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CHILDREN'S RIGHTS AND POLICIES IN EUROPE: REALITIES AND CHALLENGES IN SPAIN AND ITALY*

SUMMARY: 1. Introduction. – 2. An overview of the EU protection of children's rights in the social, education and health fields. – 3. The protection of social, education and health children's rights in Spain and Catalonia. – 3.1. State and regional legislation. – 3.2. Strategic objectives of childhood policies in Spain. – 3.2.1. Cross-cutting objectives. – 3.2.2. Social protection of children at risk, exclusion or vulnerability. – 3.2.3. Guarantee quality education. – 3.2.4. Maximize the development of children's health rights. – 3.3. Notes on the situation of child protection in Catalonia. – 3.4. Future challenges for childhood policies in Spain. – 4. The protection of social, education and health children's rights in Italy and Veneto. – 4.1. Main aspects of child social protection in Italy. – 4.2. Achieving equal opportunities for all children through education. – 4.3. The Italian system for the protection of children's health. – 4.4. Childhood laws and policies at the Italian regional level: the case of Veneto. – 4.5. Future challenges for childhood policies in Italy. – 5. Conclusions.

1. Introduction

The 1989 Convention on the Rights of the Child is the universal instrument of reference in all actions that concern children. It is the treaty that, for the first time in the international framework, manages to bring together civil and political, economic, social and cultural rights under the entitlement of the child. The Convention is a norm of obligatory attention in

* Contributo sottoposto a valutazione.

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any action that is carried out to protect children from the public powers or in the private sector, both internally and internationally. All this justifies that the Convention has been considered as the 'Magna Carta' of the rights of the child¹. The States parties to the Convention and Optional Protocols are obliged to adopt policies that guarantee the rights proclaimed in them to all children. To do this, they have the guidelines of the Committee on the Rights of the Child (CRC) and their Observations on the reports of the States parties². The effective implementation of the Convention requires the compatibility and harmonization of internal legislation, the adoption of policies that allow its effective enforcement, and the establishment of mechanisms for surveillance and control of its execution, including administrative and judicial remedies, that guarantee the sanction for his violation. In other words, it is necessary to guarantee a full legislative, administrative and judicial integration of the Convention³. The CRC has identified four general guiding principles that have been consolidated in a privileged way as guiding the interpretation and application of the Convention.

a) The right of the child to non-discrimination (art 2). Children should be treated according to the principle of equality, without any discrimination based on racial, gender, color, age, language, religion or beliefs, political opinion, culture, social or ethnic origin, disability, physical appearance, or any other condition of the child or adolescent, their parents, family group, legal representatives etc.

b) The right of the child to have his or her best interests taken as primary consideration (art. 3). In its General Comment 14 (2013), the CRC approaches the meaning of the best

¹ M.R. CARMONA, *Las obligaciones derivadas de la Convención sobre los Derechos del Niño hacia los Estados Partes: el enfoque en derechos en las políticas de infancia en España*, in *Educatio Siglo XXI*, 2012, 30/2, pp. 72-73.

² It should be recalled that the Observations of the CRC to the States are binding: see in this sense the Spanish Supreme Court judgment STS 1263/2018, FJ n. 7.

³ M.R. CARMONA, *Las obligaciones derivadas de la Convención sobre los Derechos del Niño*, cit., pp. 72-73.

interest from a triple perspective: as a substantive right, as an interpretive principle and as a procedural norm⁴. It is imposed on all institutions and bodies (administrative authorities, legislative bodies, courts, social welfare institutions, etc.), public and private, and must gain a significant presence when establishing State budgets at all administrative levels, allowing strategic allocations of resources for the application of children's rights, both in the specific items for children and in other sectors that affect it⁵.

c) The right of the child to life, survival and development (art.6). It implies the obligation of the States parties to guarantee as far as possible the survival and development of children. The CRC expects States to interpret 'development' in its broadest sense as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development. Implementation measures should be aimed at achieving the optimal development for all children. The States parties, according to art. 6 of the Convention, must guarantee the life, survival and development of children. According to art. 27 children have the right to an adequate standard of living for their physical, mental, spiritual, moral and social de-

⁴ The CRC underlines that the child's best interests is a threefold concept: 1) A substantive right: the right of the child to have his best interests assessed and taken as a primary consideration and the guarantee that this right will be implemented whenever a decision is to be made concerning a child. 2) A interpretative legal principle: if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. 3) A rule of procedure: whenever a decision is to be made that will affect a child, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. The justification of a decision must show that the right has been explicitly taken into account. States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases (CRC, General comment No. 14 (2013), *The right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1), 29 may, para. 6).

⁵ Ph. ALSTON, B. GILMOUR-WALSH, *El interés superior del niño. Hacia una síntesis de los derechos del niño y de los valores culturales*, Ministerio de Trabajo y Asuntos Sociales, Madrid, 1999.

velopment; and art. 19 commits the States to take all necessary measures (legislative, administrative, social and educational), to protect minors from all kinds of abuse, mistreatment, exploitation, etc.⁶

d) Children have the right to freely express their opinion in all matters in which they are interested and have their opinions taken into account based on their maturity and development. In recent years, the understanding of this principle as well as 'participation' has been expanding, although this term does not appear properly in the text of article 12. States parties should ensure that the child receives all the necessary information and advice to make a decision that is in your best interest. The term «who is capable of forming his or her views» it should not be seen as a limitation, but as an obligation for States parties to assess the child's ability to form an autonomous opinion as much as possible. This means that States parties cannot start from the premise that a child is incapable of expressing their own opinions. Children's views have to be taken seriously from the moment they can form their judgment. For minors, expressing their opinions is an option, not an obligation. The personal and direct exercise of this right must be guaranteed, especially in all administrative or judicial proceedings that lead to a decision that affects your rights, guarantees and interests, with no limits other than those derived from your best interests and it is not enough to listen to minors⁷. Minors should be listened and not only heard (art.9 Organic Law 1/1996 on the Legal Protection of Minors). It is not important the age of the child, it must be boasted that the child is able to create his own judgement about a specific situation. It is important to bear in mind that this right does not only stand in conflictive scenarios but also when there is no disagreement or there is consensus on parent-child relationships. As it has been said is a right that can be used or not freely. The child cannot be forced to express an opinion. Fi-

⁶ CRC, General comment No. 5 (2003), *General measures of implementation of the Convention on the Rights of the Child*, 27 November.

⁷ CRC, General comment No. 12 (2009), *The right of the child to be heard*, 1 July.

nally, the different listening methods must comply with the principle of prudence. Listening to the child in many different times can lead to victimization and this must be avoided. However, this right must be understood as a process and not as a singular and isolated event.

On the following pages, we will analyze the application of the Convention on the Rights of the Child in Europe, taking into account the key role of the European Union. It will be done through the analysis of two cases: Spain and Italy and two of its most prosperous regions (Catalonia and Veneto). We will try to show how the Recommendations of the CRC of the Child and European policies have transformed the legislation and policies of children in these countries, introducing an approach «focused on the rights of the child». The use of the expression child-centered approach is already common in international programs, and applies not only to the field of social intervention or social services, but also to those of education, health, or others, as will be seen throughout the article.

2. An overview of the EU protection of children's rights in the social, education and health fields

The protection of children's rights does not have a long-standing tradition in the EU affairs. Despite the fact that the CRC was adopted in 1989 and ratified by all EU Member States already in the mid-nineties, it was only after the entry into force of the Lisbon Treaty in 2009 that the EU started to develop a comprehensive strategy for safeguarding children's rights at the EU level. Until that moment there was virtually no reference to children in the EU treaties⁸ and the EU action for the protection of children was made of piecemeal provisions addressing particular child-related aspects in connec-

⁸ Children were only mentioned with regard to combating crime, by former Article 29 TEU identifying 'trafficking in persons and offences against children' as a priority area for cooperation between EU member states.

tion with broader issues of consumer rights, free movement of individuals and cross-border family law⁹.

The Lisbon Treaty made relevant changes to the institutional, constitutional and procedural dimensions of the EU, eliminating the ‘three pillar structure’ established by the 1992 Maastricht Treaty by amending the Treaty on European Union (TEU) and the Treaty establishing the European Community which was officially renamed the Treaty on the Functioning of the European Union (TFEU)¹⁰. In particular, the modifications provided the basis for a real EU’s constitutional commitment to protecting children’s welfare, identifying the «protection of the rights of the child» as one of the core values and general objectives of the EU under Article 3(3) TEU as well as an important aspect of EU’s external relations policy according to Article 3(5) TEU¹¹. Children were mentioned by two new provisions of the TFEU, granting legislative power to the EU with regard to human trafficking (Article 83(1)) and combating sexual exploitation (Article 79(2)(d)) of children¹². Notably, with the entry into force of the Lisbon Treaty the EU Charter of Fundamental Rights (CFR) was afforded the same legal status as the treaties, thus making it binding for the EU and its Member States (when implementing EU law) to comply with its norms and principles¹³. Among these latter, the CFR contains some key provisions in terms of children’s rights protection, such as Article 14(2) envisaging the right to receive free compulsory education, Article 21 prohibiting discrimination on grounds of age and Article 32 protecting children from exploitative labour. Moreover, building on the provisions of the CRC, Article 24 of the CFR provides children with the right to express their views freely in accordance with their age and maturity (Article 24 (1)), the right to have their

⁹ EU AGENCY FOR FUNDAMENTAL RIGHTS, *Handbook on European law Relating to the Rights of the Child*, Publications Office of the European Union, Luxembourg, 2017, p. 20.

¹⁰ *Ivi*, pp. 20-21.

¹¹ *Ivi*, p. 21.

¹² *Ivi*, p. 21.

¹³ *Ivi*, p. 20.

best interests taken as a primary consideration in all actions relating to them (Article 24 (2)) as well as the right to maintain on a regular basis a personal relationship and direct contact with both parents (Article 24 (3))¹⁴.

Although the EU is not and cannot become a party to the CRC¹⁵, given that it relies on 'general principles of EU law' to direct the interpretation of the EU Treaties and that all EU Member States have ratified the CRC, it is obliged to comply with the CRC standards by interpreting EU norms in their light – as it has been meaningfully reaffirmed by the European Parliament on the occasion of the thirtieth anniversary of the CRC¹⁶. This being said, to better appreciate the nature and scope of the EU intervention for the protection of children and its compliance with the CRC, it is necessary to take into account the division of competences between the EU and its Member States as it is prescribed by the Treaties on the basis of principles of conferral, proportionality and subsidiarity. In fact, the EU does not have a general competence to legislate on children's rights as a single specific EU policy, but rather, given that children's rights protection is a transversal field, it has to assess its competence to intervene on a case-by-case basis¹⁷. In this sense, Article 5 TEU establishes the principle of conferral, stating that the EU «shall act only within the limits of the competences conferred upon it by the Member States», namely where it has been conferred legislative power under the Treaties. Depending on the case, the EU can thus have 'exclusive' competence under Article 3 TFEU, 'shared' competence under Article 4 TFEU or a complementary competence to «support, coordinate or supplement» the intervention of its Member State under Article 6 TFEU which is for example the case of actions in the areas of education (Article 165 TFEU) and healthcare (Article 168 TFEU) that are of paramount im-

¹⁴ *Ivi*, p. 20.

¹⁵ There is no legal mechanism within the CRC allowing entities other than States to accede to it.

¹⁶ EUROPEAN PARLIAMENT, *Children's rights in the EU Marking 30 years of the UN Convention on the Rights of the Child*, 2019.

¹⁷ *Ivi*, p. 3.

portance for the social protection of children. Outside of its exclusive competence, the EU action is also subject to the principles of subsidiarity and proportionality as respectively defined by Article 5(3) and Article 5(4) TEU. According to the former, the EU can only act when its intervention is expected to be more effective than exclusive action by the Member State. The latter requires the EU not to exceed «what is necessary to achieve the objectives of the Treaties». On this basis, it is worth to mention that the legislative power of the EU has to respect these limits and is subordinated to the legislative autonomy of its Member States with particular regard to the areas of human health, education, youth and fight against social exclusion and poverty¹⁸ which are fundamentally implicated with child protection. It follows that the EU action for the safeguard and the promotion of the social, educational and health rights of children cannot directly imply the harmonization of Member States' laws but is mainly implemented through soft-law solutions, including policy instruments and guidelines as well as through campaigns, research, sharing of best practices and funding. As a consequence, even if all EU Member States have adopted laws and policies to favour the mainstreaming of children's rights and some of them have also established children-specific autonomous legal bodies or institutions, EU governments' efforts to promote children's rights and participation have been considerably diverse¹⁹.

Against this background, the social protection of children is the area in which the EU has played a greater role in shaping the behavior of Member States, focusing on combating child poverty, social exclusion and discrimination especially by promoting children's equality and participation²⁰. The EU efforts in this regard must be framed within the framework of the so-

¹⁸ As it is envisaged by Articles 2(5), 6, 151 and 153 of the TFEU.

¹⁹ EUROPEAN COMMISSION, *Embedding a children's rights perspective in policy and decision-making*, Luxembourg, 2019, pp. 2-7.

²⁰ EU AGENCY FOR FUNDAMENTAL RIGHTS, *Combating Child Poverty: an Issue of Fundamental Rights*, Publications Office of the European Union, Luxembourg 2018, p. 12.

cial objectives of the Europe 2020 Strategy²¹ and have consisted in some key policy initiatives, such as the 2010 European Platform against Poverty and Social Exclusion²², the 2011 EU Agenda for the Rights of the Child²³, the 2013 Recommendation on *Investing in Children: Breaking the Cycle of Disadvantage*²⁴ and the 2017 European Pillar of Social Rights²⁵. Taking as a reference the relevant legal standards of the CRC and of the CFR²⁶, these documents have progressively located EU children's social protection within an «ethic of child protection, participation and non-discrimination» setting the direction for further EU intervention in favour of children in other fields as well in accordance with the rationale behind the CRC²⁷. In particular, the Agenda and the Recommendation as children-specific instruments have provided Member States with guidelines and tools to enact comprehensive, multi-dimensional and children's rights-based strategies, directed not only to ensure material security but also equal opportunities for all children, recognising them as fully independent rights holders and guiding their social protection according to their best interests. Moreover, the Recommendation has strongly

²¹ EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Towards Social Investment for Growth and Cohesion – Including Implementing the European Social Fund 2014-2020*, COM(2013) 83 final 20-02-2013.

²² EUROPEAN COMMISSION, *Communication on The European Platform Against Poverty and Social Exclusion: A European Framework for Social and Territorial Cohesion*, COM(2010) 758 final 16-12-2010.

²³ EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on An EU Agenda for the Rights of the Child*, COM(2011) 60 final 15-2-2011.

²⁴ EUROPEAN COMMISSION, *Recommendation (EU) 2013/112/EU of 20 February 2013 on Investing in Children: Breaking the Cycle of Disadvantage*, OJ L59/5.

²⁵ EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Establishing a European Pillar of Social Rights*, COM(2017) 250 final 26-4-2017.

²⁶ In particular Articles 24 and 33 CFR and Articles 26, 27 and 32 CRC.

²⁷ EU AGENCY FOR FUNDAMENTAL RIGHTS, *Handbook on European law Relating to the Rights of the Child*, cit., p. 22.

emphasised the need to support the family as the key responsible for children's well-being, as well as the necessity to ensure children with access to adequate and affordable quality resources and services²⁸.

In order to achieve these integrated objectives, the EU has also been working on safeguarding and promoting children's rights to education and health. The EU normative action in the area of education primarily takes place through the project of a European Education Area to be realized by the end of 2025 and its implementing tool, namely the Strategic Framework for European Cooperation in Education and Training (ET 2020)²⁹. In particular, the EU has prioritised action in the areas of early childhood education and care (ECEC), educational support for vulnerable groups of children (especially unaccompanied minors and Roma children) and school policies to support teaching and promote common values. All EU policies in these areas have been underpinned by the idea of education as a life-long process which must be started at the earliest stage possible fostering children's basic skills and sustained throughout all levels of education in order to promote their social inclusion and mobility as well as their well-being³⁰. In this sense, on the basis of the Barcelona objectives, the EU has advocated for inclusive and quality ECEC as a key instrument to foster children's welfare, with particular regard to vulnerable groups of children³¹. Among these latter, unaccompanied minors³² and Ro-

²⁸ EUROPEAN COMMISSION, *Recommendation on Investing in Children*, cit.

²⁹ EUROPEAN COUNCIL, *Council conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020')*, 2009/C 119/02, 2009.

³⁰ EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on An Updated Strategic Framework for European Cooperation in Education and Training*, COM(2008) 865 final 16-12-2008.

³¹ EUROPEAN COUNCIL, *Recommendation of 22 May 2019 on High-Quality Early Childhood Education and Care Systems*, OJ C189/2.

³² EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament and the Council on the Protection of Children in Migration*, COM(2017) 211 final 12-4-2017.

ma children³³ have been given greater attention with EU instruments promoting their education as a pivotal part of integrated strategies combining child-centred and family-centred measures (e.g. deinstitutionalisation of child-care through the provision of family and community-based services), responding to their best interests and fighting discrimination to ensure them equal opportunities.

As compared to the others, the EU intervention for the protection of children has been less intense in the area of health. However, over the last decade the EU has passed from a fragmentary approach made of directives and decisions on market and consumer safety affecting children only tangentially³⁴ to a children's rights-based approach supporting Member States to address children's needs in the areas of mental health, informed consent to trials, physical activities, nutrition and paediatric medicines. In this context, the EU efforts have been focusing on enhancing children's autonomy and participation and protecting their right to be heard while in general recognising the indivisibility and interdependence of all children's rights by promoting health as a necessary element of every EU policy and activity concerning them³⁵.

3. The protection of social, education and health children's rights in Spain and Catalonia

Spain has a relatively modern system of construction, although incomplete, of the rights of children and adolescents. After the paternalistic model of the Franco regime, there are three stages around the position of the child as a subject of

³³ EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on An EU Framework for National Roma Integration Strategies up to 2020*, COM(2011) 173 final.

³⁴ Concerning for instance product safety, toy safety, baby foods, tobacco and alcohol.

³⁵ As it is prescribed by Article 35 CFR and reiterated by the principle of «health in all policies» underpinning the European Health Strategy.

rights in Spain. The first is the foundation of the social and democratic State governed by the rule of law, with the Spanish Constitution (EC) of 1978 that begins a process of extension of the rights (provision and protection) to children, according to the democratic principles of equality and universality. The second stage begins with the ratification by Spain of the 1989 CRC in 1990. At this moment, at the international instance, a series of political and legislative changes are taking place aimed at considering the child as an independent subject of rights. The third and last stage begins in the first years of the new century, and appeals the participation of children as the basis of policies aimed at children and adolescents that culminates with the approval of the reform to update and modify the child protection system in 2015 (Ramiro 2016). Even so, there is still much to be done in terms of the implementation of children's rights, as will be seen in the following sections³⁶.

3.1. *State and regional legislation*

The Constitution of 1978 regulates in article 39 a system of protection of the family and safeguard of minors classified by the doctrine as mixed, or partially public, based on collaboration between the private sphere, through the obligations that the Constitution imposes to the family, and the third sector; and the public, through the development of the welfare system³⁷. Spain ratified the United Nations Convention on the Rights of the Child on December 6 1990. The Convention identifies the child as a true subject of rights, and a leading actor in his own existence³⁸. Since then and following the principles of the Convention, there have been many advances that

³⁶ C. VILLAGRASA, *Derechos de la infancia y la adolescencia: hacia un sistema legal*, in *Anales de la Cátedra Francisco Suárez*, 2015, 49, p. 19.

³⁷ I. RAVETLLAT, *Protección a la infancia en la legislación española. Especial incidencia en los malos tratos*, in *Revista de Derecho UNED*, 2007, 2, p. 88.

³⁸ I. RAVETLLAT, *El interés superior del niño: concepto y delimitación del término*, in *Educatio Siglo XXI*, 2012, 30/2, pp. 89-108.

have occurred in our country towards the protection of children's rights. Starting with the concept of child, by establishing the maximum age of 18 years that consolidates these subjects as holders of their own rights³⁹. In the international arena, in addition to the Convention on the Rights of the Child, it is important to bear in mind the existence of various international treaties ratified by Spain, promoted by international organizations such as the United Nations, the International Labor Organization, the Council of Europe, the Hague Conference of Private International Law, among others, as well as the EU regulations applicable in Spain and the Council of Europe, which guide and complete the protection of children's rights in Spain.

At the Central State level, the rights of the child are regulated by Organic Law 1/1996, of January 15, on the Legal Protection of Minors⁴⁰. This Law introduced important modifications in the Civil Code and in the Civil Procedure Law. It recognizes the need to strengthen a new building for children's rights. It considers minors as active, participatory and creative rights subjects, with the ability to modify their own personal and social environment, to participate in the search and satisfaction of their needs⁴¹. Subsequently, Law 26/2015 of July 28, on the modification of the child protection system, introduces changes that guarantee uniform protection for minors throughout the State and that can also serve as a reference to the Autonomous Communities in their respective legislation.

³⁹ M.R. CARMONA, *Las obligaciones derivadas de la Convención sobre los Derechos del Niño*, cit., p. 73.

⁴⁰ Organic Law 1/1996, of January 15, on the Legal Protection of Minors, of partial modification of the Civil Code and the Civil Procedure Law. The Law distinguishes between risk situations, in which the harm suffered by the minor is not serious enough to advise their separation from the family nucleus. In these cases, the public powers shall exercise guardianship functions over the minor. On the other hand, the so-called neglect occurs due to non-compliance, or the impossible or inadequate exercise of the protection duties established by the laws for the care of minors, when they are deprived of the necessary moral or material assistance (C. ALEMÁN BRACHO, *Políticas públicas y marco de protección jurídica del menor en España*, in *Revista de Derecho Político*, 2014, 90, pp. 111-112).

⁴¹ *Ivi*, p. 110.

In Spain, the main legal institutions for the protection of minors that do not involve the establishment of a legally recognized parental-filial relationship are guardianship and conservatorship. Along with them, figures have been developed to preserve the interest of the child, mainly guardianship, administrative guardianship, family foster care⁴² and residential foster care⁴³. There are also measures for the protection of minors that imply the establishment of a legally recognized parental-filial relationship, which are national and international adoption⁴⁴.

As a result of the ratification of the CRC, the figure of the Children's Ombudsperson or Ombudsperson for Children has begun to establish itself in different countries. The Law on Legal Protection of Minors establishes that one of the Deputy Ombudspersons will permanently take charge of matters related to children. At the regional level, some Communities have also created bodies for the protection and promotion of children's rights. In 1999, the Children's Observatory was created as a state-wide body whose purpose is to maintain a centralized and shared information system with the capacity to monitor and monitor the well-being and quality of life of the child population and public policies that affect you. Some Au-

⁴² Law 21/1987, of November 11, on Adoption and Other Forms of Protection of Minors introduced the institution of foster care: a situation in which the minor participates in the life of a foster family, having this obligation to ensure him and provide him with comprehensive training. N. Caparrós; I. Jiménez Aybar, *El acogimiento familiar. Aspectos jurídicos y sociales*, Madrid 2001. Improving the foster care system is a 'pending issue' in Spain since the number of children in residential care remains very high compared to the average of European countries. J. DEL VALLE, A. BRAVO, M. LÓPEZ, *El acogimiento familiar en España: implantación y retos actuales*, in *Papeles del Psicólogo*, 2009, 30/1, pp. 33-41. J. OCÓN, *Evolución y situación actual de los recursos de protección de menores en España*, in *Revista del Ministerio de Trabajo y Asuntos Sociales*, 2003, 45, pp. 13-30.

⁴³ B. MORENO ET AL., *Derecho civil de la persona y de la familia*, Comares, Granada, 2002, p. 227 ss.

⁴⁴ C. ALEMÁN BRACHO, *Políticas públicas y marco de protección jurídica del menor*, cit., pp. 123-125.

tonomous Communities have also taken the initiative to set up their own Children's Observatories⁴⁵.

The public system of social services in Spain is the result of a process that has its starting point in article 148.1 of the 1978 Constitution, which establishes that the Autonomous Communities may assume the competence of Social Assistance. All the Statutes of Autonomy, without exception, adopt this competence as their own and have enacted the corresponding autonomous laws on social services⁴⁶. The Spanish welfare system has an important structure for meeting the needs of children through the collaboration of the central, regional and local administrations. A network in which the collaboration of social services with the education and health systems is key⁴⁷. All the Autonomous Communities have been developing their legislation on child protection and putting adequate resources to carry it out. They have established a managing body for everything that has to do with social services for childcare, which are those in charge of assessing the situation of the minor, in order to take the appropriate measures and inform the judicial authority⁴⁸.

A characteristic of the child protection system developed by the Autonomous Communities is the enormous inequality that exists between them: inequality at the legislative level and also in terms of human and material resources⁴⁹. In recent years, the need to make a State pact for children has been claimed, in order to overcome political swings both at the party level and in power struggles between the State and Au-

⁴⁵ UNICEF ESPAÑA (L. GAITÁN, O. CANTÓ, B. LERYA), *Las políticas públicas y la infancia en España: evolución, impactos y percepciones. Propuestas para la reflexión*, Madrid, 2011, pp. 20-21.

⁴⁶ *Ivi*, p. 12.

⁴⁷ C. ALEMÁN BRACHO, *Políticas públicas y marco de protección jurídica del menor*, cit., p. 131.

⁴⁸ *Ivi*, p. 116.

⁴⁹ J. UROZ, *Los derechos y la situación de la infancia en el marco de la declaración de los derechos humanos*, in *Miscelánea Comillas*, 2009, 67, pp. 157-174.

tonomous Communities⁵⁰. On this sense, the CRC urges Spain to adopt measures to promote, in all the autonomous communities, a comprehensive assessment of the budgetary needs in order to make a redistribution of resources for the accomplishment of children's rights, specifically the ones related to education and public services⁵¹.

In short, the well-being of children has been assumed as a shared responsibility with the Public Administrations, the social initiative, the family and the citizens as a whole. The Third Social Sector has seen its space for social and educational intervention increased and affirmed when it comes to serving and responding to many people and families who are left, partially or totally, out of Social Protection Systems⁵². Although the existence of charitable organizations, especially linked to the Catholic Church, has been essential to the history of the country, their development as providers of welfare state services has intensified since the 1990s, and consolidated in the first 21st century decade⁵³.

3.2. *Strategic objectives of childhood policies in Spain*

All policies and regulations related to childhood and adolescence are based on the guiding principles established by the CRC⁵⁴. In accordance with these principles, Spanish legis-

⁵⁰ C. VILLAGRASA, *Derechos de la infancia y la adolescencia: hacia un sistema legal*, cit., p. 20.

⁵¹ CRC/C/ESP/CO/5-6, para. 9.

⁵² A. ALONSO, *Singularidades de la acción desempeñada por el Tercer Sector Social ante la pobreza infantil en España: intervenciones sociales y educativas con y para la infancia y sus familias*, in *Praxis Sociológica*, 2016, 20, p. 114.

⁵³ M. CLUA, A. SESÉ, M. TUR, *Infancia y exclusión social en España: realidades y retos a partir de la crisis*, in *Gizarte zerbitzuetarako aldizkaria: Revista de servicios sociales*, 2011, 50, p. 75.

⁵⁴ In accordance with the recommendations of the Committee on the Rights of the Child, Recommendation 1121 of the Parliamentary Assembly of the Council of Europe and Resolutions A3-314/91 and A3-0172/92 of the European Parliament.

lation has developed the concept of a mature minor, to identify persons who are legally minors, but with sufficient capacity to make decisions about themselves⁵⁵. It introduces an elastic concept of the ability to act, gradually expanded and exercised by minors up to the age of majority, which results in the acquisition of full capacity to act and the extinction of legal representation or the power of parents⁵⁶. This concept has raised controversial situations to which a definitive answer has not yet been given, as occurs in the exercise of personal liberties⁵⁷.

In order to generate a comprehensive strategy for children based on the principles and provisions of the Convention on the Rights of the Child, the Committee has urged States parties (in accordance with the guidelines of the so-called '1993 Paris Principles'), to adopt National Plans. These plans establish quantifiable objectives and goals, deadlines and forecast of a surveillance and review system linked to strategies and budgets, in order to guarantee an adequate allocation of resources⁵⁸. Spain has so far adopted two strategic childhood plans (PENIA). The first comprises from 2006-2009⁵⁹ and the second from 2013-2016⁶⁰. They define the main strategic lines of development of childhood policies with the aim of effectively enforcing the CRC, taking into account the rights and responsibilities of minors. Spain has also adopted I and II Action Plan against the sexual exploitation of childhood and adolescence⁶¹. Childhood plans have been developed based on a

⁵⁵ J.L. BELTRÁN, *La capacidad del menor de edad en el ámbito de la salud: dimensión jurídica*, in *Revista de Derecho y Salud*, 2006, 14, p. 9.

⁵⁶ M.A. LINACERO, *Protección Jurídica del Menor*, Madrid, 2001.

⁵⁷ I. RAVETLLAT, *El interés superior del niño: concepto y delimitación del término*, cit.; C. VILLAGRASA, *Derechos de la infancia y la adolescencia: hacia un sistema legal*, cit., p. 22.

⁵⁸ M.R. CARMONA, *Las obligaciones derivadas de la Convención sobre los Derechos del Niño*, cit., p. 78.

⁵⁹ CASTELLANOS DELGADO, J., & PUYÓ MARÍN, C. (2006). *Plan estratégico nacional de infancia y adolescencia, 2006-2009*. Madrid: Ministerio de Trabajo y Asuntos Sociales.

⁶⁰ MINISTERIO DE SANIDAD, SERVICIOS SOCIALES E IGUALDAD (2013). *II Plan Estratégico Nacional de Infancia y Adolescencia 2013-2016*, Madrid.

⁶¹ C. ALEMÁN BRACHO, *Políticas públicas y marco de protección jurídica del menor*, cit., pp. 120-122.

series of strategic objectives. Among them, as we have already said, we will pay special attention to the three that are developed in this Project: social aspects, education and health.

3.2.1. *Cross-cutting objectives*

Childhood plans have strategic lines that we will call 'transversal', since they do not affect a specific area of work of the Administration. These lines are: Promote knowledge of the situation of childhood⁶²; Promote the rights and protection of children in relation to the media and technology; Promote children's participation, defend their right to play, leisure and free time in safe environments. In our opinion, support for families is particularly relevant, which is one of the most important cross-cutting strategic objectives, since there is an undoubted connection between childhood policies and family policies. The distinctive feature of public policies aimed at children in Spain is that they are not directed directly at children, but at the family as a basic support network for individuals⁶³. Indeed, studies on the types of welfare states in Europe place Spain in the Mediterranean model, also called 'familist', an expression of the weight of the family in the welfare provision system in Mediterranean countries⁶⁴. There are those

⁶² The Committee on the Rights of the Child has asked Spain to prepare indicators and data disaggregated by minors by age, sex, ethnic origin or others, and with respect to all the areas regulated by the Convention. This will allow us to notice the specific needs to be addressed (poverty, disability, immigration, minorities, children deprived of a family environment, administration of justice, etc.) and reduce or eliminate the conditions that lead to discrimination M.R. CARMONA, *Las obligaciones derivadas de la Convención sobre los Derechos del Niño*, cit.

⁶³ A. ARRIBA, L. MORENO, *Spain: poverty, social exclusion and 'safety nets'*, in *Welfare State Reform in Southern Europe. Fighting Poverty and Social Exclusion in Italy, Spain, Portugal and Greece*, ed. M. FERRERA, Abingdon, Routledge, 2005. G. ESPING-ANDERSEN, *Los tres mundos del Estado de Bienestar*, Edicions Alfons el Magnànim, Valencia, 1990.

⁶⁴ C. BRULLET, *Cambios familiares y nuevas políticas sociales en España y Cataluña. El cuidado de la vida cotidiana a lo largo del ciclo de vida*, in *Educar*, 2010, 45, p. 59.

who criticize this fact. Thus, a public policy design focused on children would be lacking as a backbone. According to these authors, an approach to children's rights that goes beyond the family perspective, would give greater visibility to the needs and rights of children and would make progress in the necessary direction for the development of a welfare state⁶⁵. However, a relevant fact supports the family perspective of childhood policies in Spain: investments in children are a predominant responsibility of fathers and mothers, while the benefits of these investments are shared by all⁶⁶.

On the other hand, international authorities consider that both policies (family and childhood) should be harmonized. The Committee on the Rights of the Child has urged Spain to provide families with adequate assistance, to reinforce the benefit system and to adopt social measures in favor of those affected by the economic crisis⁶⁷. Likewise, it recommended measures to ensure that no child lives below the poverty line by reinforcing the family child benefit system⁶⁸. Furthermore, the European Union recommends investing in policies that promote the reconciliation of family and work life⁶⁹. The authors agree on the need to develop a new political ethic of care in everyday life in accordance with the co-responsibility and reciprocity between women and men; and between families, civil society and public institutions⁷⁰.

A certain 'concurrent' vision between childhood and family policies should be overcome. Undoubtedly, the family en-

⁶⁵ M. CLUA, A. SESÉ, M. TUR, *Infancia y exclusión social en España: realidades y retos a partir de la crisis*, cit., pp. 71-73, 83.

⁶⁶ UNICEF ESPAÑA (O. CANTÓ, L. AYALA), *Políticas públicas para reducir la pobreza infantil en España. Resumen ejecutivo*, Madrid, 2014, p. 8.

⁶⁷ M.R. CARMONA, *Las obligaciones derivadas de la Convención sobre los Derechos del Niño*, cit., p. 84.

⁶⁸ In Spain, until the end of the 1990s, no explicit political measures were proposed on the political agenda to support families with children. C. BRULLET, *Cambios familiares y nuevas políticas sociales en España y Cataluña*, cit., p. 58.

⁶⁹ EUROPEAN PLATFORM FOR INVESTING IN CHILDREN, *Changes in child and family policies in the EU28 in 2017*, Brussels, July 2018.

⁷⁰ C. BRULLET, *Cambios familiares y nuevas políticas sociales en España y Cataluña*, cit., p. 73.

vironment is the ideal place for the child to find all his material and emotional needs covered, and it will be the one that determines an adequate development of the minor⁷¹. In fact, the best way to guarantee a perfect development in the child's evolution will be to achieve family integration, given that the functions that the family performs can hardly be replaced by any other institution in this society⁷².

Along with supporting families, or rather as part of them, we can place the other major strategic axis of childhood policies in Spain, which is the fight against child poverty, which in Spain has very high levels⁷³. Child poverty is usually understood in a broad sense, of a multidimensional nature, so it is necessary to analyze not only the lack of economic resources but also the direct deprivation of certain basic goods or services (deprivation approach), or even cover the deficiencies in social relations (approach to social exclusion)⁷⁴. Levels of child poverty and unemployment are strongly related, especially in countries where social spending on children is relatively small (as is the case in Spain)⁷⁵. In any case, these employment promotion policies must be linked to the reduction of barriers to employment linked to the need to reconcile work and family life and, with this objective, many countries have policies to

⁷¹ Numerous empirical studies show that there is a very clear relationship between parents' time spent caring for children and their cognitive development at an early age. M.J. GONZÁLEZ; M. DOMÍNGUEZ; P. BAIZÁN, *Cuidado parental en la infancia y desigualdad social: un estudio sobre la Encuesta de Empleo del Tiempo en España*, Documento de trabajo 158/2010, Fundación Alternativas, p. 5.

⁷² J. UROZ, *Los derechos y la situación de la infancia en el marco de la declaración de los derechos humanos*, cit., p. 167.

⁷³ It must be considered that relative poverty is measured: that is, a child is at risk of poverty in relation to the economic and social context in which he lives (he is poor depending on the extent to which he is below the standard of living country or region), which, in developed countries, often has more to do with the risk of social exclusion, inequity and lack of opportunities than with serious material deprivation. G. GONZÁLEZ-BUENO, *Pobreza infantil e impacto de la crisis en la infancia*, in *Educación y Futuro*, 2014, 30, p. 111.

⁷⁴ UNICEF ESPAÑA (L. GAITÁN, O. CANTÓ, B. LERYA), *Las políticas públicas y la infancia en España*, cit., p. 30.

⁷⁵ G. GONZÁLEZ-BUENO, *Pobreza infantil e impacto de la crisis en la infancia*, cit., p. 113.

reduce the cost of children by through tax reductions, monetary benefits or public childcare systems for families⁷⁶. Another factor to take into account in poverty is the family structure. The living conditions survey indicates that single-parent households and households with large families are those that are most affected by poor situations⁷⁷. Furthermore, the chronicity and persistence of this situation is usually much higher⁷⁸. Spain pledged to eradicate poverty in all its forms by 2030 by adhering to the UN Sustainable Development Goals. In 2018, the Spanish government wanted to tackle the problem by creating the High Commissioner for the Fight against child Poverty⁷⁹, which aims to emphasize Government's policies in the fight against child poverty. Its functions include the evaluation of the impact of political decisions on inequality and child poverty⁸⁰.

3.2.2. *Social protection of children at risk, exclusion or vulnerability*

Vulnerable childhood refers to those children and adolescents in situations of risk, lack of protection, social exclusion or disability. Situations of vulnerability have increased as a result of the bankruptcy of the integration model that was based on wage employment. To this must be added the changes produced in family relationships (instability and family breakdown) and social ones (a greater weakness of community solidarity). Exclusion cannot be measured solely in econom-

⁷⁶ UNICEF ESPAÑA (L. GAITÁN, O. CANTÓ, B. LERYA), *Las políticas públicas y la infancia en España*, cit., p. 28.

⁷⁷ V. RENES, J.L. LORENZO, *El impacto de la crisis en los hogares con menores: pobreza y exclusión social en la infancia*, in *Educación Social*, 2010, 46.

⁷⁸ L. AYALA, R. MARTINEZ, M. SASTRE, *Familia, infancia y privación social*, Madrid, Caritas-Fundación FOESSA, 2006.

⁷⁹ ALTO COMISIONADO PARA LA LUCHA CONTRA LA POBREZA INFANTIL (2019). Retrieved 8 November 2019, from <https://www.comisionadopobrezainfantil.gob.es>.

⁸⁰ Country profiles – Employment, Social Affairs & Inclusion – European Commission (2019).

ic terms. It is a multidimensional process that refers to the loss of integration in the productive, political or community sphere⁸¹. Law 26/2015 of July 28, Modification of the Protection System to childhood and adolescence has carried out a reform of the entire legal framework for the protection of children based on the recommendations of the European Union that discourage childhood from growing outside the family environment, due to the serious repercussions on physical, cognitive and emotional development⁸². This law begins to differentiate between foster care in the minor's own extended family or in a foreign family, and between family or residential care, among which priority is given to family care since it is considered the most beneficial for the child's development. The plans recognize groups of minors that require special attention:

a) Unaccompanied minors (MENA). The European Union recalls that one of the main causes of exclusion is related to migrant refugee children. Migration of unaccompanied foreign minors erupts in Spain in the mid-1990s and is a phenomenon that has increased exponentially⁸³. The country does not have specific policies in place to help this sector at the moment and is in the process of developing a new Strategic Plan for Citizenship and Integration (the last one corresponds to the period 2011-2014).

b) Minor offenders. Both the Ombudsperson and the Committee on the Rights of the Child have proposed new intervention guidelines to administrations, based on treatment and support in their own family and social environment, limiting hospitalization to exceptional situations and always with judicial authorization. Behind these behaviors of social maladjustment, what we can find is a previous situation of social ex-

⁸¹ *Análisis de los factores de exclusión social. Propuesta de un sistema de información sobre la infancia en exclusión*, coord. I. LÁZARO GONZÁLEZ, Madrid, 2013, p. 9.

⁸² EUROPEAN PLATFORM FOR INVESTING IN CHILDREN, *Recent trends in child and family policy in the EU*, Brussels, May 2019, p. 9.

⁸³ While in 2000 it represented 2.1% of the total child population, in 2010 it reached 13.8%. UNICEF ESPAÑA (L. GAITÁN, O. CANTÓ, B. LERYA), *Las políticas públicas y la infancia en España*, cit., p. 19.

clusion. The measures taken towards them in no case should be of a repressive nature, but should be oriented towards their effective reintegration⁸⁴.

c) Children belonging to ethnic minorities. In Spain, the gypsy minority and immigrant children are relevant. Gypsy minors are characterized by difficulties in the school environment, higher percentages of truancy, worse academic results and higher dropout rates. Along with the gypsy ethnic group, the group of immigrants is another of the population groups with a serious risk of exclusion. It is a group in which poverty levels are very high, they have serious difficulties in accessing the job market⁸⁵, which leads them to have serious difficulties in accessing housing.

d) Minors with disabilities. Changes in the conception of disability and the integration processes of these children have led in recent decades to the design of educational policies that assume special needs. There is a trend towards an educational model that integrates all the students within the ordinary school. But to achieve this it is necessary that the educational context has the necessary resources for the learning progress. The integration of children with special educational needs requires both material resources and a process of inclusion in ordinary education that is assumed by parents, teachers and students. At a time of economic crisis this group is one of the most affected⁸⁶.

3.2.3. *Guarantee quality education*

One of the main challenges in Spain to protect children is to achieve a quality education⁸⁷. The fight in this area is

⁸⁴ *Ivi*, p. 29.

⁸⁵ M. MARÍ-KLOSE ET AL., *Informe de la Inclusión Social en España 2008*, Fundació Caixa Catalunya, Barcelona, 2008, p. 53 ss.

⁸⁶ *Análisis de los factores de exclusión social*, coord. I. LÁZARO GONZÁLEZ, cit., p. 30.

⁸⁷ Various investigations have shown the strong link between educational aspects and levels of poverty and social exclusion. See M. LÓPEZ DE LA NIE-TA, *Sistema educativo y desigualdad. Un estudio de la población adulta y los*

aimed at the prevention of school failure and school absenteeism, and to attend especially to children with the greatest needs. The Spanish educational system is regulated by Organic Law 2/2006, of May 3, on Education⁸⁸. The Law aims to provide quality education at all levels of the educational system, with the collaboration of the entire educational community to achieve the educational objectives set by the European Union for the coming years.

Spain is at the top of the European level in school enrollment rates for children between 3 and 5 years old. Between 2006-2007 and 2016-2017, there has been a significant increase in the net enrollment rates of the first cycle of Early Childhood Education. In recent decades, we have attended the establishment of Early Childhood Education and Care (ECEC) as a key to the success of various objectives of the global agenda, contributing to the extension of these policies and programs on a world scale and making their improvement a priority of the various strategic action frameworks in the field of supranational policy education. Thus, the ECEC constitutes today one of the fundamental measures in those countries that seek to achieve greater equality of opportunities in their educational systems, but also an indicator of child well-being within the agendas of inclusion and social cohesion to report on the situation of children and their rights⁸⁹.

The main challenge of the educational system is found in the high school failure rates, a factor related to social exclusion⁹⁰. Children belonging to families subject to different problems (poverty, destructuring, etc.) present a greater school

menores en edad de escolarización obligatoria, in *VI Informe sobre exclusión social y desarrollo social en España*, coord. V. RENES, Cáritas-Fundación FOESSA, Madrid, 2008.

⁸⁸ Organic Law 2/2006, of May 3, on Education, in which modifications have been introduced through Organic Law 8/2013, of December 9, to improve educational quality.

⁸⁹ A. ANCHETA, *Los derechos de la infancia en el discurso de las políticas de Educación y Atención de la Primera Infancia*, in *Journal of Supranational Policies of Education*, 2014, 2, p. 53.

⁹⁰ *Análisis de los factores de exclusión social*, coord. I. LÁZARO GONZÁLEZ, cit., p. 22.

maladjustment and lower academic performance⁹¹. Along with poverty, the educational level of mothers, geographic location and gender represent fundamental indicators to determine the possibility of school attendance. Geographic location, boys residing in rural areas double the percentage of unschooling compared to those residing in urban areas. Also gender difference is a relevant factor in the rate of schooling: girls have lower levels of schooling than boys, especially at the secondary education level⁹². The current Organic Education Law establishes measures to alleviate the existing inequalities through programs developed in educational centers or through scholarships and study grants, which guarantee the right to education of students with unfavorable socio-economic conditions.

The European Union recommends to Spain the school inclusion of any type of minority, especially the Roma ethnic group. According to the data in the National Strategy for the Social Inclusion of the Roma Population in Spain 2012-2020, significant progress can be observed. Despite significant progress, the educational level of the Roma population has lower rates than the population as a whole⁹³.

3.2.4. *Maximize the development of children's health rights*

Health is one of the most important aspects of people's lives (especially minors), since their physical and psychological well-being and their capacity for social integration depend on it. The relationship between health and social exclusion is bidirectional, exclusion generates health problems and the

⁹¹ MINISTERIO DE EDUCACIÓN Y FORMACIÓN PROFESIONAL, *Sistema estatal de indicadores de la educación 2019*.

⁹² J. UROZ, *Los derechos y la situación de la infancia en el marco de la declaración de los derechos humanos*, cit., pp. 169-170.

⁹³ COMUNIDAD DE MADRID. CONSEJERÍA DE POLÍTICAS SOCIALES Y FAMILIA (2017), *Plan de inclusión social de la población gitana de la Comunidad de Madrid (2017-2021)*.

absence of health exclusion⁹⁴. The strategic axes of health policies in relation to Children in Spain address five aspects: The first is organizational in the child health system, the second has to do with promoting the participation of minors in the provision of health services, the remaining three have to do with health problems most relevant of minors in Spain.

a) First, develop the collaboration of the health and social systems with the educational system, involving families and teachers in the design, implementation, monitoring and evaluation of health promotion interventions in childhood and adolescence⁹⁵.

b) Secondly, to promote the participation of adolescent children, their development and decision-making capacity in actions aimed at knowing their health, needs and problems, and when planning, implementing and evaluating their care. The current regulations have been incorporating these criteria of decision-making autonomy of the minor in the field of health⁹⁶. The Patient Autonomy Law grants the legal age of majority from the age of 16. Although he remains subject to parental authority, the law presumes that he has sufficient maturity to evaluate and decide on medical treatment, which is why it is exclusively up to him to give consent. Only in case of serious risk action will parents be informed and their opinion will be taken into account in making the corresponding decision, although not decisively. If the minor has turned twelve and does not reach sixteen, the consent will be given by the legal representative, the parents normally, but in any case it must be previously heard and, obviously, their opinion taken into ac-

⁹⁴ *Análisis de los factores de exclusión social*, coord. I. LÁZARO GONZÁLEZ, cit., p. 24.

⁹⁵ Habits and lifestyles are directly related to health problems. Likewise, healthy habits improve the person's quality of life and increase their performance in different areas (a good diet favors cognitive development).

⁹⁶ Thus, the General Health Law of 1986 allows persons aged 16 and 17, who have not yet reached the age of majority, to decide on medical operations or interventions. Along these same lines, Law 41/2002 of November 14, basic State law, regulates patient autonomy and rights and obligations in the field of information and clinical documentation.

count⁹⁷. With the Law 26/2015 of July 28, on the modification of the protection system for children and adolescents, the subjective criterion of maturity of the minor is introduced together with the objective, which is age, when deciding on medical transfusions and other medical interventions. Always prioritizing the greatest benefit for the life or health of the patient in case the decision corresponds to the minor's representative.

c) Child and youth mental health. The European Commission in the Green Paper Improving the mental health of the population (2005) recommends the creation of mental health services for children and adolescents. The Committee on the Rights of the Child has recommended to Spain the creation of national policies for children's mental health. The specialty of child and adolescent psychiatry has been proposed, but as of today it has not yet been created⁹⁸. The most frequent aspects of mental health in clinical practice in Spain are: Eating Disorders; depression in the adolescent; Autism and Attention deficit hyperactivity disorders.

d) Sexual and reproductive health. Sexual risk behaviors are another key factor in adolescent health and social exclusion processes⁹⁹. When we talk about risky sexual behavior, we are referring to one in which the adolescent is exposed to a situation that can cause damage to their health and the health of another person (sexually transmitted diseases, unwanted pregnancies and the onset early sexual intercourse)¹⁰⁰. Another topic of debate nowadays related to sexual health is

⁹⁷ J.L. BELTRÁN, *La capacidad del menor de edad en el ámbito de la salud: dimensión jurídica*, cit., p. 14.

⁹⁸ I. BARRIOS, *La salud mental infanto-juvenil, a debate*, Redacción Médica, 19-5-2019, Retrieved 17 September 2019, from <https://www.redaccionmedica.com/opinion/la-salud-mental-infanto-juvenil-a-debate-3316>.

⁹⁹ E. GARCÍA-VEGA, E. MENÉNDEZ, P. FERNÁNDEZ, M. CUESTA, *Sexualidad, Anticoncepción y Conducta Sexual de Riesgo en Adolescentes*, in *International Journal of Psychological Research*, 2012, 5/1, pp. 79-87.

¹⁰⁰ *Análisis de los factores de exclusión social*, coord. I. LÁZARO GONZÁLEZ, cit., p. 26. The voluntary interruption of pregnancy has been at the center of the social debate following the approval of Organic Law 2/2010, of March 3, sexual and reproductive health and the voluntary interruption of pregnancy. According to data from the Ministry in 2017, the rate of children under 19 who aborted this year is at 8.84, that is 9,755 in absolute terms, in 2019,

the possibility of subjecting the minor to medical and surgical treatments for intersex children. On this sense, the committee strongly recommends that the application of these treatments should be prohibited if it is not strictly necessary. This procedure carries risks and may harm the patient and can be postponed without consequences until the child can actively participate in the decision-making process¹⁰¹.

e) Consumption of alcohol and other substances. Another risk factor for social exclusion in Spain is related to lifestyles. These are tobacco use, alcohol use and other drug use¹⁰². Problematic drug use is an indicator of problems in adolescent life development. Drug use cannot be analyzed as an isolated event, nor can it be understood if we separate it from aspects related to the subject's integral health¹⁰³, entails a series of interrelated factors: personality characteristics, social relations, sociocultural aspects, etc¹⁰⁴. Also, there is a close relationship between school failure and drug use in adolescents¹⁰⁵, thus relating two of the aspects that we have related to social exclusion¹⁰⁶. The psychoactive substances most consumed by Spanish minors are alcohol, tobacco and cannabis¹⁰⁷. The percentage of adolescents who declare having consumed alcohol

the average age of the beginning of relationships is 16.4 years (National Survey on Sexual Health and Contraception among Spanish Young People 2019).

¹⁰¹ C. GONZÁLEZ VÁZQUEZ, *Valoración de la supresión de la pubertad en menores con problemas de identidad de género*, in *Cuadernos de Bioética*, 2018, 29/97, pp. 247-256.

¹⁰² M. RODRIGO ET AL., *Relaciones padres-hijos y estilos de vida en la adolescencia*, in *Psicothema*, 2004, 16/2, pp. 203-210.

¹⁰³ A. VEGA, P. ARAMENDI, *Las drogas en los centros de iniciación profesional: aportaciones de algunos estudios del País Vasco*, in *Revista de Intervención Psicoeducativa en la Desadaptación Social*, 2011, 4, pp. 57-69.

¹⁰⁴ Q. BRUGUE, R. GOMÁ, J. SUBIRATS, *De la pobreza a la exclusión social. Nuevos retos para las políticas públicas*, in *Revista Internacional de Sociología (RIS)*, 2002, 33, pp. 7-45.

¹⁰⁵ J. ELZO ET AL., *Drogas y Escuela VII. Las drogas entre los escolares de Euskadi veinticinco años después*, Universidad de Deusto, Bilbao, 2008.

¹⁰⁶ *Análisis de los factores de exclusión social*, coord. I. LÁZARO GONZÁLEZ, cit., p. 27.

¹⁰⁷ CENTRO DE ADICCIONES Y SALUD MENTAL, Retrieved 18 September 2019, from <https://www.cat-barcelona.com/faqs/view/cuales-son-las-drogas-mas-consumidas-por-menores-y-adolescentes>.

in the last 12 months is 58% (2017), the number of those who declared having consumed cannabis is 12.6% and 20.6% state that they have used tobacco¹⁰⁸.

3.3. *Notes on the situation of child protection in Catalonia*

In Catalonia, the legal regulation related to the protection of minors emanates from the Statute of Autonomy (article 166.3 and 4), by which the Generalitat has exclusive jurisdiction over the promotion of families and children, which in any case includes social protection measures and their execution. This article has been developed by Catalan Law 14/2010, of May 27, on the rights and opportunities in childhood and adolescence, which was born with a clear vocation for universality and introduced an outstanding commitment to the fight against child abuse¹⁰⁹. The regulations relating to the protection of minors are completed with Book II of the Civil Code of Catalonia, relating to the person and the family, the Law of the Parliament of Catalonia 27/2001, of December 31, on juvenile justice, which comes to develop Organic Law 5/2000, of January 12, on criminal responsibility of minors.

There are also, at the regional level, administrative plans for children and adolescents, similar to the National Strategic Plan. The content of these Plans is quite similar to that of the National Plan, although limited to the problems and characteristics of the respective autonomous territory¹¹⁰. Currently, the *Pla d'atenció integral a la infància i l'adolescència 2015-2018 (Pd'IIAC)* is in force. It has a comprehensive approach encompassing policies of participation, promotion, prevention

¹⁰⁸ OBSERVATORIO ESPAÑOL DE LAS DROGAS Y LAS ADICCIONES, *Estadísticas 2017. Alcohol, tabaco y drogas ilegales en España*, Madrid, 2018.

¹⁰⁹ I. RAVETLLAT, *Competencias autonómicas en materia de atención y protección a la infancia y la adolescencia: estudio al hilo del artículo 166.3 del Estatuto de autonomía de Cataluña*, in REAF, 2015, pp. 159-201. C. VILLAGRASA, *Derechos de la infancia y la adolescencia: hacia un sistema legal*, cit., p. 35.

¹¹⁰ C. ALEMÁN BRACHO, *Políticas públicas y marco de protección jurídica del menor*, cit., p. 118.

and protection of children and adolescents, and their rights, and a cross-cutting approach involving public administrations through the National Children's Table of Catalonia.

The General Directorate for Childhood and Adolescence Care (DGAIA) is the body in charge of childhood and adolescence policies in Catalonia¹¹¹. The dispersion of competencies in childhood and adolescence between the different administrative levels – state, autonomic and local-, and even between the different departments of the *Generalitat* of Catalonia itself – Education, Health, Justice, Social Welfare and Family-, causes important disparities and imbalances that hinder the true implementation of the Convention on the Rights of the Child in our reference socio-legal environment. With the idea of coordinating the activity, the Secretariat for Childhood and Adolescence was created in 2006, a body called to ensure the rights of children and plan policies for this sector of the population¹¹². Catalonia is one of the Communities in which the entities of the Third Sector are more active and act with greater coordination¹¹³.

Catalonia has one of the highest rates of immigrant population, a factor that has a definite influence on social policies, especially those for childcare. Even so, the risk of poverty in Catalonia is one of the lowest in Spain with 12.6 (only below the Basque Country and Navarra)¹¹⁴. All the policies and regulations aimed at children and adolescents are sup-

¹¹¹ DIRECCIÓ GENERAL D'ATENCIÓ A LA INFÀNCIA I L'ADOLESCÈNCIA. (2019). Retrieved 29 September 2019, from https://treballiaferssocials.gencat.cat/cal/el_departament/funcions_i_estructuralorganismes/secretaria_dinfancia_i_adolescencial/.

¹¹² I. RAVETLLAT, *El interés superior del niño: concepto y delimitación del término*, cit.

¹¹³ Three have been the most successful in motivating entities to coordinate: Federació d'Entitats d'Atenció i d'Educació a la Infància i a l'Adolescència (FEDAIA): it was born in 1994 and has become a benchmark for all entities that work with children and adolescents at risk of social exclusion. Taula d'Entitats of the Third Social Sector of Catalonia M. CLUA, A. SESÉ, M. TUR, *Infancia y exclusión social en España: realidades y retos a partir de la crisis*, cit., p. 82.

¹¹⁴ INSTITUTO NACIONAL DE ESTADÍSTICA, *Tasa de riesgo de pobreza por comunidades autónomas*. Retrieved 14 September 2019.

ported by six main pillars. These are: the best interests of the child, comprehensive care, cross-cutting policies in childhood and adolescence, the universalization of public services, planning and evaluation in the design of childhood policies, and finally institutional action of public responsibility.

One of the main objectives, in the framework of childhood and adolescence in Catalonia, is to recognize the minor as a citizen with social rights and the capacity to exercise and defend them. The aim is to achieve the universalization of the social and personal well-being of children and adolescents. Guarantee these rights, especially to people with greater vulnerability or who have difficulties accessing or being able to exercise them¹¹⁵.

The main objectives of Law 12/2009, of July 10, on Education in Catalonia, are to compensate for possible inequalities of social origin within the educational system and to tackle the integration of all students with guarantees of success, as well as improving the school performance in basic and compulsory education, stimulate the continuity of students in the post-compulsory education stage and adapt to the requirements of the knowledge society¹¹⁶. The law encourages public administrations to detect cases of non-schooling, absenteeism and dropping out of school and adopt the necessary measures to alleviate them. In the field of health protection, the same aspects are concerned as at the State level, taking into account that Catalonia is one of the Communities with the highest number of pregnancies among minors¹¹⁷ and with the highest rates of cannabis use¹¹⁸.

¹¹⁵ GENERALITAT DE CATALUNYA, ACCIÓ SOCIAL I CIUTADANIA, *Pla d'Atenció Integral a la Infància i a l'Adolescència* (2010-2013).

¹¹⁶ GENERALITAT DE CATALUNYA, Ley 12/2009, de 10 de julio, de Educación.

¹¹⁷ STATISTA, *Voluntary abortion in children under 20 in Spain by Autonomous Communities (2017)*, Retrieved 29 September 2019, from <https://es.statista.com/estadisticas/612699/abortos-voluntarios-en-menores-de-20-years-for-cc-aa-in-spain/>.

¹¹⁸ TAULA D'ENTITATS DEL TERCER SECTOR A CATALUNYA, *Drets Humans i polítiques de drogues: noves propostes de regulació*, in *Debats Catalunya Social*, 2014, p. 36.

3.4. *Future challenges for childhood policies in Spain*

Based on the aspects studied, and the latest Recommendations of the Committee on the Rights of the Child to Spain, in addition to the guidelines of the European Union through the Recommendation Investing in children: Breaking the cycle of disadvantage (2013) and the reports Annual reports of the aforementioned Investing in Children Platform, we are able to synthesize the lines that should guide Spanish policies for the protection of children's rights in the coming years.

a) Improvement of legislation and recognition of rights: the Committee invites to harmonize the relevant laws, particularly the Civil Code and the Code of Civil Procedure, with the Convention, to ensure the respect, in practice, of the right of children aged under 12 years to be heard¹¹⁹. Regarding the Right to identity the Committee recommends that the State party ensure that children born through international surrogacy have access to information about their origins¹²⁰. In relation to child abuse and neglect, the Committee regrets the lack of progress in adopting a comprehensive law on violence against children¹²¹. It also recommends an expedite the revision of the regulations on intercountry adoption, ensuring that they are in line with the Convention¹²². With regard to the Protocol on the sale of children, child prostitution and child pornography the Committee recommends to continue aligning its Penal Code with articles 2 and 3 of the Optional Protocol¹²³.

In the context of EU politics, it is particularly concerning that Spain did not move towards a more integrated and multi-dimensional approach to promoting the social inclusion of children, and no positive development is mentioned in the last Report. The focus on children's rights and more effective

¹¹⁹ CRC/C/ESP/CO/5-6, para. 17.

¹²⁰ *Ivi*, para. 19.

¹²¹ *Ivi*, para. 22. On June 19, 2020, a Draft Organic Law for the comprehensive protection of children and adolescents against violence entered the Congress of Deputies.

¹²² *Ivi*, para. 29.

¹²³ *Ivi*, para. 48.

mainstreaming of children's policies and rights in is not increased in our country since 2013¹²⁴.

b) Administrative coordination. The Spanish territorial organization in Autonomous Communities that have their own competences, incorporates a difficulty in the management of some matters, as in this case, the one related to the care of minors and the preservation of their rights. We are facing a huge regulatory production emanating from different legal operators with competence on the matter (Ravetllat 2012). The CRC reiterates its recommendation that the State party continue strengthening its coordination systems within the central administration and between the autonomous communities to implement policies for the promotion and protection of the rights of the child¹²⁵. In reference to the Best interests of the child, the Committee expresses its concern at the uneven implementation of this right in the autonomous communities¹²⁶. The UE also recommends Spain to improve coordination between State and regional child policies¹²⁷.

c) Allocation of resources. The investment in childhood policies carried out by the Spanish public administrations as a whole represents approximately 4% of the GDP of our country, and it turns out to be almost 8% less in 2013 than in 2007, the year in which the economic crisis (Center for Economic Studies Tomillo (2015), p. 27. Consequently, the Committee is seriously concerned that the level of investment in children by the State party has not been high enough to offset the negative impact of the severe economic and social crisis that began in 2008 and that has led to increased poverty and social inequality¹²⁸.

¹²⁴ H. FRAZER, E. MARLIER, *Progress across Europe in the implementation of the 2013 EU Recommendation on 'Investing in children: Breaking the cycle of disadvantage'. A study of national policies*, European Social Policy Network (ESPN), European Commission, Brussels, 2017, pp. 16-17.

¹²⁵ CRC/C/ESP/CO/5-6, para. 7 and CRC/C/ESP/CO/3-4, para. 12.

¹²⁶ CRC/C/ESP/CO/5-6, para. 16.

¹²⁷ H. FRAZER, E. MARLIER, *op. cit.*, p. 39.

¹²⁸ CRC/C/ESP/CO/5-6, para. 8.

The EU is convinced that the social and economic future of countries depends to a great degree on their capacity to improve child well-being. Reducing child poverty and social exclusion. They are the main objectives of the social policies promoted in childhood. The situation in Spain is worrying, since it is among the European countries with a high level of child poverty (34.4%), well above the EU average (26.9%). In the 2014-2020 period the application of the Recommendation on Investing in children has been negative in Spain, as the use of EU financial instruments has weakened since 2013¹²⁹.

d) Data collection. The Committee encourages to expand the capacity for collecting disaggregated data on children, especially on children in situations of vulnerability; and to ensure that the data and indicators are used for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention¹³⁰.

e) Independent monitoring: the Committee recommends that the State party take the measures necessary to reinforce the independent monitoring of children's rights and strengthen the capacity of the national office of the Ombudsperson to receive, investigate and address complaints by children in a child-sensitive manner, particularly children in those autonomous communities where no office of the Ombudsperson exists.

f) Family policies: recalling its previous concluding observations¹³¹ the Committee insists that Spain should increase the provision of counselling to parents; and strengthen the system of family benefits and child allowances to support parents and children in general, with additional support, for families at risk due to poverty, single-parent families, families with numerous children and/or unemployed parents¹³².

For its part, the European Union recommends investing in policies that promote the reconciliation of family and work life, promoting an equal responsibility for childcare between women and men and making employment contracts more flex-

¹²⁹ H. FRAZER, E. MARLIER, *op. cit.*, p. 28.

¹³⁰ CRC/C/ESP/CO/5-6, para. 10.

¹³¹ CRC/C/ESP/CO/3-4, para. 40

¹³² CRC/C/ESP/CO/5-6, para. 26.

ible. Spain has made significant efforts in terms of parental leave arrangements but it is necessary to continue promoting these policies. Developments in child and family income support have weakened¹³³. The UE has recommended increasing political priority attached to early childhood education and care as a mechanism to facilitate conciliation of family and professional lives, as well as to reduce inequalities and improve life chances for children from the most vulnerable groups¹³⁴.

g) Social measures. The Committee is seriously concerned about the high number of children in residential care and the fact that residential care is, in practice, used as the primary alternative as an initial measure¹³⁵; recommends that the State party increase the resources to prevent the separation of children from their families and ensure the sufficient provision of support and assistance. It also recommends expedite the process of deinstitutionalization, ensuring that residential care is used as a measure of last resort, and ensure that all remaining residential care centres meet at least the minimum quality standards¹³⁶.

h) Health. Spain should increase the number of paediatricians and ensure that general practitioners providing health services to children acquire additional specialized skills and expertise relating to and receive further training on child and adolescent care. It should also be promoted the development of a mental health policy for children and ensure that qualified staff, including child psychiatrists, are available throughout its territory; and it should be established a protocol for the diagnosis and treatment of attention deficit hyperactivity disorder and other behavioural disorders in children, encouraging the development of medication-free alternatives. Finally, the Committee recommends strengthening its measures to prevent and address the incidence of substance abuse, par-

¹³³ H. FRAZER, E. MARLIER, *op. cit.*, pp. 20-21.

¹³⁴ *Ivi*, p. 40.

¹³⁵ CRC/C/ESP/CO/3-4, para. 42.

¹³⁶ CRC/C/ESP/CO/5-6, para. 27-28.

ticularly tobacco, cannabis and alcohol, by children and adolescents¹³⁷.

i) Education. The Committee is seriously concerned that, in practice, the constitutional right to education is implemented unevenly in the State, with unequal investment in education by autonomous communities and a slight decrease in overall investment in education. It is also concerned at the high rate of individuals leaving education and training early and at the fact that almost one fifth of all secondary school students, particularly immigrant children, Roma girls and children living in poverty; do not obtain the compulsory education diploma¹³⁸. The Committee urges Spain to foster a national dialogue on the basic and structural characteristics of the education system and to protect resources dedicated to education and training for children. It also recommends that the State provide reinforcement, orientation and support programmes to prevent early school leaving¹³⁹.

4. *The protection of social, education and health children's rights in Italy and Veneto*

The protection of children's rights in Italy has developed significantly over the last 30 years, following the ratification of the CRC by Law No. 176 of 27 May 1991. Among the first relevant steps, there was the creation of the Parliamentary Commission for Childhood and Adolescence and the National Observatory for Childhood and Adolescence in 1997¹⁴⁰. Notably, this latter was tasked with preparing the «National Plan of Action and Interventions for the Protection of the Rights of the Subjects in Evolutionary Age» every two years, aiming

¹³⁷ *Ivi*, para. 33-34.

¹³⁸ EU also recommends to address educational inequalities and to improve access and inclusion for disadvantaged groups of children in schools especially immigrant and Roma children. H. FRAZER, E. MARLIER, *op. cit.*, p. 40.

¹³⁹ CRC/C/ESP/CO/5-6, para. 40.

¹⁴⁰ By Law No. 451 of 23 December 1997.

to provide strategic guidelines for improving the protection of children across major priority areas, mainly by means of cooperation between State and regional authorities¹⁴¹. However, only four national plans have been adopted by the Italian government ever since, respectively covering the periods 2000-2002, 2002-2004, 2009-2011 and 2016-2017.

The National Fund for Childhood and Adolescence was then established by Law No. 285 of 28 August 1997 to subsidize national, regional and local interventions for the promotion of children's rights and development, in accordance with the principles of the CRC¹⁴², and was later incorporated into the more general National Fund for Social Policies by the Framework Law for the Realization of the Integrated System of Social Interventions and Services of 2000¹⁴³, maintaining however its original children-specific purpose. In particular, Article 16 of this latter Framework Law recognised the importance of emphasising and supporting family responsibilities towards children as the central element of an integrated system of social services and interventions. Also in 2000, the Working Group for the CRC was created as a network of Italian associations working on children's rights and tasked with ensuring an independent monitoring action on the implementation of the Convention, within the process of periodical reporting to the UN Committee on the Rights of the Child¹⁴⁴.

Arguably the most important step in terms of alignment to the CRC¹⁴⁵ was taken in 2011 with the creation of a mono-

¹⁴¹ In this sense, a central role is played by the «Permanent Conference for the relations between the State, the Regions and the Self-governing provinces» as the major instrument used to solve issues of legislative competence between the mentioned actors in areas of concurrent jurisdiction.

¹⁴² This law represented a remarkable change in Italy's approach to children's rights protection, shifting from the idea of intervening only in front of situations of unease and need of children to the idea of supporting children's well-being progressively during their growth, as underlined by AGIA, *La Convenzione delle Nazioni Unite sui Diritti dell'Infanzia e dell'Adolescenza. Conquiste e prospettive a 30 Anni dall'Adozione*, Roma, 2019, p. 321.

¹⁴³ Law No. 328 of 8 December 2000.

¹⁴⁴ AGIA, *op. cit.*, p. 322.

¹⁴⁵ In compliance with the requirements laid down in Articles 12 and 18 CRC.

cratic body, namely the National Ombudsperson for Childhood and Adolescence (AGIA),¹⁴⁶ mandated to promote the implementation of the principles and norms of the CRC and its Optional Protocols¹⁴⁷, as well as of other national and international¹⁴⁸ instruments relevant to children, through coordinated action with political and administrative institutions at all levels of governance. Similarly, over the years, all Italian Regions and Self-governing provinces have adopted legislation establishing Regional Ombudsperson for the protection of children's rights. Besides these structural developments, more specific actions have been taken by the Italian government to raise the protection of children in the policy fields of social, education and healthcare.

4.1. Main aspects of child social protection in Italy

As for the EU, the safeguard of the social conditions of children has been the subject of significant attention also in Italy. In this sense, prominent action has been taken to protect the right of children to a family. As repeatedly confirmed by the Court of Cassation and envisaged by Law No. 149 of 28 March 2001¹⁴⁹, the family has been identified as the ideal environment for the psychosocial development of children and the right to a family as one of the fundamental children's rights. Accordingly, state, regional and local authorities have been recognised the duty to support families in need in order to protect children's right to live in their family environment¹⁵⁰. The removal of children from their families must be ordered only to protect them, taking into account their best interests, as

¹⁴⁶ By Law No. 112 of 12 July 2011.

¹⁴⁷ Italy has ratified all the Optional Protocol to the CRC, in particular OP1 and OP2 on 9th May 2002 and OP3 on 4th February 2016.

¹⁴⁸ Among the most noteworthy children-specific international treaties to which Italy is a party are the ILO Convention No. 182 on the Worst Forms of Child Labour of 2000 and the Hague Adoption Convention of 1995.

¹⁴⁹ Amending Law No. 184 of 4 May 1983 on Adoption and Custody of Children.

¹⁵⁰ AGIA, *op. cit.*, p. 249.

a temporary and exceptional measure to prepare and eventually realise their return under parents' care¹⁵¹. Noteworthy in this regard has been the establishment by the Ministry of Labour and Social Policies of the Programme of Intervention for the Prevention of Institutionalization (PIPI) which is active since 2011 to encourage the deinstitutionalisation of children's care by promoting the temporary use of foster care rather than institutional solutions. In this direction, the same Ministry has laid down the National Guidelines on Foster Care Placement and the Guidelines on Residential Care for Children, both aimed to pursue the best interests of children by fostering the protective nature of temporary care services. In case of abandonment of children, then, Law No. 173 of 19 October 2015 on affective continuity has provided for the possibility to convert protracted foster care into adoption¹⁵². Meaningfully, the right to a family has also been protected with regard to migrant children, permitting family reunifications to ensure their right to family unity and allowing the Juvenile Court to authorise the entry or residence in the Italian territory of their family members, for a certain period of time¹⁵³.

As regards juvenile justice, the most important development for the protection of children in accordance with the CRC has regarded their role before the Court. In fact, children's right to be heard has been extended to all civil proceedings relating to children by Law No. 219 of 10 December 2012 and Legislative Decree No. 154 of 28 December 2013¹⁵⁴ – which have also recognised the uniqueness of the status of the child – and has proved to be particularly relevant during separation and divorce proceedings, making it binding to take into account the point of view of children as well as their best interests¹⁵⁵.

Building on the same CRC standards, important actions in the social field have also been taken to safeguard one of

¹⁵¹ *Ivi*, p. 244.

¹⁵² *Ivi*, p. 243.

¹⁵³ As provided for by Articles 28(3), 29(6) and 31(3) of the Consolidated Law on Migration.

¹⁵⁴ As recognised in Articles 315-bis and 336-bis of the Civil Code.

¹⁵⁵ AGIA, *op. cit.*, pp. 340-341.

the most vulnerable categories of children, namely unaccompanied ones. In March 2017, Italy became the first European country to establish a comprehensive legislative framework protecting unaccompanied minors, adopting the so-called ‘Zampa Law’¹⁵⁶ which norms notably reflect different fundamental rights from the CRC, including rights to health care and education, legal representation, and to be heard during judicial and administrative proceedings as well as principles such as the one on the best interests of the child. Among the measures of protection envisaged by the Zampa Law it is worth to mention the easier access to basic services, safeguards against expulsion, the prohibition against the return of unaccompanied minors at the border, more appropriate social and medical age assessment procedures and accelerated access to asylum procedures and recognition (e.g. possibility to grant residence permit for minors in the absence of identity documents)¹⁵⁷. Furthermore, the Zampa Law has provided for the creation of the National Information System of Unaccompanied Minors (SIM) to function as an *ad hoc* monitoring mechanism as well as of the figure of the «voluntary guardians» which are selected and trained by the Regional Ombudsman for the protection of children’s rights to promote the social inclusion of unaccompanied minors¹⁵⁸.

The fight against social exclusion and child poverty is another relevant area in which, however, Italy’s action has long been characterised by a fragmentary approach, lacking specific and adequately funded interventions, in spite of several recommendations by the CRC Committee to establish a national instrument to deal specifically with child poverty issues,¹⁵⁹ as well as high levels of child poverty and social exclusion highlighted by follow-up analysis regarding the 2013 EU Recommendation on *Investing on children: Breaking the cycle of dis-*

¹⁵⁶ Law No. 47 of 7 April 2017.

¹⁵⁷ AGIA, *op. cit.*, p. 440.

¹⁵⁸ *Ivi*, p. 241.

¹⁵⁹ GRUPPO CRC, *I diritti dell’infanzia e dell’adolescenza in Italia. 10° Rapporto di aggiornamento sul monitoraggio della Convenzione sui diritti dell’infanzia e dell’adolescenza in Italia*, 2019, p. 19.

*advantage*¹⁶⁰. In recent years, however, in compliance with the «guidelines for action against children and family poverty» envisaged by the last National Plan¹⁶¹, the government has taken relevant income support measures rapidly replacing each other, such as the 2017 Support Active Inclusion (SIA), the 2018 Inclusion Income (REI) and the 2019 Citizenship Income (RDC)¹⁶². Notably, both the SIA and REI have granted particular protection to poor families with children¹⁶³.

4.2. *Achieving equal opportunities for all children through education*

As required by EU instruments¹⁶⁴, Italy's action against child poverty and social exclusion has also been strictly related to the intervention for the protection of children's right to education, considering poverty as a multidimensional problem requiring integrated responses with the aim of ensuring equal opportunities to all children¹⁶⁵. In particular, great emphasis has been placed on early childhood education and care services as multifunctional instruments aimed to promote children's well-being and development, support the educational role of parents and reconcile working and care times¹⁶⁶. In this sense, it must be mentioned the adoption in 2007 of the Extraordinary Plan for the Development of the Integrated System of Socio-Educative Services for Early Childhood which has been directly implemented by Regions and Self-governing

¹⁶⁰ H. FRAZER, E. MARLIER, *op.cit.*, p. 9.

¹⁶¹ MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI, *IV Piano nazionale di azione e di interventi per la tutela dei diritti e lo sviluppo dei soggetti in età evolutiva*, 2016, p. 26.

¹⁶² GRUPPO CRC, *10° Rapporto di aggiornamento sul monitoraggio della Convenzione*, loc. cit., pp. 19-20.

¹⁶³ *Ivi*, p. 19.

¹⁶⁴ EUROPEAN COMMISSION, *Recommendation (EU) 2013/112/EU of 20 February 2013 on Investing in Children: Breaking the Cycle of Disadvantage*, OJ L59/5.

¹⁶⁵ MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI, *op. cit.*, pp. 42-43.

¹⁶⁶ *Ivi*, pp. 41-44.

Provinces¹⁶⁷. Most recently, the Integrated System of Education and Training from Birth to 6 Years Old has been established by the Legislative Decree No. 65 of 13 April 2017 to promote equal opportunities to develop knowledge, potentialities and autonomy of all children, aiming to overcome territorial, economic, ethnic and cultural differences.

Also noteworthy in this regard have been Italy's efforts for reducing and preventing early school leaving which have recently led to the creation of the Control Room for the Fight against Early School Leaving within the Ministry of Education, University and Research (MIUR)¹⁶⁸. The reduction of schooling drop-out and the promotion of a more inclusive education have notably been central objectives of the National Project for the Inclusion and the Integration of Roma, Sinti and *Caminanti* Children, launched in 2013 as well as of the Guidelines for the Right to Education of Children Outside the Original Family established in 2017 through cooperation between MIUR and AGIA¹⁶⁹. In general, AGIA has a central role being tasked with orienting governmental, regional and local authorities towards achieving all the required measures to ensure the full implementation of children's educational rights as empowering rights able to amplify children's capacity to enjoy all their other rights as envisaged by the interdependent and holistic framework of the CRC¹⁷⁰.

4.3. *The Italian system for the protection of children's health*

The children's right to health in Italy is primarily protected by the figures of the paediatrician, which is mandatory for every children up to six years old, and of the family doctor, through which the child can have access to the services and per-

¹⁶⁷ *Ivi*, p. 44.

¹⁶⁸ GRUPPO CRC, *10° Rapporto di aggiornamento sul monitoraggio della Convenzione*, cit., p. 59.

¹⁶⁹ *Ivi*, p. 60.

¹⁷⁰ AGIA, *op. cit.*, p. 291.

performances guaranteed by the Italian National Health Service (SSN) and included within the Essential Levels of Care (LEA). These latter have recently been updated by the Ministerial Decree of 12 January 2017, replacing the ones adopted in 2001¹⁷¹, and are monitored by the New Guarantee System for Monitoring Healthcare¹⁷² to ensure their enjoyment by all citizens including children. Notably, the so-called 'Legge Taverna'¹⁷³ has included newborn screening – namely one of the most important children-specific instruments of preventive public health medicine, already introduced in Italy by Framework Law No. 104 of 5 February 1992 – into the new LEA, making it compulsory throughout the country, and has provided for the creation of the National Coordination Centre on Newborn Screenings. With regard to preventive healthcare for children, then, the introduction of Law No. 119 of 31 July 2017 on mandatory vaccination together with the establishment of the National Plan on Preventive Vaccination 2017-2019 have permitted to increase the vaccination coverage among children and adolescents¹⁷⁴. Preventive measures against drug addiction and alcoholism have also been implemented, such as through the Memorandum of Understanding for the Protection of the Right to Health, Education and Inclusion, between the Ministries of Health and Education aimed to prevent children from abusing addictive substances¹⁷⁵. Most importantly, the selling and serving of alcoholic beverages has been prohibited with regard to children under the age of majority¹⁷⁶ as well as the selling of cigarettes¹⁷⁷, in line with the objectives of the National Health Plan which aims to promote healthy lifestyles among children and adolescents. A central issue in terms of compliance with the CRC in relation with children's health has concerned parental respon-

¹⁷¹ Ministerial Decree of 29 November 2001

¹⁷² Established by the Ministerial Decree of 12 March 2019.

¹⁷³ Law No. 167 of 20 November 2017.

¹⁷⁴ AGIA, *op. cit.*, p. 327.

¹⁷⁵ *Ivi*, p. 333.

¹⁷⁶ Respectively by Law No. 125 of 30 March 2001 and Law No. 48 of 18 April 2017.

¹⁷⁷ Law No. 189 of 8 November 2012.

sibility and children's informed consent on medical treatment. In this regard, CRC principles have been duly transposed into Law No. 219 of 22 December 2017, recognising that any decisions on medical treatment of children must be taken by caregivers taking into consideration the point of view of children in accordance with their age and evolving capacities and aiming to the fulfilment of their best interests.¹⁷⁸ Moreover, action has been taken to protect the mental health of children, as required by both the CRC and EU instruments, through the adoption of the Guidelines on Neuropsychiatric Disorders of Childhood and Adolescence, of 27 July 2019 by agreement between the Government, Regions and Self-governing Provinces¹⁷⁹.

4.4. *Childhood laws and policies at the Italian regional level: the case of Veneto*

As noted in the last National Plan¹⁸⁰, in order to guarantee effective protection for children, the coordination and cooperation between state and regional authorities have proved to be crucial, especially with regard to the fields of health and education where the legislative power is shared between State and Regions¹⁸¹. In this regard, the Permanent Conference for the Relations between the State, the Regions and the Self-governing Provinces of Trento and Bolzano, has been the main instrument used to direct the implementation of the principles and norms of the CRC at the local level by means of agreements between the different levels of governance. The Region of Veneto, as one of the wealthiest Italian Regions and one in which the levels of protection of children are much higher than the national average¹⁸², can be taken as an example of good practice in implementing international and national

¹⁷⁸ AGIA, *op. cit.*, p. 325.

¹⁷⁹ GRUPPO CRC, *10° Rapporto di aggiornamento sul monitoraggio della Convenzione*, cit., p. 56.

¹⁸⁰ MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI, *op. cit.*, p. 31.

¹⁸¹ As laid down in Article 117(3) of the Italian Constitution.

¹⁸² GRUPPO CRC, *I Diritti Dell'Infanzia E Dell'Adolescenza In Italia. I Dati Regione Per Regione*, 2018.

standards for the safeguard of children at both the regional and local level.

Historically, Veneto was the first Italian Region to establish the figure of the guarantor of children's rights through the Regional Law No. 42 of 9 August 1988 creating the Office for the Public Protection of Children. However, this latter was later incorporated into the figure of the «Regional Guarantor for the Rights of the Individual» of Veneto by Regional Law No. 37 of 24 December 2013 therefore partially losing its monocratic nature¹⁸³. The system of children's rights protection of Veneto has been structured on different levels, providing a certain range of services tailored to the age and needs of children.

As regards early childhood services for children between three months and three years old, over the last three decades the Region of Veneto has developed different kind of educative services, such as *kindergarten*, «company nursery», «micro nursery», «integrated nursery» and «childhood centre», which are financially supported by the Region in accordance with Regional Law No. 32 of 23 April 1990 and aim to meet the care needs of children by supporting parenthood and families, including vulnerable ones. Furthermore, Veneto has created a regional system of «nursery in the family»¹⁸⁴, supporting qualified personnel to take care and educate children at their homes.

With regard to all categories of children, a key document was adopted in 2008 providing regional guidelines for promoting children's rights through social and healthcare services, underlining the need to guide the latter's implementation on the basis of international and national principles such as children's best interests, right to be heard and right to a family, as well as the need to provide for tailored assistance to vulnerable groups of children¹⁸⁵. On these foundations, the Region of Veneto has adopted a multidisciplinary approach for the

¹⁸³ GRUPPO CRC, 10° *Rapporto di aggiornamento sul Monitoraggio della Convenzione*, cit., p. 17.

¹⁸⁴ As provided for by Regional Council Resolution No. 153 of 16 February 2018.

¹⁸⁵ Regional Council Resolution No. 569 of 11 March 2008 adopting the *2008 Guidelines for the protection and safeguard of the minor*.

protection of children that has been implemented by different legislative and policy initiatives. In particular, regional systems of temporary foster care¹⁸⁶ and adoption¹⁸⁷ have been created to safeguard the right of children to a family. Different residential and semi-residential institutions for the social and healthcare of children have been established,¹⁸⁸ such as for instance the «educational community for minors», the «educational community for mothers and children» and the «educational community for the rehabilitation of minors and adolescents». Innovative residential structures named «apartment groups» have been recently created to provide care to unaccompanied foreign minors, aiming to promote their individual autonomy¹⁸⁹. Moreover, Veneto has implemented the PIPPI, principally aiming to preventing children from being removed from their original family through innovative interventions to support parenting such as household education, supporting groups for parents and children, foster families and partnerships between schools, families and social and health services. The Veneto region first joined the third edition of the programme in 2014-2015 through Regional Council Resolution No. 2098 of 30 December 2013 and has confirmed its commitment up to present times¹⁹⁰.

4.5. *Future challenges for childhood policies in Italy*

On the whole, over the past three decades, Italy has thus taken remarkable steps in terms of children's rights protection in the social, educational and health fields, at both national and local level, being carried by the momentum given

¹⁸⁶ Regional Council Resolution No. 1855 of 13 June 2006 basing on National Law No. 184 of 4 May 1983.

¹⁸⁷ Regional Council Resolutions No. 712 of 23 March 2001 and No. 2497 of 29 December 2011.

¹⁸⁸ Regional Council Resolutions No. 84 of 16 January 2007 and No. 242 of 22 February 2012.

¹⁸⁹ Regional Council Resolution No. 70 of 20 July 2018.

¹⁹⁰ DGR No. 488 of 23 April 2019 for 2019-2020.

by the ratification of the CRC. However, several challenges are yet to be addressed. In this sense, recommendations have been made by both the UN and the EU – respectively through the Committee on the Rights of the Child and the Country Specific Recommendations in the context of the European Semester – identifying legislative and policy gaps in the current system of protection of children. As regards the EU, a recurrent recommendation is the one of improving labour market outcomes for women, including through the provision of full-time quality childcare services, in order to indirectly foster the protection of children.¹⁹¹ In fact, the parental leave system as well as childcare and long-term care services are deemed to be inadequate preventing especially women with children from working and therefore causing income inequality and, in turn, child poverty. Furthermore, the Italian government is also required to improve the quality of the education and training system in order to reduce school drop-out rates and to correct existing regional and territorial disparities in educational outcomes¹⁹². With regard to health, it is pointed out the unequal provision of healthcare across regions, in terms of access, equity and efficiency, hence requiring better administration and monitoring of the delivery of standard levels of services as well as the promotion of home and community-based care services¹⁹³. Further relevant recommendations have been made by the European Social Policy Network (ESPN) basing on an evaluation of Member States' progress in implementing the 2013 Recommendation on *Investing in children: Breaking the cycle of disadvantage*¹⁹⁴. In fact, the latter analysis has found the majority of Italy's policies and programmes for children to be at a stalemate, having undergone little substantive

¹⁹¹ EUROPEAN COMMISSION, *Recommendation for a Council Recommendation on the 2019 National Reform Programme of Italy and delivering a Council opinion on the 2019 Stability Programme of Italy*, COM(2019) 512 final, 2019, p. 7.

¹⁹² *Ivi*, pp. 6-7.

¹⁹³ *Ivi*, pp. 5-6.

¹⁹⁴ H. FRAZER, E. MARLIER, *A study of national policies*, loc. cit.

change since 2013¹⁹⁵, despite Italy being among the European countries with high levels of child poverty or social exclusion, with a proportion of children at risk of poverty or social exclusion (AROPE) amounting to 33.5%¹⁹⁶. According to ESPN's experts, in order to address these challenges, Italy should primarily work to enhance children's participation in decisions that affect them and to improve the connection between national plans and the European Structural and Investment Funds programmes, both at national and regional levels¹⁹⁷.

Recommendations by the CRC Committee are also linked to different specific areas of children's rights protection.¹⁹⁸ The reform of the social protection system through the introduction of the «citizenship income» is considered as potentially detrimental for children, causing greater labour market inequality¹⁹⁹. For this reason, the Committee recommends the Italian government to adopt a more comprehensive approach to child poverty by ensuring children with access to adequate resources, affordable quality services and greater participation as well as encouraging parents' participation in the labour market²⁰⁰. As regards children's right to a family and alternative care, the Committee requires Italy to continue reviewing its policies on alternative care for children deprived of a family environment to reduce reliability on civil society organizations and to go beyond the institutionalisation of children²⁰¹. In particular, it is required to strengthen the system of foster care for children who cannot stay with their families and ensure in practice that children's views are heard in adoption processes in accordance with their evolving capaci-

¹⁹⁵ *Ivi*, p. 34.

¹⁹⁶ *Ivi*, pp. 9-11.

¹⁹⁷ *Ivi*, p. 93.

¹⁹⁸ As recommendations are provided on the basis of the Convention and the process is also determined by it, the State parties are obliged to abide by them. For States parties ignoring or not acting on the recommendations, it may be seen as bad faith in implementing their treaty-based obligations.

¹⁹⁹ COMMITTEE ON THE RIGHTS OF THE CHILD, *Concluding observations on the combined fifth and sixth periodic reports of Italy*, CRC/C/ITA/CO/5-6, p. 10.

²⁰⁰ *Ivi*, p. 10.

²⁰¹ *Ivi*, p. 8.

ties. As for the health sector, the Committee commends the efforts made in reducing child mortality and the definition of the new essential levels of healthcare. However, it underlines the absence of a uniform system for the protection of the mental health of children, requiring the development of adequate neuropsychiatric integrated services²⁰². Major recommendations regard the education field. While praising the government's efforts to ensure the completion of «free, equitable and quality primary and secondary education» by all children, the Committee requires Italy to implement a more inclusive children's rights-based approach promoting the education of children belonging to vulnerable groups in order to address the high levels of school leaving, including mandatory schooling, of Roma, Sinti and *Caminanti* children in particular, often caused by forced evictions²⁰³. Furthermore, in front of the low level of ECEC in the southern regions, the Committee has stressed the need for the Italian Ministry of Education to establish a coordinating body, tasked with introducing and implementing qualitative standards through holistic ECEC policies in all regions²⁰⁴. Notably, these measures should be suitable to children with disabilities according to their special educational needs. With regard to unaccompanied minors, whilst recognising the adoption of Law No. 47/2017 as a major step forward towards their protection, the Committee deplores the delay in adopting the implementing decrees for its effective application as well as the adoption of Law No. 132/2018 on urgent measures on international protection, migration and public security, eliminating the residence permit for humanitarian protection and hindering migrants' access to the reception system²⁰⁵. Moreover, the Committee underlines the shortcomings characterising first and second-level reception centres for unaccompanied minors underlining the need to up-

²⁰² *Ivi*, pp. 9-10.

²⁰³ *Ivi*, pp. 10-11.

²⁰⁴ *Ivi*, p. 11.

²⁰⁵ *Ivi*, pp. 11-12.

hold the latter's best interests and right to be heard, at all stages of migration as a primary consideration²⁰⁶.

In line with the observations made by the EU, then, the Committee has also noted with concern the existing disparities between regions as regards access to healthcare services, minimum living standards and education for all children throughout the entire country and especially between northern and southern regions²⁰⁷. According to the Committee, the Italian government should address these regional imbalances by adopting a more coherent and unitary approach for the protection of children, through the allocation of adequate human, financial and technical resources at all levels of governance to implement child-related policies, programmes and legislative measures as well as defining a «clear mandate and sufficient authority» within the Presidency of the Council of Ministers, to coordinate all activities relating to the implementation of the CRC at the cross-sectoral, national, regional and local levels²⁰⁸. In addition, the government should take affirmative actions in favour of children and particularly those belonging to vulnerable groups which are especially affected by the discriminatory effects of such regional disparities, exacerbating problems of school and care leaving, lack of access to healthcare and child poverty²⁰⁹.

5. *Conclusions*

Spain and Italy are southern European countries, Mediterranean, with similar systems regarding the welfare state²¹⁰. Both countries have a family approach to well-being since the family is considered the main support network for individuals, and who must bear most of the weight of such well-being. If we

²⁰⁶ *Ivi*, p. 11.

²⁰⁷ *Ivi*, p. 4.

²⁰⁸ *Ivi*, p. 2.

²⁰⁹ *Ivi*, pp. 3-4.

²¹⁰ Spain has developed its welfare system since the 1980s, so it could be thought of a certain disadvantage compared to Italy.

accept that the family is the best environment for the child to grow and develop in the best conditions, this approach makes perfect sense. But it must be sustained by adequate family policies. The children's welfare approach is based on family support (although these supports are insufficient in both cases). That is why the so-called third sector has acquired an important role in sustaining well-being in both countries.

At the administrative organization level, both countries have a decentralized structure, but the Spanish one has shown greater coordination difficulties between the different levels of governance of childcare policies.

As for the development of childhood policies, it should be said that it faces the quadrennial plans of Spain, in Italy the Children's Plans are biannual, which may a priori favor better monitoring of the objectives and programs, in addition to a more rapid evaluation of results. This country has also created specific funds for childcare.

In 2011, Italy created a figure for the exclusive Ombudsperson for Children, both at the state level and in the various regions. In Spain, this figure has only been created in some autonomous communities, and it has now been abolished, leaving the Ombudsperson to cover this function.

The social protection system in both countries is very similar, in that their child protection institutions are very similar. A common tendency in both is to keep children with their families and to deinstitutionalize abandoned children to take them to foster families. Or to streamline the adoption processes in the event of permanent abandonment.

The two countries, located in southern Europe, suffer similar problems in relation to the increase in the migration of unaccompanied minors. For this, similar protection regulations have been issued, although in Italy the Zampa Law seems to have tackled this situation in a new way by establishing a monitoring system for these minors (National Information System of Unaccompanied Minors, SIM).

Regarding education, following the impulse of the EU, in both countries, an effort is being made to improve the quality of education in the first years of life and fight against early

school leaving. Special attention is paid to the Gypsy minorities in Spain and Rome and Sinti in Italy.

In the field of health, the problems are also similar, although perhaps in Spain mental health problems are more visible (especially some disorders typical of childhood, such as TDH; or adolescence, such as eating disorders). Spanish legislation has been more permissive in granting autonomy to the 'mature minor' to make decisions that can seriously affect their health (such as abortion or carrying out sex change interventions).

The Region of Veneto, as one of the wealthiest Italian regions and one in which the levels of protection of children are much higher than the national average, can be taken as an example of good practice in implementing international and national standards for the safeguard of children at both the regional and local level.

Catalonia, together with the Basque Country, turns out to be one of the richest regions in the country and most advanced in the development of rights. However, it is also one of the regions that receive more immigration and where there are more unaccompanied minors, with the problems that their care entails. Therefore, education in Catalonia presents a specific problem of 'segregation', for which there are areas with many immigrants that make the educational and integrative task of immigrant minorities complex.

Regarding future challenges, it can be concluded that both countries are receiving strong recommendations from international organizations to fight more decisively against high levels of child poverty, through an improvement in the labor market, of specific social measures such as the establishment of a minimum income, as well as adequate family policies, supporting conciliation measures and greater support for families with dependent children, especially single parents and large families.

MARÍA FERNÁNDEZ-ARROJO, MONTSERRAT GAS-AIXENDRI, SIMONE DELICATI, AIDA KISUNAITE, Children's rights and policies in Europe: realities and challenges in Spain and Italy

This article analyzes the application of the Convention on the Rights of the Child in Europe, taking into account the role of the European Union. This is done through the analysis of two cases: Spain and Italy and two of its most prosperous regions (Catalonia and Veneto). In each of the countries, the main guidelines in childhood policies and the laws that have been implemented are analyzed. The future challenges faced by each of the two countries concerning the protection of children's rights are also analyzed. Finally, comparative considerations are made on the situation of children's rights in these two countries.

Key words: Children's Rights, Child Policies, Child best interest.

MARÍA FERNÁNDEZ-ARROJO, MONTSERRAT GAS-AIXENDRI, SIMONE DELICATI, AIDA KISUNAITE, Diritti dei minori e politiche in Europa: realtà e sfide in Spagna e in Italia

Questo articolo analizza l'applicazione in Europa della Convenzione ONU sui diritti dell'infanzia, avendo presente il ruolo dell'Unione Europea, attraverso lo studio di due casi: la Spagna e l'Italia e, in particolare, due delle regioni più prospere dei rispettivi Paesi (Catalogna per la Spagna ed il Veneto per l'Italia). In ogni singolo caso di studio vengono esaminate le principali leggi e gli orientamenti strategici delle politiche dell'infanzia. Lo studio analizza, inoltre, le sfide future che ciascuno dei due Paesi deve affrontare in relazione alla protezione dei diritti dei minori. Infine, vengono svolte considerazioni comparative sulla situazione dei diritti dei bambini in questi due Paesi.

Parole chiave: diritti dei bambini, politiche d'infanzia, interesse superiore del minore.

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