴ to provide support to the local guardianship authority in the identification, evaluation, and assistance of children at risk and children separated from their parents; to ensure the scheduled placement of children separated from their parents; to ensure the establishment or withdrawal of the status of child without parental care and status of adoptable child; to represent the child's interests in the law court; and to collect data on the situation of children on district level and report it to the central child protection authority.
3. **The local guardianship authority** is the mayor of a village, commune, or city. Their duties¹³⁵ are exercised directly or via the specialist for child rights protection employed in the mayor's office. The responsibilities of the local guardianship authority include monitoring, evaluating, and taking decisions on families with children at risk and children separated from their parents; prevention of the child separation or their (re)integration in the family; ensuring the emergency placement and establishment of guardianship on children whose parents are abroad; supervision of the child's removal from the family; and formulating recommendations on the scheduled placement for the territorial guardianship authority. The local guardianship authority reports to the territorial guardianship authority.

The **People's Advocate Office** or Ombudsman Office¹³⁶, is an independent institution mandated to ensure the protection of all human rights and freedoms. The People's Advocate for the rights of the child is assisted by a special subdivision within the People's Advocate Office, and provides protection and assistance to the child at his/her request, without seeking the parents' or legal representatives' consent. The People's Advocate for the rights of the child can notify the Constitutional Court and may initiate court matters.¹³⁷ However, as regards the effectiveness of bodies tasked to combat discrimination and promote equality, ECRI notes that both the Council to Prevent and Combat Discrimination and Ensure Equality (CPPEAE) and the Ombudsman "*severely lack the financial and human resources necessary to carry out their mandates effectively.*"¹³⁸

In its Strategic Development Programme for 2018-2022, the Advocate's Office recognises that the most serious rights violations are committed against children without parental care

¹³³ According to the authorities, most callers seek assistance and guidance over personal issues related to parent-child conflicts and communication, child pregnancy, bullying and harassment at school, peer interaction, and domestic violence. The authority noted a constant number of cases where parents, who emigrate abroad for seasonal work, look for professional help about where to leave their children. Also, there are reported a small number of cases regarding child neglect and street begging.

¹³⁴ Article 7 of the Law on the Special Protection of Children at Risk and of Children Separated from their Parents describes in detail all duties of the local guardianship authority, *op.cit.*

¹³⁵ *Ibid.*, Article 6.

¹³⁶ The statute and role of the Ombudsman Office is regulated by the Law No. 52 on the People's Advocate, adopted by the Parliament on 3 April 2014, published on 9 May 2014, Official Monitor No. 110-114. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2017\)054-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)054-e).

¹³⁷ *Ibid.*, Article 17.

¹³⁸ ECRI Report on the Republic of Moldova (fifth monitoring cycle). Adopted on 20 June 2018; Published 2 October 2018, p. 10. Available at: <https://rm.coe.int/fifth-report-on-the-republic-of-moldova/16808de7d7>.

and orphans.¹³⁹ While there is mention of the exclusion of Romani women from public life, there is no reference to human rights of Roma in general, or those of Romani children in particular. The 2017 annual report from the Ombudsman Office on children's rights, highlighted issues pertaining to Romani children, such as lack of birth certificates, poor access to education, and high rate of poverty.¹⁴⁰ The report describes those children left without parental care as the most vulnerable in Moldova, and identified the following critical failings in the system of childcare: the lack of a mechanism to identify those parents who plan to emigrate abroad; insufficient awareness-raising on legal guardianship; the lack of a centralised database with children left without parental care; and poor responses of local and territorial guardianship authorities on identification, evaluation, assistance, and monitoring of children temporarily or permanently left without parental care.¹⁴¹

The **National Council for Child Rights Protection** is an inter-ministerial body which was established by the Government in 2005 and reactivated in 2010. The Council ensures the development and implementation of policies to protect the rights of children and women. The members of the council are the Ministry of Health, Labour and Social Protection and Family, the Ministry of Education, Culture and Research, and representatives of international human rights organisations and civil society organisations working in this field. Civil society claim that the body does not have a clear agenda due to outdated legislative provisions and lack of financial and human resources. Additionally, civil society considered that communication between the authorities and non-governmental organisations was ineffective.¹⁴²

Types of Childcare

There are three types of childcare in Moldova; (1) residential care in a group setting supervised by caregivers, (2) family-based alternative care, which includes three types of foster care, and (3) adoption.

1. Also referred to as institutional care, this includes Day Care Centres for Children at Risk and with Disabilities, and Placement Centres for Children Separated from their Parents. The latest report of the Ministry of Labour, Social Protection and Family shows following figures for 2018: (i) 20 Day Care Centres for Children at Risk hosted 811 children; (ii) 683 children with disabilities benefited from a wide range of care services at 25 Day Care Centres for Children with Disabilities; and (iii) 30 Placement Centres for Children Separated from their Parents, and 13 mixed centres (which include both temporary and permanent placements) ensured care conditions for 592 children.¹⁴³

139 Strategic Development Programme for 2018-2022 of People's Advocate Office, p. 18. Available at: <http://old.ombudsman.md/sites/default/files/document/attachments/strategieopr.pdf>.

140 "Report on the respect of children's rights in the Republic of Moldova for 2017", Ombudsman Office, 2018, pp. 15, 38, 3. Available at: http://old.ombudsman.md/sites/default/files/document/attachments/raport_copil_2017def.pdf.

141 *Ibid.*, p. 23.

142 NGO Alternative Report to Committee on the Committee on the Rights of the Child, *op. cit.*, pp. 5, 6.

143 Annual Social Report 2018, Ministry of Labour, Social Protection and Family, p. 115. Available at: https://msmps.gov.md/sites/default/files/raport_social_anual_2018_final.pdf.

2. Family-based alternative care includes three types of foster care – Professional Parental Assistance, Family Type Children’s Home, and guardianship. **Professional Parental Assistance**¹⁴⁴ is a social service providing care in a substitute family by a foster caregiver called professional parental assistant, who is entrusted with the care and protection of a child. **Family Type Children’s Home**¹⁴⁵ is understood as a type of service provision within a family environment whereby an orphan child left without parental care is placed under the care of a foster parent-educator for a limited period of time. When placing a child in Family Type Children’s Home, the territorial guardianship authority discloses the ethnic origin, culture, religion, language, and health of the child. **Guardianship or kinship care**¹⁴⁶ (formal or informal) represents a form a protection which is applicable to children separated from their parents. As the country is affected by a massive wave of labour migration, a high number of children are left in informal kinship care by relatives, close friends, or trusted acquaintances for long periods of time. The process of formal guardianship is not fully formalised. The 2018 data provided by the Ministry of Labour, Social Protection and Family reveals that there are 398 professional registered parental assistants, who had 757 children under their care, and 266 children were placed in 60 Family Type Children’s Homes. There are 3,185 children without temporary parental care and 12,541 children under either formal or informal guardianship.¹⁴⁷
3. Adoption is defined as a special form of protection that should establish the filiation between the adopted child and the adopter. The legislation states that one of core principles of adoption is consideration of the ethnic, cultural, and linguistic origins of the child. In cases of international adoption, the Ministry of Labour, Social Protection and Family reveals the ethnic, cultural, and linguistic origins of the child.¹⁴⁸ Such a condition is not stated in cases of domestic adoption. Despite this fact, the Directors of the Centres for Temporary Placement of children say that they inform the potential adopters about the ethnic belonging of the child.

Main Reasons for the Placement of Romani Children in State Care Institutions

The Republic of Moldova is the poorest country in Europe, ranking at 107 out of 189 on the 2019 UNDP Global Human Development Index.¹⁴⁹ While the National Bureau of Statistics does not collect ethnically disaggregated data, research studies point out that Romani people are disproportionately more likely to live in poverty. The 2011 Regional Roma survey highlighted that 65% of Roma live in absolute poverty (with 4.30 USD daily income), compared with 28%

¹⁴⁴ This service is regulated by the Government Decision No. 760 approved on 17 September 2014. Available at: https://www.legis.md/cautare/getResults?doc_id=18529&lang=ro.

¹⁴⁵ This service is regulated by the Government Decision No. 51 approved on 17 January 2018. Available at: https://www.legis.md/cautare/getResults?doc_id=109605&lang=ro.

¹⁴⁶ This service is regulated by the Family Code.

¹⁴⁷ *Ibid.*, p. 118.

¹⁴⁸ The Law No. 99 on the Legal Regime of Adoption was adopted by the Parliament on 28 May 2010, published on 30 July 2011, Official Monitor No. 131-134. Available at: <https://msmps.gov.md/legislatie/>.

¹⁴⁹ United Nations Development Programme, Human Development Index Ranking, 2019. Available at: <http://report2019.archive.s3-website-us-east-1.amazonaws.com>.

of non-Roma.¹⁵⁰ At the same time, the absolute poverty rate in Romani families with children (67%) is higher than in those without children (61%).¹⁵¹ The UN Special Rapporteurs on Minority Issues,¹⁵² and Extreme Poverty and Human Rights¹⁵³ both expressed their concerns over economic hardships experienced by Roma in Moldova.

Poverty is directly interlinked with lack of education, employment opportunities or employment in grey economy, and housing. This is a significant factor in the decision of many Romani parents to place children in residential care. All stakeholders interviewed for this research claim that poverty is the main cause driving the placement of Romani children in institutional care. The decision of parents is not solely based on financial difficulties; it is also interdependent of other factors, such as lack of housing, domestic violence,¹⁵⁴ and seasonal labour migration.

The practice of placing children in the State care institutions remains common in the Republic of Moldova. Traditionally, children with disabilities are the group which is most frequently placed into residential institutions, but during the last years the number of children from socially disadvantaged families and of children left without parental care, following migration, has also increased. While limited national level data is available on some child rights issues, the scale of the problem concerning Roma in state care is difficult to quantify due to the lack of comprehensive, ongoing, and coordinated data collection on child rights in general in Moldova, and the limited or completely absent deeper disaggregation of data on the situation of particularly vulnerable groups (i.e., children with disabilities, children living in poverty, Romani children, street children, and children under the age of two).¹⁵⁵

While a representative from the Ministry of Labour, Social Protection and Family told our researcher that the ministry does not gather ethnic data and the only data disaggregation is by gender,¹⁵⁶ it is clear that such data is gathered, for when it comes to international adoptions the personal files held on each child reveals their ethnic, cultural, and linguistic origins.

150 The United Nations Development Programme, World Bank and European Commission, Regional Roma Survey, 2011. Available at: <https://cps.ceu.edu/article/2012-10-16/undpworld-bankec-regional-roma-survey-2011>.

151 V. Cantarji, M. Vremiş, V. Toartă, N. Vladicescu, “Roma in Densely Populated Communities from the Republic of Moldova”, 2013, p. 86. Available at: https://www.md.undp.org/content/moldova/ro/home/library/effective_governance/romii-in-republica-moldova-in-localitate-preponderant-locuie-de.html.

152 Report of the Special Rapporteur on Minority Issues on her Mission to the Republic of Moldova, 2017, p. 13. Available at: <https://digitallibrary.un.org/record/860673#record-files-collapse-header>.

153 Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, Mission to the Republic of Moldova (8–14 September 2013), p. 4. Available at: <https://www.undp.org/content/dam/unct/moldova/docs/pub/saracie%20eng.pdf>.

154 Various reports reveal that violence against women in Moldova remains a significant concern. A recent survey shows that 40% of interviewed women have experienced physical and/or sexual violence at the hands of a partner or non-partner since the age of 15. More than one in five women report that they experienced a form of physical violence at the hands of an adult before they were 15 years old, usually slapping and beating, mainly by their parents. “OSCE-led Survey on Violence against Women: Moldova”, Organisation for Security and Co-operation in Europe, 2019. Available at: <https://www.osce.org/secretariat/424979?download=true>.

155 NGO Alternative Report to the Republic of Moldova Combined 4th and 5th periodic Report on the implementation of the UN Convention on the Rights of the Child, p.9. Available at: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/MDA/INT_CRC_NGO_MDA_26229_E.pdf.

156 Information provided by Ms. Teaca Diana, the Main Consultant, Directorate for the Protection of Family and Children’s Rights Policies within the Ministry of Health, Labour and Social Protection.

The Director of the Centre for Temporary Placement of Children from Drochia said that between 2002 and 2004 almost 70% of their beneficiaries were Roma. These children were placed in the centre due to the economic hardship faced by their families and the lack of adequate housing, against a wider backdrop of a severe and enduring economic crisis that had its origins in the early 1990s.

The Roma mediator from the village of Schinoasa, along with other mediators, confirmed that in densely populated Romani communities, if a family could not afford to raise their children the community would try to identify local solutions, and placement of a child in a State institution would be the very last option. They told the researcher that socially vulnerable Romani families from non-Romani settlements might be at a higher risk of putting their children in residential care, as they do not have the help and solidarity they would find inside a Romani community.

The Head of the Department of Social Assistance and Family Protection of the district Stefan Voda also expressed her concern over the high rate of poverty among Romani people from the village of Talmază. She pointed out that Romani families are more likely than non-Roma to put their children in the State-care institutions, due to lack of a fixed income and poverty. She asserted that the State should take targeted action and address the poor living conditions of Roma to break a vicious cycle where Romani children suffer most.¹⁵⁷

The extent of emigration can be grasped from the most recent census, conducted in 2014, which puts Moldova among the ten countries with the fastest shrinking populations.¹⁵⁸ Within a decade Moldova has lost almost half a million of its citizens; from 3,383,332 in 2004 to 2,998,235 in 2014.¹⁵⁹

The massive exodus is driven by the high rate of poverty, lack of adequate employment opportunities, and low salaries.¹⁶⁰ As a result, the number of children deprived of parental care increased dramatically; doubling between 2010 and 2012 to a total of 105,270, out of which 38,281 were children where both parents went abroad. As a result, 98.78% of children were placed under the guardianship of elderly family members, extended family, or third parties, and 1.22% of children were taken into State care.¹⁶¹

¹⁵⁷ The socially vulnerable families' monthly benefit of social assistance allowance, which is 557 MDL (27,85 EUR) for each child. The national minimum wage is 2,031 MDL (101 EUR). Many Romani families are without any regular source of income and fall below this minimum.

¹⁵⁸ "The fastest shrinking countries on earth are in Eastern Europe", 24 January 2018. Available at: <https://qz.com/1187819/country-ranking-worlds-fastest-shrinking-countries-are-in-eastern-europe/>.

¹⁵⁹ "The main results of 2014 national census", 31 March 2017. Available at: <https://statistica.gov.md/news-view.php?l=ro&idc=168&id=5583&parent=0>.

¹⁶⁰ M. Vremis, V. Craievschi-Toarta, E. Burdelni, A. Herm, M. Poulain, "Extended Migration Profile of the Republic of Moldova", prepared for the International Organization for Migration, 2012, p. 26. Available at: https://publications.iom.int/system/files/pdf/110_emp_report_updated.pdf.

¹⁶¹ National Survey on the Situation of Children whose Parents emigrated abroad, 2012, p. 3. Available at: https://brd.gov.md/sites/default/files/document/attachments/migratia_si_necesitate_copiilor_lasati_in_urma_migratiei_prezentare.pdf.

The migration patterns of Roma do not differ significantly from the general population.¹⁶² What is particular is that Roma emigrate for certain periods with their entire family, including their children. Mono-parental families cannot afford this and their children are left in informal guardianship, often under the care of grandparents. The Directors of the Centres for Temporary Placement of Children from Calarasi and Drochia related a number of cases where single mothers emigrated for seasonal work but had no relatives to care for their children. Circumstances including poverty, lack of housing, and unemployment forced them seek work abroad and left them with no option but to place their children in temporary care.

Experience of Romani Children in Care

As mentioned earlier, Roma face high levels of intolerance, discrimination, and exclusion in Moldova, and this extends to prejudicial attitudes towards Romani children, with two-thirds of the majority population viewing most Romani children as beggars and pickpockets.¹⁶³ The Directors of the Temporary Placement Centres for Children assert that there is no discrimination within their institutions, and Romani children are treated just the same as other children. However, they recognise that Romani children, in particular children with disabilities, face prejudiced behaviour from their peers. In order to tackle this issue, the administrative bodies organise different activities on intercultural and tolerant dialogue, as well as individual sessions run by psychologists for those who are bullied and those who bully. The Pestalozzi Children's Foundation in Moldova and NGO *PRO.DO.C.S.* closely work with staff from the placement centres and provide training sessions on anti-discrimination.

The representatives of the Temporary Placement Centres add that prejudiced and stereotypical behaviour occurs during the adoption process or placement in foster care. Usually, professional parental assistants or adopters hesitate to take Romani children, and centre directors recounted the difficulties they experienced trying to place Romani children for adoption or in family-based alternative care. According to one centre director, many potential adopters and professional parental assistants expressed the stereotypical prejudices that these children would go begging, breaking the law, and use violence against them, and she called for wider system support in the long-term process of changing such discriminatory attitudes.

¹⁶² N. Vladicescu, M. Vremis, "Social Impact of Emigration and Rural-Urban Migration in Central and Eastern Europe. Final Country Report. Moldova", p. 27, 2012. Available at: <https://ec.europa.eu/social/BlobServlet?docId=8848&langId=en>.

¹⁶³ Perceptions of the Population on Discrimination, *op.cit.*, p. 8.

Romania

Population Profile

According to data cited by the European Commission, approximately 1.85 million Roma live in Romania (8.32% of the population).¹⁶⁴ In terms of discrimination, ECRI, in its 2019 Report on Romania, “notes with great concern the persistent and high incidence of anti-Gypsyism, resulting in Roma constantly enduring hatred and insults in public life. Roma people are often portrayed as ‘thieves, liars, lazy’ and systematically linked with criminality, which reinforces bias and increases their social exclusion.”¹⁶⁵ The report also noted with concern that Roma continue to be the targets of racially-motivated violence and subjected to disproportionate force by law enforcement.¹⁶⁶

Most of the authorities with whom ECRI met claimed that socio-economic marginalisation of Roma is a result of poverty, which is a widespread phenomenon in the country affecting all citizens, but not an issue of discrimination. The EU-Midis II survey reported that 70% of Roma in Romania were at risk of poverty compared to 25% of the total population, and 32% were living in households where in the previous month at least one person went to bed hungry. In terms of access to clean water and sanitation, 68 % of Roma were living without tap water in their dwelling and 79% of Roma were living in households without a toilet, shower, or bathroom inside the dwelling.¹⁶⁷ As FRA noted; “Roma in Romania – the country with the highest number of Roma in the EU – enjoy access to safe water in rates similar to those in Bhutan, Ghana, or Nepal.”¹⁶⁸ Forced evictions remain a “particularly pressing problem”, often carried out in an abusive fashion, resulting either in homelessness or relocation to remote sites without infrastructure or access to essential services, thus reinforcing residential segregation.¹⁶⁹

164 European Commission, *Roma inclusion in Romania; Facts and Figures*. Available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-romania_en.

165 Council of Europe, *ECRI Report on Romania (fifth monitoring cycle)*, 2019. Available at: <https://rm.coe.int/fifth-report-on-romania/168094c9e5>.

166 “ECRI draws attention to the fact that since 2015, the European Court of Human Rights (ECtHR) delivered over 20 judgments condemning Romania for cases of police violence and the failure of the authorities to effectively investigate inhuman and degrading treatment by police, including racially motivated ill-treatment.” *ECRI Report on Romania (fifth monitoring cycle)*, 2019, p.22. Available at: <https://rm.coe.int/fifth-report-on-romania/168094c9e5>.

167 Fundamental Rights Agency, *Second European Union Minorities and Discrimination Survey Roma – Selected findings*. 29 November 2016. Available at: <https://fra.europa.eu/en/publication/2016/eumidis-ii-roma-selected-findings>.

168 Fundamental Rights Agency, *A persisting concern: anti-Gypsyism as a barrier to Roma inclusion*. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-anti-gypsyism-barrier-roma-inclusion_en.pdf.

169 Philip Alston, *End-of-mission statement on Romania, by Professor Philip Alston, United Nations Human Rights Council Special Rapporteur on extreme poverty and human rights*. Bucharest, 11 November 2015. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16737&LangID=E>.

Child Protection Law and Policy Context

It has been acknowledged that over the past 30 years Romania has made considerable progress dealing with the catastrophic child protection system inherited from the communist regime. Romania's rate of children placed in public care compared to its entire population of children is about average among the countries of Central and Eastern Europe, however in terms of absolute numbers, Romania's childcare system is one of the largest in the region.¹⁷⁰

In line with the European Commission's Social Investment Package, the Romanian government committed to review and adjust its policies on deinstitutionalisation and the provision of early and preventative interventions that enforce the right of children to grow up in a family environment. Speeding up the deinstitutionalisation process features as a priority in various strategic documents including the *National Strategy for the Protection and Promotion of Children's Rights 2014-2020*, the *National Strategy on Social Inclusion and Poverty Reduction 2015-2020*, and the *Romanian Partnership Agreement for the 2014-2020 Programming Period*.

The *National Strategy for the Protection and Promotion of Children's Rights 2014-2020* contained a focus on observing the rights and promoting the 'social inclusion of children in the most vulnerable circumstances', and identified the following specific objectives:

- Secure a minimum level of resources for children by way of a national anti-poverty program that places special emphasis on children;
- Reduce existing gaps between outcomes for rural and urban children;
- Remove attitude and environmental barriers to the rehabilitation and social reintegration of children with disabilities;
- Reduce the opportunity gap between Romani and non-Romani children;
- Continue the transition from institutional childcare to community-based care;
- Curb the street child phenomenon.¹⁷¹

Deinstitutionalisation

The extent of the transformation of Romania's child protection system over the last 20 years can be gauged from the fact that in 2000 there were 100,000 children in care, predominantly in large-scale institutions; in 2018, the total of children housed in institutions was 6,632. The majority of children in out-of-home care were placed in family-based care in 2018, including 18,317 children in foster care and 18,437 children in kinship care.

However, progress on deinstitutionalisation stalled in the wake of the global economic crisis, deepening poverty meant that more parents handed over their children into state care, and

¹⁷⁰ Manuela Sofia Stănculescu et al. *Romania: Children in Public Care 2014*. Published by the World Bank, the National Authority for the Protection of Children's Rights and Adoption (ANPDCA) and UNICEF Bucharest, 2017. Available at: https://www.unicef.org/romania/sites/unicef.org.romania/files/2019-04/Romania_Children_in_Public_Care_2014.pdf.

¹⁷¹ Manuela Sofia Stănculescu et al. *Romania: Children in Public Care 2014*, p. 22.

austerity cutbacks left the childcare system underfunded and understaffed, thus depleting its capacity to carry out reforms.

The annual fact-sheets produced by *Opening Doors* trace the progress made in deinstitutionalisation over the past decade. According to the *National Strategy for the Promotion and Protection of Children's Rights 2014-2020*, all old-type institutions must be closed down and replaced with community-based care. In 2014, the government prohibited the institutionalisation of children under the age of three. In 2018, the government prepared an updated Operational Plan to support the implementation of the *National Strategy for the Promotion and Protection of Children's Rights 2014-2020*; and resolved to use €100 million of EU funds to shut down 50 institutions, launching three EU-funded calls. Despite delays, the *Opening Doors* campaign group noted that this funding could prove useful, “*if implemented in a proper manner, allowing the applicants to have an integrated approach in deinstitutionalisation.*”¹⁷²

Poverty remains the main driver for separation of children from their families, with over 50% of children in Romania suffering from severe deprivation. It is combined with other structural causes such as the lack of material support, the lack of accommodation, the lack of parenting skills, domestic violence, abuse, or neglect. The National Strategy considers prevention of children's separation from their families as one of the priorities, so investment in community-based prevention and family support services is of crucial importance.

Access to services remains very limited, with many parents unaware of their existence. In addition, those parents without ID cards cannot access the services. Most providers are concentrated around cities, with only 24% of community-based services located in rural areas where there is the greatest need, and only 6% of the total funding is allocated to services in rural communities. Other concerns highlighted were the lack of monitoring, gaps in services for children in care and their families, and a shortage of adequately trained child professionals.

The latest country report noted with concern that for the last year and a half, “*there was practically no initiative of the Government/state to involve civil society representatives in any consultation or decision-making process regarding deinstitutionalisation.*” Subsequent delays in the allocation of EU funding, and the failure of the Romanian government to include children on the 2019 EU Presidency agenda, have given added cause for concern that reform of the child protection system is in danger of stalling, with deinstitutionalisation being relegated from the list of national policy priorities.

Children at Risk System Definitions

While there is no legal definition of child endangerment, the rights of the child, the obligations of parents, and the situations that may lead to the removal of parental rights are described in in Romanian legislation on the protection and promotion of the rights of the child [272/2004]:

172 *Opening Doors for Europe's Children*, 2018 Country Fact Sheet: Romania. Available at: <https://better-carenetwork.org/library/principles-of-good-care-practices/transforming-institutional-care/opening-doors-for-europes-children-2018-country-factsheets>.

Art.32

The child has the right to be brought up in an environment which would allow the child's physical, mental, spiritual, moral, and social development. For this purpose, the parents must:

- supervise the child;
- cooperate with the child and respect the child's personal and private life and dignity;
- inform the child on all acts and deeds which may affect him or her and take into account the child's opinion;
- undertake all the necessary measures for the realisation of the rights of their children;
- cooperate with natural and legal persons which are involved in childcare, education, and child professional training.

Art. 34

1. The public social security service will undertake all the necessary measures for the early identification of risk situations, which may determine the separation of the child from his or her parents, as well as for the prevention of abusive behaviours of the parents and family violence.
2. Any separation of the child from his or her parents, as well as any restriction in exercising the parental rights must be preceded by the systematic granting of services and assistance stipulated by the law, with a special emphasis on adequately informing the parents, providing counselling, therapy, and mediation for them, based on a service plan.

Art. 36

1. If there are sound reasons to suspect that the child's life and security are endangered in the family, the public social security service or, if the case, the representatives of the general department for social security and child protection at the level of each sector have the right to visit the children at their residence and to gather information on how the children are being cared for, on the children's health and physical development, education and professional training, and may grant, where needed, the necessary advice.
2. If, following the visits stipulated under paragraph (1) it is noticed that the child's physical, mental, spiritual, moral, or social development is endangered, the public social security service must immediately notify the general department for social security and child protection, in view of undertaking the measures stipulated by the law.
3. The general department for social security and child protection must refer the case to the court, in case it considers that the conditions required by the law regarding the partial or complete termination of the parental rights of one or both of the parents are met.

Art. 37

1. The general department for social security and child protection will undertake all necessary measures so that parents who have been deprived of parental rights, as well as those whose rights were restricted, may benefit from specialised assistance, in order to increase their capacity to care for their children, in view of regaining the exercise of parental rights.
2. The parents who request the return of the exercise of parental rights benefit from free legal assistance, in accordance with the law.¹⁷³

¹⁷³ Romanian Law on the protection and promotion of the rights of the child [272/2004], Chapter 2, Section 2, Articles 32, 34, 36, 37. Available at: http://www.dreptonline.ro/en_resources/en_romanian_child_protection.php.

As outlined in the UNICEF report, there are three main ways in which the General Directorate for Social Assistance and Child Protection (DGASPC) can be informed about a child who may need to be taken into the protection system: (i) the Public Social Assistance Service (SPAS), which accounts for 24% of notifications; (ii) other institutions, mostly maternity wards or neonatal units (30%); and (iii) the child's family (28%).¹⁷⁴ In addition, the DGASPC can take its own initiatives, and notifications can be made by other people and also by the children themselves.

When it comes to removing the child from the family there are clear methodological norms. The decision to separate a child from the family may be taken: (i) by the DGASPC director; (ii) by a court; (iii) by the Child Protection Commission (CPC); or (iv) based on a Presidential Ordinance if there is an emergency intervention. Based on the initial assessment, the DGASPC multidisciplinary team will suggest a solution for the child's care.

The main problem highlighted by the DGASPC specialists is not being able to provide support fast enough to children once they have been identified. Even in emergency cases (such as those involving abuse or abandonment), the "emergency" might take more than two months during which the child is left with the abusing parent or adult and with no external support.¹⁷⁵

Overrepresentation and Ethnically Disaggregated Data

Despite the official denial concerning the existence of ethnically disaggregated data, it became clear to researchers that childcare institutions do in fact gather such data for their adoption files. In the counties surveyed where Roma constitute less than 15% of the total population, it was estimated that nearly 60% of children taken into state care in the counties are Roma (or "half-Roma").

Researchers, in the course of interviews with staff from the Directorates of Social Assistance and Child Protection at Braşov and Timisoara, discovered that while officials maintain that it is not legal to 'sort children based on their ethnicity' or to collect 'ethnic data', the adoption files on each child include information on ethnicity. In the absence of comprehensive anonymised ethnically-disaggregated data, estimates ranged from 35% to 75% depending on the geographical regions and the reference sources. From those institutions that actually acknowledge that they hold statistics based on ethnic criteria, the average of children officially registered as Roma came to 30%. At the other end of the scale, social workers, families, and NGOs estimated that as much as 75% of all children in care were of Romani origin.

According to the Manager of the General Directorate of Social Assistance and Child Protection Sector 3 Bucharest, 45% of all children in care are Roma. Estimates gleaned from interviews with the managers of care institutions, ranged between 35% and 45%. On the higher end of the scale, NGOs that have implemented projects in partnership with Directorates of

174 Manuela Sofia Stănculescu et al. *Romania: Children in Public Care 2014*. Published by the World Bank, the National Authority for the Protection of Children's Rights and Adoption (ANPDCA) and UNICEF. Bucharest, 2017. Available at: https://www.unicef.org/romania/sites/unicef.org.romania/files/2019-04/Romania_Children_in_Public_Care_2014.pdf.

175 *Ibid.*, p.41.

Social Assistance and Child Protection (for example in Ialomița County), estimated the percentage of Romani children in state care to be nearer 65%.

How and why Romani Children end up in Care Institutions

The 2017 UNICEF study found that while many case files gave ‘poverty’ as the sole reason for children in Romania entering the child special protection system, separation from families was due to a much more complex mixture of vulnerabilities. Broadly, the analysis revealed three main categories of reasons why children are separated from their families and taken into the protection system: (i) unfortunate life events such as the death or institutionalisation of their parent(s); (ii) the parents’ behaviour or attitudes that are directly or indirectly harmful to their child; and (iii) structural causes such as poverty, lack of services, and unstable housing.¹⁷⁶

The process of deinstitutionalisation also significantly slowed down in Romania for two main reasons: first; many families have been leaving their children in institutions, either temporarily or permanently, because of their declining living conditions and severe poverty, and second; public sector hiring freezes and budget cuts further limited the system’s already stretched capacities to deliver family-type care services. Acute poverty renders families more vulnerable in Romania than elsewhere in the European Union, and disproportionate numbers of Roma are among the most vulnerable.

Child poverty has long remained the worst in the EU, and the poverty rate actually increased between 2007 and 2015. According to Eurostat data, in 2015 over 38% of children aged 0 to 17 in Romania lived in poverty. One in every two children living in rural areas is poor, and they account for 74% of the national total of children living in poverty. Child poverty in Romania tends to be persistent and accompanied by severe material deprivation: *“Thus, the persistent poverty rate (for three to four years long) is nearly 30% among children, a percentage which, since 2010, has put Romania consistently among the worst EU countries.”*¹⁷⁷

Moreover, Roma are disproportionately represented among the very poor, with 70% of all Romani household members at risk of poverty compared to 25% of the national population. The share of Roma without access to basic sanitation in the EU is the highest in Romania: 68 % of Roma surveyed were living without tap water in their dwelling; 79% of Roma were living without a toilet, shower, or bathroom inside the dwelling.¹⁷⁸ This deep poverty among Roma is a consequence of structural racism and discrimination, compounded by weak governance and endemic corruption. It is not some incidental vagary of the free market, but *“is a function of a long history of discrimination, neglect and isolation”*, as Professor Philip Alston, UN Special Rapporteur on Extreme Poverty and Human Rights made clear in his end-of-mission statement:

¹⁷⁶ *Ibid.* p. 39.

¹⁷⁷ UNICEF, Romania: *Children in Public Care 2017*. Bucharest 2017. Available at: https://www.unicef.org/romania/sites/unicef.org.romania/files/2019-04/Romania_Children_in_Public_Care_2014.pdf.

¹⁷⁸ EU Agency for Fundamental Human Rights. *A persisting concern: anti-Gypsyism as a barrier to Roma inclusion*, pp. 42-44. Luxembourg: Publications Office of the European Union, 2018. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-anti-gypsyism-barrier-roma-inclusion_en.pdf.

“Many officials are in a state of denial about both the extent of poverty in the country and of the systemic and deep-rooted discrimination against the extremely poor, especially the Roma ... Government services, especially but not only for the poorest, are generally the worst in Europe, based on indicator after indicator. I was often told that poverty is a choice. It is indeed, but the choice is too often made by government policies rather than by those living in poverty ... The official state of denial is most striking when it comes to the Roma population. Available statistics make clear that most Roma are worse off than the rest of the population in almost every aspect of life. The maternal mortality rate, the number of Roma women that die during pregnancy or shortly after giving birth, is fifteen times higher than for non-Roma women.”

Alston described the levels of poverty, social exclusion, and material deprivations to which Romanian children are exposed to as *“simply unjustifiable in an upper middle-income country like Romania.”* He found it paradoxical that while a large number of children fall through the cracks of the education and social welfare system, institutionalisation of children seems to play a significant role in filling the gaps:

The families that I spoke to in Bucharest often spoke of the fear that the local council may take away their children and I have also received information indicating that poor families are often persuaded to send their children to residential institutions so they are adequately fed and taken care of.¹⁷⁹

In the case of Romani children in state care, denials that ethnicity plays any role in removals must be set against the “official state of denial” when it comes to anti-Roma racism in Romania. Despite all the evidence and data, Alston found that very senior officials asserted that “there is no discrimination against Roma in Romania” and that they “live exactly as they want to live”, while others had no compunction about telling him that “Gypsies are generally criminals who don’t like to work, and never send their children to school.” While poverty is cited as the main factor for removals of Romani children, it should be stressed that the extreme deprivation that renders so many Romani families vulnerable is a function of historical oppression and contemporary policies of neglect, exclusion and discrimination.

Officials were adamant in replies to our researchers that ethnicity was never a factor in child removals, but that poverty played a key role in children being abandoned, handed over, or removed from the family setting. Similarly, care-workers interviewed by our researchers tended not to attribute removals to ethnic discrimination, but rather a combination of family circumstances and structural factors, which closely chimed with the general findings of UNICEF data collection. The complex of vulnerabilities included:

“extreme poverty, parental unemployment, poor quality housing or homelessness, poor school attendance or dropout, poor parenting, domestic violence, a high risk of child neglect and abuse (sometimes associated with parental alcohol abuse), young or single parenthood, unstable marriages, low expectations and/or self-esteem, and learned helplessness.”¹⁸⁰

179 Philip Alston, *End-of-mission statement on Romania*, by Professor Philip Alston, United Nations Human Rights Council Special Rapporteur on extreme poverty and human rights. Bucharest, 11 November 2015. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16737&LangID=E>.

180 UNICEF, Romania: *Children in Public Care 2017*. Bucharest 2017, pp. 38-39. Available at: https://www.unicef.org/romania/sites/unicef.org.romania/files/2019-04/Romania_Children_in_Public_Care_2014.pdf.

Social workers who were interviewed attributed the reasons for Romani children ending up in state care as poverty accentuated by living conditions, abandonment in health institutions, domestic violence, segregation in ghettos, drug use, and parents convicted and incarcerated for crimes. They also cited cases where parents could not take proper care of children with disabilities. Another factor was migration; parents who moved abroad in search of work sometimes left their children in state care, or with relatives, often grandparents, who subsequently, due to illness or other factors, became unable to adequately care for the children in their charge.

One social worker recounted, in revealing terms, that he had found many reasons to remove Romani children from their families, but the most common were *“the families are disorganised, they are poor, they live by crime and children end up begging. There are social, economic and cultural reasons that lead to a disorganised family that has more than five children.”*

Another key structural risk factor that correlates strongly with the situation of marginalised Romani communities is unstable family accommodation, home evictions, and homelessness. Most children in the special protection system come from households living in only one or two rooms in very poor and overcrowded conditions. The majority of children in the system are from rural areas (60%), with a massive over-representation from Braşov, Constanţa, Covasna, Sibiu, Vâlcea, and Vaslui, from communities described as *“marginalised, consisting of improvised houses or former dormitories, often not connected to utilities, with very poor roads, and deficient in basic social services.”*¹⁸¹

Experiences of Romani Children in Care

As in other countries, care workers and officials were emphatic in denying that Romani children were treated any differently from their non-Romani peers. One manager of a General Directorate of Social Assistance and Child Protection told our researcher that children interact well with each other; accommodation, dining, and recreation areas are all shared and not segregated, and the children all go by minibus to the same school. It was only inside the school that the Romani children experienced discrimination: “Teachers used a strange vocabulary towards the children, and this affected them.”

A care assistant from the same county also affirmed that Romani children are treated no differently:

“In our county, children are all treated the same. We try by all means to offer them a friendly and conducive environment for their proper psychosomatic development. The money is not enough to buy everything we need, but regarding the activities we are all involved. The protection authority has the task to protect everyone, but we do not know exactly how they allocate resources. What is very visible is the fact that we make no differences between children.”

As regards prospects of Romani children returning to their families, being fostered, or adopted, there is a dearth of ethnically disaggregated data. From the UNICEF research the following profile of children in state care and their prospects emerges:

¹⁸¹ *Ibid.* p. 40.

- On average, a child spends 7.5 years in the Romanian protection system. Children with extended families (especially grandparents) have the shortest stays (6.2 years), while children from single-parent families, especially single-mothers, have the longest (8.35 years). Children with disabilities, especially severe disabilities, and children with parents who have disabilities and/or mental health problems spend longer in the system than the average.
- Many children arrive in the child protection system when they are under the age of 3. These are the children, particularly those who entered before the age of one, who face a serious risk of becoming the “system’s children.” Of those who are currently in care, more than 18,000 children entered when they were less than 12 months old and over 9,100 children entered when they were between 1 and 2 years old. About one-third of them are children with mild, medium, or severe disabilities.
- As a result, the study found that one in every five children aged between 15 and 26 who were in the system as of November-December 2014 had spent their entire lives in the system, and almost one in every three had spent 90% of their lives. Therefore, the “system” is the only family they know.

As regards prospects for family reintegration, the study found that half of all separated children never contacted their parents or carers after separation. For those children separated at a very young age, the short time spent together did not allow for a strong bond to form with their parents. This was further exacerbated by a lack of any support or counselling for these parents, which means that many stop communicating with their children and, as time passes, prospects of family reintegration become more remote:

“After three years of separation, their chances of leaving the system drop dramatically. After six or seven years of separation, if no adoption takes place, their chances of exiting the system diminish even further, while the likelihood of being reintegrated into their own family is reduced to virtually zero.”

Children who were separated when they were less than two years old are far more likely not to have family interaction than children separated at the age of six. The study also found that:

“The frequency of the children’s interactions with their family decreases significantly if there is no stable relationship with the mother, the mother has little education, or if the household is located in a marginalised community. The more of these factors that apply, the lower the chances of the separated child to reunite with his or her family of origin.”¹⁸²

When it comes to adoption and fostering, despite official denials, ethnic data is indeed kept and included in each child’s file. Social workers told researchers that prospective foreign parents were more likely to adopt a Romani child than Romanian adoptive parents. One manager stated that in his county, “the adoption of Roma children is almost non-existent”; he identified the significant difference between children: “Roma children go to foster parents and non-Roma children get adopted more easily.” As an NGO president put it: *“I had the experience of seeing that Roma children are not adopted, and the first question of the families is whether the child to be adopted is of Roma ethnicity. Non-Roma kids are more accepted because they are whiter.”*

¹⁸² *Ibid.* p. 44.

Slovakia

Brief Profile of Roma in Slovakia

An estimated 320,000 to 480,000 Roma live in Slovakia today, accounting for some 6-8% of the population. According to the *Atlas of Roma Communities*, approximately 440,000 Roma live in approximately 825 municipalities. As the latest ECRI report on Slovakia notes, very large number of Roma have lived for generations, and still live today, in shanty towns in conditions of segregation, structural discrimination, and extreme poverty. Almost 85% of them live below the poverty line, and 53% of Roma who are employed are part of this group.¹⁸³

Excerpting from 2016 FRA survey data, the ECRI report provides the following profile of Roma exclusion in Slovakia:

- Only 34% of Roma children aged 4-6 attend nursery school (as compared with 77% of the population as a whole), and only 94% attend school when they have reached compulsory school age.
- Only 33% of Roma children aged 15-18 are in education corresponding to their age (as compared with 74% among the population as a whole) and 42% are not in any form of education (as compared with 9%). 61% of Roma girls and 54% of Roma boys leave school early (compared to national average of 7%).
- The majority of Roma children (62%) experience a form of school segregation: in 2016, 22% were enrolled in classes in which all of the pupils were Roma and 40% were enrolled in classes with a majority of Roma pupils.
- 25% of Roma were living in housing without running water, 43% were living in homes without toilets, showers or bathrooms inside them (as compared with 0.6% of the population as a whole) and 27% were living in housing with leaks or infiltration of water from the roof, with walls, windows, floors or foundations suffering from damp.
- The life expectancy of Roma is six years less than the national average, child mortality is three times higher, and 5% have no health insurance.
- 54% of the persons questioned said that they had suffered discrimination over the last five years. Although 51% knew that discrimination was against the law, only 16% knew of an organisation that could help them.¹⁸⁴

¹⁸³ Council of Europe ECRI Report on the Slovak Republic (sixth monitoring cycle). Adopted on 1 October 2020. Published on 8 December 2020, p. 26 Available at: <https://rm.coe.int/ecri-6th-report-on-the-slovak-republic/1680a0a088>.

¹⁸⁴ FRA Second European Union Minorities and Discrimination Survey Roma – Selected findings 2016. Quoted from ECRI 2020 Report, p.26. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf.

Child Protection, Poverty, and General Policy Context

The 2017 ESPN progress report on progress made on the EU Recommendation on “Investing in children” noted that almost every fourth child in Slovakia was at risk of poverty or social exclusion (AROPE). Children who faced three risks – income poverty, severe material deprivation, and low work intensity – represented 4.7% of all children in 2015 (above the EU average of 2.7%).

What makes the situation worse is that socioeconomic disadvantages tend to be transmitted across generations to a greater extent than all other EU countries; 94% of children at risk of poverty or social exclusion had parents with a low level of education, compared to an EU average of 65.6%. While the share of people at risk of poverty is below the Union average, levels are considerably higher in a number of districts in Southern and Eastern Slovakia, where regional disparities translate into lack of access to quality education, healthcare, housing, and other essential services for disadvantaged groups, in particular Roma, people with disabilities, and those who suffer from homelessness.¹⁸⁵

The European Commission 2020 Country Report on Slovakia also noted the substantial regional disparities and the vulnerability of certain groups; the proportion of people at risk of poverty or social exclusion ranges from 7.9% in Bratislava to 21.7% in East Slovakia. For particularly vulnerable groups, including children from socially disadvantaged families, Roma, and single-parent families, the proportion is 45.7%. The 2020 Country Report states:

“Slovakia lacks a vision on the future of marginalised settlements. Individual policies in education, labour market policies, health care, housing and financial inclusion lack effective coordination (OECD 2019). Access to social and essential services is hampered by missing infrastructure.”¹⁸⁶

Child poverty and social exclusion have been addressed in the *National Reform Programme 2017* (Ministry of Finance, 2017) which set ‘social inclusion of pupils from socially disadvantaged background’ as one of its priorities in the area of education. The 2020 Country report notes that for Romani children living in concentrated residential areas, the probability of becoming unemployed or earning less than the minimum wage in irregular work is almost 70%. Slovakia lacks a systematic early support for children in poverty and children with a disability. Gaps in provision of early childhood education and care (ECEC) persist, only 31.7% of three to five-year-old Romani children from marginalised communities were enrolled in ECEC, and in general kindergartens are less accessible in municipalities with larger Romani populations.¹⁸⁷

Deinstitutionalisation

According to the European Commission’s 2020 Report on the *Transition from Institutional Care to Community-Based Services in 27 EU Member States*, Slovakia is currently implementing

¹⁸⁵ ESPN Thematic Report on Progress in the implementation of the 2013 EU Recommendation on “Investing in children: Breaking the cycle of disadvantage” Slovakia 2017. Available at: <https://ec.europa.eu/social/main.jsp?catId=1248&langId=en&intPageId=3655>.

¹⁸⁶ European Commission, *Commission Staff Working Document Country Report Slovakia 2020*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX%3A52020SC0524>.

¹⁸⁷ *Op cit.*

deinstitutionalisation in social care supported by EU structural funds, which has largely focused to date on children and on people with disabilities.

In the case of children, there has been an increased focus on placing children in foster families. In contrast, the number of children with disabilities in foster families has decreased. Key trends for children (including children with disabilities) are:

- The rate of placement in residential care has reduced over time but is still the most prevalent form of provision for children. Those who leave residential care are most likely to go to a family living situation (their own or a foster family).
- There still appear to be just over 500 children with a disability in social care settings with no reduction since 2013.¹⁸⁸

From Structural and Investment Funds spending for the 2014-2020 period, a total allocation of €230 million was planned to support the transition from institutional to community-based care in Slovakia. An estimated €30 million was allocated to Priority Axis 4, Specific Objective 4.2.1 “Support of transformation from institutional to community-based care” under the Operational Programme Human Resources, co-financed by the ESF, and €200 million was allocated to Priority Axis 2, Specific Objective 2.1.1 “Transition from institutional to community-based services for persons with disabilities and children at risk, and support of nurseries” under the Integrated Regional Operational Programme (IROP), co-financed by the ERDF. Civil society have advised that the allocation under the IROP has since been reduced from €200 million to €69 million and a separate amount of €70 million was allocated to develop community-based services through the Integrated Territorial Investment approach.¹⁸⁹

Concerning numbers of children in care, the European Commission Report cites the Unicef TransmonEE dataset which reported that in 2016 there were 5,137 children in some form of residential care, which was a slight reduction from 5,556 in 2012. The number of children with disabilities in institutional care also decreased slightly from 878 to 744 in the same period. The rate of placement in residential services per 100,000 population also decreased from 685 in 2009 to 512 in 2016. The proportion of children leaving institutions increased from 24% in 2012 to 29% in 2016, although the actual numbers decreased from 1,572 to 1,483. Of these, none were reported to have transferred to another institution; most returned to live with their parents, started independent life, or were fostered. The report also notes that none of this data takes into account residential schools; in 2014 there were still many residential schools for different groups of children with disabilities, most of which had between 30 and 100 places.¹⁹⁰ None of the data cited is disaggregated by ethnicity and the report makes no mention of Romani children, nor the issue of their overrepresentation in institutional care.

¹⁸⁸ Jan Šiška, Julie Beadle-Brown, Report on the Transition from Institutional Care to Community-Based Services in 27 EU Member States, pp.111-114. European Commission. Available at: <https://deinstitutionalisation-dotcom.files.wordpress.com/2020/05/eeg-di-report-2020-1.pdf>.

¹⁸⁹ Neil Crowther, Gerard Quinn & Alexandra Hillen-Moore, *Opening up communities, closing down institutions: Harnessing the European Structural and Investment Funds Community Living for Europe*, Structural Funds Watch, November 2017, p. 16. Available at: https://eustructuralfundswatchdotcom.files.wordpress.com/2017/11/cle-sfw_opening-up-communities-november-2017_final.pdf.

¹⁹⁰ Jan Šiška, Julie Beadle-Brown, Report on the Transition from Institutional Care to Community-Based Services in 27 EU Member States, p.113. European Commission. Available at: <https://deinstitutionalisationdotcom.files.wordpress.com/2020/05/eeg-di-report-2020-1.pdf>.

Concerns about pace and progress with deinstitutionalisation as regards persons with disabilities surfaced in the 2016 Concluding Observations for Slovakia of the UN Committee on the Rights of Persons with Disabilities. The Committee expressed its deep concern regarding the high number of institutionalised persons and noted that progress of the deinstitutionalisation process is too slow and partial. The UN Committee called for the process to be expedited and recommended that Slovakia stops the allocation of resources from the national budget into institutions and that it reallocate resources into community-based services. A subsequent visiting delegation from the European Parliament to Slovakia confirmed these observations, reporting a *“lack of implementation of the existing good strategies and the strikingly slow speed of the deinstitutionalisation process.”*¹⁹¹

Institutional Care and the Legal Framework

Under § 54 (2) of the Act on Family, the court may order institutional care only if the upbringing of the child is seriously threatened or seriously undermined, the child’s parents have been deprived of their parental rights, and the child cannot be left in alternative personal care or foster care. Importantly, insufficient housing or proprietary conditions of the parents of the minor child may not be regarded as seriously threatening or seriously undermining the upbringing of the minor child (§ 54 (2)).

According to the Act on Socio-legal Protection of Children and Social Care, the child protection authorities shall exercise the measure of socio-legal protection and social care in a way that secures the protection of life, health, and healthy development of the child (§ 26). If there is a threat to the child’s life, health, and healthy psychological, physical, and social development of the child, the child protection authorities are obliged to imminently file a request for an interim measure to the court (to order interim care) and to secure their fundamental needs (§ 27 (1)). The child protection authorities shall assist the family to improve the family conditions (§27 (4)).

According to §§ 16-17 of the Act which regulates the social care of children, such care will be provided to:

- a minor who committed an offense which would normally constitute a criminal offense under criminal law;
- a juvenile perpetrator or a juvenile suspected of committing a criminal offense under criminal law;
- a child who committed a misdemeanour;
- a child who is a member of a group that threatens them with negative influence;
- a child who is a drug-abuser or drug-addict;
- a child who is gambling or addicted to games, social media, etc.;

¹⁹¹ European Parliament Committee on Petitions, *Mission Report and Recommendations following the Fact-finding visit to Slovakia of 22 - 23 September 2016*. Available at: <https://www.europarl.europa.eu/cmsdata/113106/1113278EN.pdf>.

- a child with behavioural disorder leading to problems at school, in groups, in relationships with other children, parents or other adults, or neglect of school attendance or escape from home;
- a child who has not experienced behavioural problems or disorders but their behaviour, although of short length, requires assistance for its seriousness or inappropriateness.

The child protection authority, in cooperation with the institution where the child is situated, the municipality, and other stakeholders shall draw up a plan for social work with the child's family, which includes monitoring psychological, physical and social development of the child. For this purpose, the child protection authority shall visit the child in the institution at least once in six months (§ 32 (3)). At least once in six months, the municipality shall submit a report on the social situation of the child's parents to the child protection authority which shall include, among others, the evaluation of the possibility of the child's return to the family environment (§ 32 (4)). The child protection authority shall at least once in six months submit to the court a report on the effects of the imposed measures taken to remove the reasons for which institutional care has been ordered and informs the court of the possibilities of terminating the institutional care, leaving the child in alternative personal care, or the possibility of adoption (§ 32 (5)).

Overrepresentation and Data

In 2011, ERRC field researchers who visited 12 childcare facilities in five localities in Slovakia found in the course of over 150 interviews that, on average, Romani children accounted for 82.5% of the total children in the institutions, and according to care workers interviewed, their return to biological parents is very rare and prospects for adoption far less than non-Romani peers.¹⁹²

In 2015, research published by the NGO CVEK¹⁹³ found that in facilities visited Romani children were very significantly overrepresented:

“Even in the regions of Western Slovakia, where there are significantly fewer Roma than in Central and Eastern Slovakia, Roma children in the homes visited often account for about 50% of the children. In other regions, this proportion was also significantly higher; some children's homes are practically exclusively Roma.”¹⁹⁴

In its 2016 Concluding Observations on Slovakia, the UN CRC expressed concerns that the majority of children in institutional care were Roma, that very few were adopted, and alternative and foster care options were limited.¹⁹⁵

¹⁹² ERRC *et al.* Life Sentence: Romani Children In Institutional Care, 20 June 2011. Available at: <http://www.errc.org/reports-and-submissions/life-sentence-romani-children-in-institutional-care>.

¹⁹³ Centrum pre výskum ethnicity a kultúry/ Center for the Study of Ethnicity and Culture (CVEK), *Štátne deti na jednej lodi? Rómske deti v detských domovoch*, 2015. Available at: <http://cvek.sk/wp-content/uploads/2015/11/Statne-deti-na-jednej-lodi.pdf>.

¹⁹⁴ *Ibid.*, p. 8.

¹⁹⁵ UN Committee on the Rights of the Child, 45th session, Concluding observations: Slovakia, CRC/C/SVK/CO/2, 10.07.2007, §§ 43-46.

According to information received by the Organization Fantasia of Children from the Ministry of Labour and Social Affairs, the total number of all children in state care in Slovakia exceeds 5,000, placed in approximately 110 facilities of various types. Of this total, the source estimated that more than 63% are Romani children. The Heads of Social Protection and Guardianship in Kežmarok and Poprad estimated the share of Romani children in state care in their districts to be 70% and 50% respectively.

Concerning data on ethnicity, it is clear from the researcher's interviews with representatives of the institutions that the ethnicity of children is recorded. For example, the head of the *Research Institute of Child Psychology and Pathopsychology* (VÚDPaP) confirmed that when applying for adoption, the applicant states whether they are interested in a Romani child, and the files even record whether one or both of the parents is of Romani origin. A social worker at a community centre told the ERRC researcher that they ask clients to state their nationality: *"some say they have Slovak nationality. We work with tables within the project, where they record whether or not they are a Roma client."*

How and why Romani Children end up in Care Institutions

Based on the interviews carried out by the ERRC researcher, the most common causes for removing children from their families included discrete incidents such as school truancy, a tragedy such as the death of a parent, and wider issues related to extreme poverty, lack of income, and precarious housing conditions in segregated settlements. This concurs with the European Commission's 2020 Country Report which found that, despite the legal system prohibiting the placement of children into care on the grounds of poverty or deprivation, poor housing conditions are one of the most frequent reasons for removing Romani children from their biological families:

"Child poverty, in particular among Roma communities, is a major reason for children being placed in the state foster care system. Formal long-term care continues to be dominated by residential facilities, and the process of deinstitutionalising care for persons with disabilities is proceeding slowly. There is a lack of financial resources and of a clear and integrated approach addressing the increasing demand for healthcare and social services in long-term care. Access to quality healthcare, in particular primary care, remains relatively poor and uneven."¹⁹⁶

When asked about the reasons for children being taken into care, heads of social protection agencies deny that ethnicity plays any role in removals, and go on to cite parental neglect, truancy, theft of firewood and potatoes, healthcare concerns, family tragedies, and 'other pathological phenomena in the locality' including drug and alcohol abuse. One community centre worker identified these as symptoms, and that the main reason for child removals is *"poverty, poor living conditions, low level of education, bad housing and high unemployment in the settlement"*.

Many interviewees similarly maintained that ethnicity plays no role in decisions to remove children, but rather poverty *"especially in segregated Romani settlements in eastern Slovakia and in families with large numbers of children"*. Social workers stated that they do not like removing children, but *"in most cases they are children taken from a low-stimulating environment where there*

¹⁹⁶ European Commission, *Commission Staff Working Document Country Report Slovakia 2020*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX%3A52020SC0524>.

is often no access to water, sewerage and even life conditions as such for the child.” While individual decisions on child removals may be made in good faith, the racism that reproduces the extreme poverty goes largely unquestioned, and the system that dumps hugely disproportionate numbers of Romani children into state care institutions goes effectively unchallenged.

The failure by the Slovak authorities to make headway with deinstitutionalisation and establishing child and family support services “regulated by rights-based and outcomes-oriented standards”¹⁹⁷, all the while neglecting to address the overrepresentation of Romani children in the system, is testament to the depth of institutional discrimination against Roma. As the European Court of Human Rights has accepted in the case of *D.H. and Others v. Czech Republic*: “a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group.”¹⁹⁸ The discrimination at play is a manifestation of deeply-rooted structural racism that reproduces and exacerbates inequality: the fact that 85% of Roma live below the poverty line places vast numbers of Romani children at risk. This official neglect renders family life in marginalised communities ever more vulnerable and precarious. This is especially the case in disadvantaged regions and racially segregated localities, where access to social and essential services is, as the European Commission phrased it, “uneven and hampered by missing infrastructure.”¹⁹⁹

Experience of Romani Parents with Social Care

Interviews with mothers of children taken into care provide insight into the lives of the most-excluded and rights-deprived communities; social exclusion, segregation, and immiseration has made life precarious for these parents, and rendered them desperately vulnerable. Living on the edge has left many families unable to withstand the shock of sudden tragedies or misfortunes such as the death of a spouse, imprisonment for minor misdemeanours such as their children’s truancy, or being plunged into absolute poverty after losing informal jobs. The following excerpts are taken from our researcher’s interviews with two mothers whose children were removed and placed in institutional state care.

Parent R. and her husband had eight children, two were already adults, and six children aged between 3 and 14 were taken to a children’s home. She told our researcher that her children were taken into care after she was sent to prison on account of her 12- and 14-year-old-boys’ truancy. At the time, her husband was also in prison for the same reason. None of their relatives wanted to take in the children. She recalled that when the social protection workers came to her home, the children were already packed and had said their goodbyes. Earlier she had received the court ruling to serve her prison sentence and knew what to expect.

After her release, Parent R. said she had received no assistance, she could not find work, nobody would hire her, and she was without financial means as her husband was still in

¹⁹⁷ UNICEF (2010) *At Home or in a Home?: Formal Care and Adoption of Children in Eastern Europe and Central Asia*, p.52.

¹⁹⁸ *D.H. and Others v. Czech Republic* [G.C.], no. 57325/00, 13.11.2007, § 184.

¹⁹⁹ European Commission, *Commission Staff Working Document Country Report Slovakia 2020*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX%3A52020SC0524>.

prison. She received only one benefit payment of about €60 and was dependent on her family who brought her some food, but had very little themselves. She was unable to visit her children as she was in prison, but had written letters to them. She could not get to see them after her release from prison because the home was very far away, and since then the children have not kept contact. They feel secure, attached to their childminder, and do not want to return to the family home.

Parent T. was a widow and mother of seven children aged between 7 and 15 years old. She said her children were taken away because of poor living conditions. Following the death of her husband, who was the sole breadwinner, the family was left with no income. She had no idea that the social protection workers were coming to take her children; she was not even at home, but in the local village shop. She learned about it indirectly from her son who heard in the village that the mayor was planning to remove her children. The removal was a huge shock and trauma for the mother and her children. She recalled “I did not want to believe it, the mayor himself had helped me sometimes with firewood and baby food, as he knew my situation”. Her husband died leaving debts of over €2000, which she had to repay. She received some basic assistance and a payment of €180 from social workers for food and household basics; “but this was not enough.”

She was aware of her rights, visited the children regularly and took an active interest in their upbringing, and dealt with various “accidents and incidents” that occurred in the crisis centre. She said that her children survived the stress and trauma of being separated from their family for 12 months, and related what happened to her daughter:

“My daughter was hit by a cop. She went for a walk with the girls somewhere and did not come back in time. Police were called and this cop slapped my daughter. They took her to Prešov, put her in psychiatry for a month, giving her medication ... That's why she is still having problems, vomiting blood and depression. When she told me, I made a complaint about the cop, but she was terribly afraid our house would be burned and cancelled her testimony. There was nothing I could do.”

Conclusions

The evidence from this latest 2020 five country review suggests that, despite the declared lack of ethnically disaggregated data, it remains the case that hugely disproportionate numbers of Romani children end up in state care institutions. In its 2016 Concluding Observations on Slovakia, the UN CRC expressed concerns that the majority of children in institutional care were Roma, that very few were adopted, and alternative and foster care options were limited.²⁰⁰ Allowing for regional variations in four of the countries under review, our researchers received the following estimates:

- In Slovakia, where Roma account for 6-8% of the total population, an estimated 63% of children in state care were of Romani origin.
- In Romania, where Roma are estimated to be 8.32% of the total population, depending on the geographical region and the information sources, overrepresentation of Romani children in care ranged from 35% to 75%.
- Again, in the Czech Republic, estimates ranged according to regions. Roma represent a mere 2.2% of the total population, but account for between 30% and 60% of children in state care.
- In Bulgaria, Roma account for approximately 10.33% of the total population, but the estimates of Romani children in state care suggest they account for 30-60% of the total, depending on the region.

In the fifth country, Moldova, the scale of the problem concerning Roma in state care is difficult to quantify due to the lack of comprehensive, ongoing, and coordinated data collection on child rights in general, and the limited or completely absent deeper disaggregation of data on the situation of particularly vulnerable groups. However, it is likely that Romani children are indeed overrepresented, because poverty was identified as the main cause driving the placement of Romani children in institutional care, and in Moldova, Roma are much more likely to be poor, with 65% of Roma living in absolute poverty compared with 28% of non-Roma.²⁰¹

Based on the interviews carried out by ERRC researchers, while reasons for removing children from their families included discrete incidents such as school truancy, or a tragedy such as the death of a parent, the most common causes related to extreme poverty, lack of income, and precarious living conditions in segregated settlements. Despite the legal prohibitions on the placement of children into care on the grounds of poverty or deprivation, poor housing conditions and child poverty remain the most frequent reasons for removing Romani children from their biological families in countries such as Slovakia.

This deep poverty among Roma is a consequence of structural racism and discrimination, compounded by weak governance and endemic corruption. It is not some incidental vagary

²⁰⁰ UN Committee on the Rights of the Child, 45th session, *Concluding Observations: Slovakia*, CRC/C/SVK/CO/2, 10.07.2007, §§ 43-46.

²⁰¹ The United Nations Development Programme, World Bank and European Commission, *Regional Roma Survey*, 2011. Available at: <https://cps.ceu.edu/article/2012-10-16/undpworld-bankek-regional-roma-survey-2011>.

of the free market, but rather, as Professor Philip Alston, UN Special Rapporteur on Extreme Poverty and Human Rights made clear in the case of Romania, it “is a function of a long history of discrimination, neglect and isolation”.

Very many at-risk Romani families do not have access to social supports, and preventative measures remain scarce, and often non-existent in the most deprived regions where need is greatest. As a consequence, underfunding combined with institutional discrimination results in removals of Romani children from their families being a first rather than final option for the authorities. Although the law clearly provides that courts and child protection agencies should always prefer alternatives to institutional care, the right of many children to family life is not being upheld, because some regional authorities fail to develop alternatives to institutional care to the extent necessary, or fail to ensure that they are the preferred option resulting in the phenomenon known in public policy as the “post code lottery”.

In the case of the Czech Republic, as detailed by Lumos in the successful Collective Complaint to the ECSR, children’s rights are significantly affected by where they live (the “post code”). Data collected demonstrated clearly that institutional care is not being used as a measure of last resort in disadvantaged regions with significant Romani populations. The Committee concurred, and in its 2020 ruling described as unacceptable that the government “*allows placement of children in harmful institutions as de facto ‘a measure of first resort’ without obliging the public authorities to first attempt to provide support to child’s birth family or find placement in a substitute family.*”²⁰²

Progress on deinstitutionalisation stalled in the countries reviewed, with expert groups and civil society organisations warning of operational dysfunction, diminishing political will, and inadequate funding. In Bulgaria, problems included quality issues about all types of alternative care placements; the lack of meaningful coordination or consultation with partners, compounded by transparency deficits in decision-making related to child-protection policy; an absence of detailed planning and monitoring mechanisms at national level; and severe under-resourcing of child-protections systems. This under-resourcing results in acute staff shortages, poor material resources and a high turnover of social workers who lack competency-based standards, training, and supervision. Similarly, in Romania the process of deinstitutionalisation slowed down significantly for two reasons: first, declining living conditions, severe poverty, and emigration meant that more children were either placed by parents in institutions or removed from their families; second, public sector hiring freezes and budget cuts further limited the system’s already stretched capacities to deliver family-type care services.

Across the countries surveyed, as many as one third of children in state care had spent 90% of their entire lives inside the system. For children separated at an early age, prospects for family reintegration are severely reduced by the lack of support or counselling for Romani parents, especially if the household is located in a remote or marginalised settlement. After six years of separation, if no adoption takes place their chances of exiting the system diminish even further, while the likelihood of being reintegrated into their own family is reduced to virtually zero.

²⁰² European Committee of Social Rights, *Decision on the Merits of European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic. Complaint No. 157/2017*. 23 November 2020. Available at: [https://hudoc.esc.coe.int/eng#f{%22sort%22:\[%22ESCPublicationDate%20Descending%22\],\[%22ESCDIdentifier%22:\[%22cc-157-2017-dmerits-en%22}\]}.](https://hudoc.esc.coe.int/eng#f{%22sort%22:[%22ESCPublicationDate%20Descending%22],[%22ESCDIdentifier%22:[%22cc-157-2017-dmerits-en%22}]})

As for adoption and fostering, a common observation of social workers in the different countries was that only prospective parents from abroad were more likely to adopt a Romani child than local adoptive parents. One manager stated that in his county in Romania, “the adoption of Roma children is almost non-existent”. Ten years on from the first round of ERRC research, this latest round confirms that in 2020, it still remains the case that while it is very easy to be sucked into the system, it is virtually impossible for many Romani children to escape it until they came of age; for the majority, the institution is the only family they know²⁰³; and ‘the institution’ is deeply damaging and leaves young people largely unprepared and unsupported for life outside the system when they came of age.

This research provides eloquent testimony to the damage done to Romani children by institutionalisation. In our collective complaint to the ECSR, the UN Special Rapporteur, Dainius Pūras, submitted that the body of evidence shows that children with disabilities and those from ethnic minorities are likely to experience a greater impact of institutionalisation, resulting in more severe developmental delays or disturbed behaviours than their peers, and detailed how young children experience institutionalisation:

“social and interpersonal development is impaired, physical growth is slowed, and cognitive and language development is delayed ... It should be stressed that, even if it were possible to provide conditions in institutions that are not inhuman or degrading or to eliminate violence and abuse, it is almost impossible for children in institutions to form consistent attachment to a carer and this will still lead to detrimental effects on their development.”²⁰⁴

The ERRC maintains that the best interests of the child must prevail at all times, and that family-based care should come before any alternative care arrangements, while fully accepting that there are cases when alternatives to parental care must be provided. However, we regard as indefensible the stubborn assertion by supporters of institutional care for children that since conditions have significantly improved in institutional care homes, these places should be regarded as safe and suitable places for children. This is especially disingenuous in the case of the Czech Republic where, as a former minister stated, the system of childcare and child protection was not able to transform as “the interests of the employees prevailed over best interests of children.”²⁰⁵

The situation in such institutions was described by a Czech ombudsperson as “further worsened by an aspect of depersonalisation and inadequate physical contact ... children have anything but love”²⁰⁶, and memorably characterised by Lumos as places where:

²⁰³ UNICEF, Romania: *Children in Public Care 2017*. Bucharest 2017, p. 44. Available at: https://www.unicef.org/romania/sites/unicef.org.romania/files/2019-04/Romania_Children_in_Public_Care_2014.pdf.

²⁰⁴ European Committee of Social Rights, *Complaint: European Roma Rights Centre & Mental Disability Advocacy Centre v. the Czech Republic: For failure to ensure social and economic protection of young children who are segregated in child-care institutions*. 26 October 2016. Available at: <https://rm.coe.int/complaint-157-2017-european-roma-rights-centre-mental-disability-advoc/1680761626>.

²⁰⁵ Lidovky.cz, *Za dítě v ústavu platí stát ročně 778 tisíc. Třikrát víc než za pěstounskou péči*. 2017. Available at: https://www.lidovky.cz/domov/pobyt-v-kojeneckem-ustavu-je-30x-drazsi-nez-sluzby-pro-rodinu-stoji-778-tisic.A170515_165043_In_domov_ELE/tisk.

²⁰⁶ Public Defender of Rights Report on systematic visits of health care facilities, including institutions for children under three, p. 61. The report is available (in Czech) at: https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2013/NZ-25_2012-kojenecke-ustavy.pdf.

CONCLUSIONS

“children are arbitrarily separated from their parents (and often their siblings) and raised by personnel who are paid to care for them, and who usually work shifts; large numbers of unrelated children live together in the same building or compound; the child does not have the opportunity to form a healthy emotional attachment to one or two primary caregivers; the setting is isolated from the broader community and is distinctly identifiable as being outside the broader community (by the use of high walls or fences, barbed wire, guards on the gate, provision of school on site, inter alia); contact with the birth and extended family is not actively encouraged or supported, and is at times discouraged; care is generally impersonal and the needs of the organisation come before the individual needs of the child.”²⁰⁷

As stated in the introduction, the ERRC maintains that institutionalisation of young children is a form of violence, and the disproportionate overrepresentation of Romani children in state care amounts to a form of racist violence. A human rights-compliant response to the existing situation of Romani children and children with disabilities in state care, calls for the immediate and total elimination of institutional care and the development of appropriate child support services across Europe.

²⁰⁷ European Committee of Social Rights, *Decision on the Merits of European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic*. Complaint No. 157/2017. 23 November 2020. Available at: [https://hudoc.esc.coe.int/eng#{%22sort%22:\[%22ESCPublicationDate%20Descending%22\],\[%22ESCDcIdentifier%22:\[%22cc-157-2017-dmerits-en%22}\]](https://hudoc.esc.coe.int/eng#{%22sort%22:[%22ESCPublicationDate%20Descending%22],[%22ESCDcIdentifier%22:[%22cc-157-2017-dmerits-en%22}]).

Recommendations

To the European Commission:

- Revise the *EU Roma strategic framework for equality, inclusion and participation for 2020–2030*²⁰⁸ to incorporate a more complex, child-centred approach that pays close attention to the rights and the needs of the most vulnerable of Romani children in Europe, including those removed from their families and placed in state care institutions.
- Fully align the Roma Framework with wider EU post-2020 policy on reducing child poverty and social exclusion, and ensure the balancing act between universal policies and targeted approaches does not exclude adequate support and prevention services for children and their families from socially-excluded Romani communities. Within such mainstream policy, revise children's rights and other relevant policies to ensure that Romani families and children are included as target groups in need of special protection.
- Issue a discrete Communication devoted to the rights of the child within the remit of the *EU Roma Framework*, urging national governments to ensure that revised national inclusion strategies adopt a holistic and rights-based approach when it comes to Romani children and youth
- Assist national governments in developing an approach to child protection that ensures services and systems that are child-friendly, equitable, and non-discriminatory; that prioritises the elimination of all forms of violence against Romani children, guarantees the rights of those in vulnerable situations (including those in state institutions), and promotes the participation of Romani children in policies that affect their lives.
- Ensure that the EU Roma Framework is fully aligned with the **broad political commitment** at European level for deinstitutionalisation, and that the Framework specifically prioritises child protection and the right to family life. Provide incentives for change, put a moratorium on any use of EU funds by Member States to build new institutions, and redirect EU funding to deliver support services in the community. Amend procedures so that the European Neighbourhood Instrument (ENI) can contribute to deinstitutionalisation reform in countries such as Moldova.²⁰⁹
- Encourage national governments to set policy objectives, benchmarks and indicators, targeted programme plans, and monitoring and evaluation systems to prevent the separation of Romani children from their families; to provide adequate resources for family support, prevention measures, and legal aid to Romani families at risk of child removal; and to develop and use detailed definitions and methodological guidance in assessing child endangerment.

²⁰⁸ European Commission, *EU Roma strategic framework for equality, inclusion and participation for 2020–2030*. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1813.

²⁰⁹ Opening Doors for Europe's Children, 2018 Country Fact Sheet: Moldova. Available at: <https://better-carenetwork.org/library/principles-of-good-care-practices/transforming-institutional-care/opening-doors-for-europes-children-2018-country-factsheets>.

RECOMMENDATIONS

- Earmark funding for local governments and NGOs to provide prevention services in Romani communities to enable Romani children to stay with or return to their families, and also encourage local and regional authorities to identify child protection as an issue in Roma inclusion policies and resource allocation.
- Work with the Council of Europe to set standards for the collection of comparable data about the number of Romani children in state care (including in institutions, foster care, other forms of alternative care, and adoption), including data disaggregated by ethnicity, gender, disability and other relevant factors, with appropriate measures to protect the personal data of children and families.

To national governments and regional authorities:

- Amend domestic legal standards to provide full and adequate protection to Romani children and families at risk of separation, to fully ensure that child removal on the basis of poverty or material concerns is prohibited in law and in practice, and ensure regular court review of administrative decisions to place children in state care. Close any legal loopholes that allow placement of Romani children in harmful institutions as a de facto ‘measure of first resort’.
- Revise national child protection policy to include Romani children and families as at particular risk of endangerment; review all national policies and programs to assess whether seemingly neutral provisions have a deleterious or discriminatory impact on Roma.
- Collect comparable annual data that is disaggregated by ethnicity, gender, disability, and other relevant factors in the areas of child protection, education, housing, employment, and health care, with appropriate measures to protect the personal data of children and families.
- Provide information about free legal support to families at risk of child removal, especially Romani families endangered by discrimination and social exclusion.
- Develop and adopt a detailed description of child endangerment and methodological guidance to facilitate objective and consistent assessment.
- Ensure regular and systematic monitoring and evaluation of both basic and the professional care services, including children’s rights representatives, which takes account of the perceptions of families and children and their level of satisfaction with child protection services.
- Implement positive action programmes to facilitate the employment of Romani professionals in child protection services.
- Make anti-discrimination and multi-culturalism training an obligatory component of school curricula for child protection and social work professionals, and ensure care professionals meet consistent professional standards. Work with Romani organisations to deliver trainings on Romani language, history and culture with child protection workers and children in state care.
- Prioritise funding for basic child welfare services on a service provision basis to ensure an adequate level of preventative work and avoid the under-financing of the regions and city districts most in need.

- Prioritise national funding for preventative social work programmes to reduce the number of Romani children in state care, oblige and adequately finance social work and child protection authorities to implement programmes for the return of children in state care to their families, and increase the number of preventative social workers, enabling improved community social work by reducing the caseload per worker.
- Bring local prevention services to marginalised neighbourhoods to support Romani families at risk of separation due to poverty, and ensure effective cooperation between public service providers such as schools, employment offices, housing authorities, and public health facilities to enable Romani families at risk to improve their living conditions.
- Provide adequate information and guidance to Romani families at risk of separation about their rights and duties, and ensure free legal aid is available for such families.



errc