

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT** **C**  
**CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS**



**Country Report on France  
for the Study on  
Member States' Policies for  
Children with Disabilities**

STUDY





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

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**for the Study on**

## **Member States' Policies for Children with Disabilities**

**STUDY**

### **Abstract**

This study looks at the situation of children with disabilities in France to identify the gaps in the legal frameworks and its implementation, the obstacles faced by children with disabilities and best practices. This country study is part of a larger study which analyses 18 Member States. Based on a comparative analysis of the country studies, the report 'Study on Member States' Policies for Children with Disabilities' provides some recommendations for EU action to enhance the situation of children with disabilities.

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## LIST OF ABBREVIATIONS

- Art.** Article
- Charter** The Charter of Fundamental Rights of the European Union
- CE** *Conseil d'Etat* (Council of State)
- CJEU** Court of Justice of the European Union
- CRC** United Nations Convention on the Rights of the Child
- CRPD** United Nations Convention on the Rights of Persons with Disabilities
- ECHR** Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms
- INSHEA** *Institut national supérieur de formation et de recherche pour l'éducation des jeunes handicapés et des enseignements adaptés* – National institute for the training and research on the education of young persons with disabilities and adapted trainings
- JORF** Official Journal of the French Republic
- TEU** Treaty on the European Union
- TFEU** Treaty on the Functioning of the European Union
- UN** United Nations

## EXECUTIVE SUMMARY

The French legal framework addresses **the situation of children with disabilities** by applying existing general legislation and common rules. Specific measures are adopted only when required to address particular issues concerning the rights of children with disabilities. Such provisions are found in the legal frameworks that address children in general or persons with disabilities. The main focus of the French legal framework is **access to inclusive education, access to public transport and establishments, and assistance**. Several issues such as children with disabilities as vulnerable suspects or gender issues are believed to be sufficiently covered by the general legislation and, accordingly, have not been addressed under specific provisions for children with disabilities. In addition, since France has signed and ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and the UN Convention on the Rights of the Child (CRC), both Conventions are directly applicable in France and can be invoked in French courts.

The problems and obstacles experienced by children with disabilities in France are thus not related to gaps in legislation but rather to the **concrete enjoyment of the rights guaranteed**. While the literature identifies several issues that need to be improved for full enjoyment of children with disabilities' rights, reliable data to sustain this conclusion is scarce. Indeed, at present, France has no institutional structure or statistical tool for collecting and diffusing such data at the national level.

An initial finding is that **material and human resources are insufficient** to ensure that children with disabilities can fully enjoy a number of rights – in particular, the right to **inclusive education**. Though significant efforts have been made to raise the number of school places available for children with disabilities, a number of shortcomings exist. A particular matter of concern is vocational training for children with intellectual disabilities, which is reported to be 'largely inadequate in quality, quantity and variety'. The training of teachers is also considered insufficient, as is the number of specialised assistants to accompany children with disabilities. This is highly problematic because if no specialised assistance is available, the director of a school may refuse to enrol the child with a disability in that school.

A second finding is that the transition from primary to secondary school is particularly challenging for children with intellectual disabilities; 55 percent of children with intellectual disabilities leave the school system between primary and secondary school compared with 17 percent of children without disabilities. School curricula are too rigid and do not allow for adaptation and flexibility to meet the special needs and rhythm of children with disabilities. Adequate individual follow-up and support to children is also needed, especially for children with hearing impairment, autism or cognitive disabilities. In addition, **stigmatisation** plays a role in the lack of access to inclusive education, due to the widespread belief that children with disabilities do not have the capacities to go to secondary school.

Thirdly, **a lack of harmonisation and co-operation** impedes implementation of measures to support children with disabilities. The training of medico-social and education professionals needs harmonisation as practice is different from one *département* to another. In addition, medico-social services and education services do not sufficiently cooperate.

Fourthly, **children with disabilities remain vulnerable to violence**. Violence from public officers (and more particularly law enforcement officers) remains an issue in France.



Violence at school is of particular concern: close to 90 percent of children with intellectual disabilities report having suffered insults and teasing, and nearly two-fifths report experiencing discrimination at school. Moreover, corporal punishment is not explicitly prohibited by France's Criminal Code.

A fifth issue is that **financial and other assistance is reported as being insufficient** for children with disabilities or their families. Such assistance should be adjusted in accordance with their actual needs, such as additional costs linked to transport, etc..

Another important issue relates to **the extremely long and demanding administrative procedures** faced by parents of children with disabilities seeking assistance (for example, in terms of certificates). Some parents face such strong difficulties that they renounce possibilities for assistance that would enable their children to more fully enjoy their rights. Families need to be better informed about their children's rights and the services available.

Lastly, children are directly heard in administrative proceedings only exceptionnally. The presence of children (and their lawyers) in any proceeding affecting them should be systematised.

## INTRODUCTION

In December 2010, the European Union became a party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). In doing so, the EU recognised the challenges persons with disabilities face in securing their rights and highlighted the need for EU actions in that to be firmly on the agenda of the European Union (EU) and its Member States.

Children with disabilities are already vulnerable because they are children. Their disability renders them particularly vulnerable. As such, they deserve specific safeguards and protection from the EU and its Member States.

The key legal framework for EU action in this field is the EU decision ratifying the CRPD, the requirement under Article 10 TFEU for the EU to combat discrimination based on disability, as well as the EU objective of promoting the rights of the child found under Article 3 TEU. This framework provides the EU with a unique position to push forward for further protection of the rights of children with disabilities, and to develop legislative or policy initiatives. The UN Convention on the Rights of the Child (CRC) provides another basis for action in this area.<sup>1</sup>

This country report for France is part of a larger study which aims at providing the European Parliament with an overview of the situation of children with disabilities in selected Member States, with a view to evaluating the need for European legislation to enhance the rights of children with disabilities in the European Union. The project reviews the existing legal, policy and institutional frameworks in 18 Member States. Each country report analyses the implementation of international principles and rights stemming from the CRPD and the CRC to uncover any particular issues that necessitate further policy and legislative actions at national and EU level. The results from the country reports also form the basis for the comparative analysis in the report 'Study on Member States' Policies for Children with Disabilities'.

The key elements deriving from the CRC and CRPD, with regard to children with disabilities include:

- The obligation to act in the best interests of the child;
- The right to non-discrimination;
- The consideration of the evolving capacities of the child;
- The right to participate/to be heard;
- The right to be free from violence;
- The right to family life;
- The right to assistance;
- The right to education, including inclusive education.

Given their ratification of both UN Conventions, Member States are obliged to take

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<sup>1</sup> All the 27 Member States have ratified the CRC, and all 27 Member States have signed the CRPD (Finland, Ireland and the Netherlands have signed but not yet ratified).

necessary measures to ensure the respect of the rights set forth for each child or person with a disability within their jurisdiction. Member States should take the appropriate measures to ensure that children are protected against all forms of discrimination or violence, including adopting all appropriate legislative, administrative and other measures for the implementation of those rights. Moreover, the protection of the rights of children with disabilities should be mainstreamed in all policies and programmes in accordance with Article 4(3) of the CRPD on the involvement of persons with disabilities in all decision-making processes.

Due to the scale of this subject and the scarcity of materials available, the scope of this study does not cover in detail the wide range of issues arising from and relating to the situation of children with disabilities. It does not aim to provide an in-depth analysis but rather an overview of the situation of children with disabilities' rights in France. This study presents a snapshot of some of the major issues and obstacles faced by children with disabilities and their families, a legal analysis of the implementation of the main rights and principles recognised in the CRC and CRPD and relevant in the context of the situation of children with disabilities and points to some potential solutions at national and EU level to improve their situation.

Each country report is structured as follows: it first looks at the situation of children with disabilities at the national level. It describes the national legal and institutional framework for the protection of children with disabilities and analyses national implementation of principles and rights developed in the UN Conventions (CRC and CRPD). It then considers specific issues relevant to the situation of children with disabilities, including children as suspects, gender issues, violence and education. Finally, the report covers the mechanisms in place to implement the legal framework, highlighting gaps, problems, best practices, and recommendations found by the literature or via interviews with stakeholders.

# 1. OVERVIEW OF THE SITUATION AND CHALLENGES FOR CHILDREN WITH DISABILITIES IN FRANCE

## KEY FINDINGS

- National actions focus on inclusive education, accessibility and assistance.
- Gaps, problems and challenges include: insufficient training of teachers and insufficient accessibility in general, limited access to data, and differences in practices from one *département* to another.

## 1.1. Introduction to the situation of children with disabilities in France

France signed the UN Convention on the Rights of Persons with Disabilities on 20 March 2007 and ratified the Convention on 18 February 2010. France signed the UN Convention on the Rights of the Child on 26 January 1990 and ratified the Convention on 7 August 1990.

The French legal framework addresses the situation of children with disabilities by applying general legislation and common rules. Specific provisions are adopted only when particular measures are required in order to guarantee the rights of children with disabilities. Such provisions are found in the legal frameworks that address children in general or persons with disabilities. Consequently, identification of the rights of children with disabilities and the implementing measures that flow from the legal framework requires screening the legislation that addresses the situation of children in general, as well as the legislation covering persons with disabilities.

French policy regarding children with disabilities is clearly organised along **three pillars**: access to inclusive education as a right; access to public establishments, common spaces (for example, parks) and public transport, and financial assistance. French legislation prohibits discrimination on the grounds of disabilities.

The reports reviewed for this country study as well as the persons interviewed pointed out that the situation of children (and, more generally, persons) with disabilities have constantly improved. Nevertheless, some problems remain regarding the concrete enjoyment of the rights guaranteed to children with disabilities.

## 1.2. Review of issues and identification of possible regulatory gaps

No regulatory gaps were identified in the course of the literature review and the stakeholder interviews carried out for this study. The most crucial need is for the additional **human and material resources** needed to fulfil the objectives set forth in the international agreements and national legislation and to ensure that the rights guaranteed in these legal instruments are fully enjoyed by children with disabilities. The following issues have been identified.

- Concerning the right to inclusive education, France has made significant efforts to raise the number of school places available for children with disabilities, and the proportion of children with disabilities in inclusive education has increased from 2003 to 2011. Nevertheless, a number of shortcomings have been identified. A particular, vocational training for children with intellectual disabilities is reported to be 'largely inadequate in quality, quantity and variety'.<sup>2</sup> The training of teachers is also insufficient, and specialised assistants are scarce.
- Specialised assistance in particular is needed in order for children with disabilities to benefit from extracurricular activities.
- The (financial) assistance available for children with disabilities and their families is deemed insufficient to meet the needs.

The following problems regarding the right to **inclusive education** have been identified:

- The transition from primary to secondary school is reported as particularly problematic for children with intellectual disabilities (55 percent of children with intellectual disabilities leave the school system between primary and secondary school compared with 17 percent of non-disabled children).<sup>3</sup> The school curricula are too rigid and do not leave enough room for adaptation and flexibility to the special needs and rhythm of children with disabilities.
- A cultural obstacle remains: a widespread belief that children with disabilities do not have the capacities to go to secondary school. Prejudices and self-censorship are believed to hamper children from continuing their studies, and several reports highlight problems of stigmatisation.

Regarding **violence** and children as vulnerable suspects:

- The lack of a programme addressing gender-related vulnerability of persons with disabilities was criticised in the Concluding Observations of the Committee on the Rights of the Child in 2009.
- French law does not address the situation of children with disabilities as vulnerable suspects.
- A 2008 survey reports that 24 percent of the children surveyed experienced abuse during childhood.<sup>4</sup> Abuse in residential care is reported as being particularly critical. Violence at school is also of particular concern: almost two fifths of children with intellectual disabilities suffer bullying and stigmatisation at school, and 89 percent of young people with intellectual disabilities say they have suffered insults and teasing. Forty-four (44) percent have been marginalised, 29 percent have been treated unfairly, and five percent have been refused the enjoyment of a right. The literature reports that child victims of violence receive poor assistance, and that cooperation

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<sup>2</sup> Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 19.

<sup>3</sup> Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 21. See also Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, p. 9.

<sup>4</sup> Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 10.

among professionals is unsatisfactory.

- Violence from public officers (and more particularly law enforcement officers) remains an issue in France. In addition, the Criminal Code does not explicitly prohibit corporal punishment.

Problems of implementation of certain rights guaranteed under the current legislation:

- Children are only exceptionally directly heard in decision-making procedures affecting them. The presence of children (and eventually their lawyers) in decision-making affecting them should be systematised. Furthermore, hearing impaired children and teenagers are identified as requiring particular support. Autistic children and children with cognitive disabilities are also identified as particularly vulnerable and under-assisted.
- Parents of children with disabilities face long and demanding administrative procedures (for example, in terms of certificates), leading some parents to give up and renounce the enjoyment of their rights.
- The training of medico-social and education professionals should be harmonised. In addition, medico-social services and education services do not sufficiently cooperate.
- Implementation of the legal framework and policies that apply to children with disabilities is not harmonised across the territory, and differs from one *département* to another.

## 2. OVERVIEW OF THE LEGAL FRAMEWORK IN FRANCE

### KEY FINDINGS

- Under France's monist legal system, any international agreement ratified or approved by France is considered to be part of the overall French legal order and takes precedence over French legislation.
- The French legal framework addresses the situation of children with disabilities by applying 'common' or general rules. Specific measures are adopted only when required to address specific issues related to the rights of children with disabilities. Such provisions are found in the legal frameworks that address children in general or persons with disabilities.
- Law n° 2005-102 on equal rights and opportunities, participation and citizenship for persons with disabilities is the key legislation addressing the situation of persons with disabilities in France.

### 2.1. General overview of the national legal and institutional framework

As a whole, French civil law is based upon the continental system of codification. The main sources of law are international law, EU law, the French Constitution, laws, regulatory measures (*decrees*), customs, and case law.

Adjudicating bodies are organised on three levels for each category. The *Tribunal d'Instance* and the *Tribunal de Grande Instance* adjudicate civil cases. In addition, specific adjudicating bodies have competence in specific matters (labour law...). Appeals are lodged before the Courts of Appeal (*Cour d'Appel*). The third level is composed of the *Cour de Cassation*, the Supreme Court which reviews civil or criminal cases. This Court solely adjudicates on the legal aspects of the cases at hand.

Administrative tribunals (*Tribunal administratif*) are the first degree adjudicating bodies of public law cases. Appeals are lodged before the Administrative Courts of Appeal (*Cour Administrative d'Appel*). The third level is the *Conseil d'Etat*, the Supreme Administrative Court. The Tribunal of Conflicts (*Tribunal des conflits*) adjudicates cases of conflict between the private law Supreme Court and the public law Supreme Court.

The French legal system is monist. In principle, any international agreement ratified or approved by France binds national laws (Article 55 of the French Constitution). However, individuals may only invoke provisions of international agreements before national adjudicating bodies if the provisions of the international norm have direct effect.

France has four levels of governance: national, regional (France has 27 regions), departmental (101 '*départements*'), and municipal (36,766 municipalities). The national government retains certain powers at each level (*pouvoirs déconcentrés*) while the regional, departmental and municipal levels also have their own competences, i.e. competences that are not under the authority of the central government (*pouvoirs*

*decentralisés*).

In addition, independent administrative (and constitutional) authorities (*Autorités Administratives – Constitutionnelles - Indépendantes*) play an important role within the French institutional setting. They exercise executive powers while retaining independence from the government. They ensure the effectiveness of certain rights guaranteed to citizens regarding their relationship with the administration.

## **2.2. Children with disabilities specific legal and institutional framework**

### **2.2.1. Legal framework**

The legislative provisions addressing the situation and rights of children with disabilities are codified and disseminated in five codes: the Social Action and Families Code as a main source of provisions that address children with disabilities, the Social Security Code, the Education Code, the Criminal Code and the Criminal Procedure Code.

- The provisions mainly result from a set of four laws:
  - Law n° 90-602 (12 July 1990) on the protection of persons against discriminations based on health or disabilities,
  - Law n° 2005-102 (11 February 2005) on equal rights and opportunities, participation and citizenship for persons with disabilities.<sup>5</sup>
  - Law n° 2011-901 (28 July 2011) improving the functioning of departmental houses of persons with disabilities (*les maisons départementales des personnes handicapées*) and containing several provisions related to policies on disability and the rights of persons with disabilities.
  - Law n° 2007-293 (5 March 2007) reforming childhood protection (key for guaranteeing the best interests of the child).

Some provisions specifically address children with disabilities (such as on education), while other provisions cover more generally persons with disabilities (such as protection against discrimination) or children (such as the protection of children at risk). All in all, to obtain the overall picture on the legal framework related to the rights of children with disabilities, it is necessary to refer to the legal provisions applying to persons with disabilities on one hand, and to those applying to children on the other hand.

### **2.2.2. Institutions and authorities**

The focal point for the Convention on the Rights of Children (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) is the Human Rights Ombudsman. The Ombudsman is in charge of transmitting reports to the CRC and CRPD. The Ministry in charge of matters concerning persons with disabilities is the Ministry of Social Affairs and

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<sup>5</sup> Law n° 2005-102 (11 February 2005) on equal rights and opportunities, participation and citizenship for persons with disabilities, p. 7. Most of its implementing acts have been adopted. For a list of implementing acts, see: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000809647&categorieLien=id> (last accessed 20 September 2012).



Health.

The French State coordinates and animates the interventions of competent organisms through the **Interministerial coordinating committee** on adaptation and readaptation (*comité interministériel de coordination en matière d'adaptation et de réadaptation*), which is assisted by the **National consultative council for persons with disabilities**.<sup>6</sup>

The institution in charge of child protection matters is the **Social Aid Service for Children** (*service de l'aide sociale à l'enfance*). Alongside this general institution are institutions specific to persons with disabilities. They perform orientation, support, evaluation and consultative functions. The 'Defenders of rights' (*Défenseurs des droits*) count 450 'defenders' throughout the country headed by the 'Defender of rights', who are in charge of defending fundamental rights, including the rights of the child.<sup>7</sup>

The **Commission for the rights and autonomy of persons with disabilities** (*Commission des droits et de l'autonomie des personnes handicapées*) is competent for the orientation of the person with disabilities and measures aimed at ensuring the person's educational, professional or social inclusion, designation of the establishments or services assisting children with disabilities, and assessment of whether the disability of the child justifies awarding financial assistance.<sup>8</sup>

The Commission is composed of representatives of the *département*, State services and establishments of social protection organisms, trade-union organisations, and parents' associations. At least one third of its members are representatives of persons with disabilities and of the families of persons with disabilities, and one member represents the departmental consultative council of persons with disabilities.<sup>9</sup>

When the Commission considers how to orient support for a child with disability, it must propose several alternatives to the child and the child's parents or legal representatives. If the child, his/her parents or legal representatives express preference for an establishment or service, this preference must be included in the list proposed by the Commission. When justified by the evolution of the child, the parents or legal representative of the child with disability can ask the Commission to review its decision.<sup>10</sup>

At the *département* level, an important structure of support for persons with disabilities is provided by the **Department Houses for Persons with Disabilities** (*maisons départementales des personnes handicapées*).<sup>11</sup> They welcome, provide information, advise and accompany persons with disabilities and their families. They also organise awareness-raising of all citizens.

The Department Houses for Persons with Disabilities put into place and organise **multidisciplinary teams**, in charge of evaluating the needs for financial assistance of persons with disabilities on the basis of the person's life projectory. The teams provide hearings for the parents of the child with disabilities on their own initiative or upon demand. The multidisciplinary team can also hear the child him/herself if (s)he has the

<sup>6</sup> Article R. 114-1 of the Social Action and Families Code.

<sup>7</sup> The Defenders of rights website, available at <http://www.defenseurdesdroits.fr/connaitre-son-action/la-defense-des-droits-de-lenfant/presentation> (last accessed on 25 March 2013).

<sup>8</sup> Social Action and Families Code, Article L. 241-6.

<sup>9</sup> Social Action and Families Code, Article L. 241-5.

<sup>10</sup> Social Action and Families Code, Article L. 241-6.

<sup>11</sup> Articles L. 146-3 to L. 146-12 of the Social Action and Families Code.

capacity.

France has two **consultative** institutions for persons with disabilities: the National Consultative Council for Persons with Disabilities<sup>12</sup> (*'le Conseil national consultatif des personnes handicapées'*) and the departmental consultative council. The national consultative council ensures the participation of persons with disabilities in the elaboration and implementation of the policies that concern them. Competent ministers can consult the national council on any project, programme or study that concerns persons with disabilities.

The national council is responsible to evaluate the material, financial and moral situation of persons with disabilities and to present proposals to the Parliament and the Government. The departmental consultative council formulates advice and proposals on disability policies and issues in the fields of social life and on the measures that have to be implemented at the local level.<sup>13</sup>

### 2.2.3. Definitions

The term 'disability' is defined in Article L. 114 of the Social Action and Families Code as '(...) **any limitation of an activity or restriction to participation in the life of society** (...) suffered by a person because of substantial, lasting or definitive impairment of several physical, sensory, mental, or cognitive functions, because of multiple disabilities, or because of a health disorder that disables.' This definition results from the changes brought about by Law n° 2005-102 on equal rights and opportunities, participation and citizenship for persons with disabilities.

The term 'children' includes teenagers (minors) **under 18 years** of age. The legislation may however differentiate among children according to their age range. For example (and as developed at more length later in the report), the violence suffered by children below 15 years of age does not entail the same criminal sanction as violence suffered by teenagers who are 15 to 18 years old. Similarly, the treatment of children as vulnerable suspects is different according to their age (below or above 13 or 16 years old).

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<sup>12</sup> Article L. 146-1 of the Social Action and Families Code.

<sup>13</sup> Article L. 146-2 of the Social Action and Families Code.

### 3. LEGAL FRAMEWORK AND IMPLEMENTATION ASSESSMENT

#### KEY FINDINGS

- The overall legal framework in France is good: the rights of children with disabilities are protected under the legislation guaranteeing children's rights and the rights of persons with disabilities, while some specific measures exist.
- Implementation of the rights and principles set forth in the CRPD and CRC is assessed as moderate: most of the problems identified and reported relate to the actual implementation of some provisions which affect the enjoyment of the rights of children with disabilities.
- The main problems faced by children with disabilities in France relate to the right to inclusive education and freedom from violence.

#### 3.1. Implementation of the provisions of the CRPD and CRC

##### 3.1.1. Best interests of the child (Art. 3 CRC; Art. 7 CRPD)

The principle of consideration of the best interests of the child in all decisions affecting them is **effectively implemented in French law**, albeit the legislation uses the term 'interest of the child'. The Social Action and Families Code provides: 'The interest of the child, his fundamental physical, intellectual, social and affective needs and respect of the rights of the child must guide any decision that concerns him'.<sup>14</sup> The latest law codifying childhood protection makes numerous references to the best interests of the child.<sup>15</sup>

The UN Committee on the Rights of the Child, however, raised concerns on the lack of impact assessments of government actions and decisions concerning the best interests of the child. The Committee noted that differences in understanding the application of this principle persisted in practice. Furthermore, it noted that 'this principle is **rarely put into action** by the legislative bodies, at the municipal, regional and national levels'.<sup>16</sup>

In matters of childhood protection, numerous references to the best interests of the child exist in the legislation. For instance, the child can be heard in all proceedings related to him/her when the interest of the child commands it. It is assumed that this principle may be applied not only in civil proceedings but also with regard to decisions concerning the child and his/her education.<sup>17</sup>

<sup>14</sup> Article L. 112-4 of the Social Action and Families Code.

<sup>15</sup> Law n° 2007-293 (5 March 2007) that reforms childhood protection, *JORF* (Official Journal of the French Republic - *Journal Officiel de la République Française*) n°55, 6 March 2007, p. 4215.

<sup>16</sup> Committee on the Rights of the Child (2009), 'Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4', Fifty-first session, 11 June 2009, p. 9. Similarly, see Florence Grandvalet (2011), 'Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with Disabilities, National Report of France', February 2011, under "Promotion, participation and discrimination."

<sup>17</sup> Law n° 2007-293 of 5 March 2007.

No specific provision has been identified with regard to criminal proceedings and social protection. However, the Council of State and the Court of Cassation have both held that **Article 3 CRC is directly applicable** and can be invoked in Court. Therefore, authorities are bound to take the best interests of the child as a primary consideration in their actions, including in criminal proceedings and the area of social protection.<sup>18</sup>

### 3.1.2. Non-discrimination (Art. 2 CRC; Arts. 3 and 5 CRPD)

Non-discrimination is firmly established in French law. Both the Criminal Code and the Social Action and Families Code prohibit discrimination. Gender related discrimination is addressed below under section [3.2.1](#).

The prohibition of discrimination on the grounds of disability has been introduced by Law n° 90-602 on the protection of persons against discrimination based on health or disability, which modifies the Criminal Code.<sup>19</sup> The Criminal Code prohibits discrimination on the grounds of origin, sex, marital status, pregnancy, physical appearance, name, **state of health, disability, genetic characteristics**, morals, sexual orientation or gender identity, **age**, political opinions, union activities, membership or non-membership, true or supposed, of an ethnic group, nation, race or religion<sup>20</sup>.

Article 225-2 provides **criminal sanctions** for this offence, including the sanctions of imprisonment up to five years and a fine up to EUR 45,000, or five years when discrimination is the basis for a refusal to provide a good or a service in a public location or in order to refuse access to this public location and a fine of EUR 75,000.<sup>21</sup> The prohibition of discrimination binds physical and legal persons, as well as employers and providers of goods and services, without specifying whether it covers private and public services; hence it can be assumed it applies to both. Organisations defending the rights of persons with disabilities can file an action before courts with the agreement of the victim or legal representative for child victims.

Law n° 2008-496 containing various provisions to conform to Community law in the field of the fight against discrimination<sup>22</sup> prohibits direct and indirect discrimination on the grounds of disability. The Law also requires appropriate measures to be taken (which is close to the

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<sup>18</sup> Court of Cassation website, 'The decisions of principle of the 18 May 2005', available at: [http://www.courdecassation.fr/publications\\_cour\\_26/rapport\\_annuel\\_36/rapport\\_2009\\_3408/etude\\_personnes\\_3\\_411/chambre\\_civile\\_3417/convention\\_new\\_3423/18\\_mai\\_15307.html](http://www.courdecassation.fr/publications_cour_26/rapport_annuel_36/rapport_2009_3408/etude_personnes_3_411/chambre_civile_3417/convention_new_3423/18_mai_15307.html) (last accessed 6 March 2013).

<sup>19</sup> Law n° 90-602 (12 July 1990) on the protection of persons against discriminations based on health or disabilities, *JORF* (Official Journal of the French Republic - *Journal Officiel de la République Française*) n°161 of 13 July 1990, p. 8272.

<sup>20</sup> Article 225-1 of the Criminal Code provides: 'Any distinction between private persons based upon (...) the disability, (...) age constitutes a discrimination. Any distinction between legal persons based upon (...) the disability, (...) age of the members or some members of the legal person constitutes a discrimination'.

<sup>21</sup> Article 225-2 of the Criminal Code provides: 'A discrimination (...) against a private or legal person is punished by three years of imprisonment and a fine of 45 000 euros when: 1° A good or a service has not been provided; 2° The normal conduct of any economic activity has been interfered with; 3° The discrimination is based on a refusal to hire the person, the sanction of a person, or the dismissal of a person; 4° The providing of a good or a service has been conditioned on (*the disabilities*); 5° A job offer, traineeship or period of education has been conditioned on (*the disabilities*); (...) When the discriminatory refusal foreseen under 1° is committed in a public place or in order to refuse access to this place, the sentence is 5 years of imprisonment and 75 000 euros.'

<sup>22</sup> Law n° 2008-496 of 27 May 2008 containing various provisions to conform to Community law in the field of the fight against discrimination (Official Journal of the French Republic - *Journal Officiel de la République Française*) n°0123 of 28 May 2008.

concept of reasonable accommodation<sup>23</sup>). However, the prohibition and requirement to take appropriate measures are limited in scope to employment and training.

The Social Action and Families Code establishes rights and guarantees for persons with disabilities. Article L. 114-1 provides that persons with disabilities are entitled to benefit from the fundamental rights recognised for all citizens as well as the full enjoyment of their citizenship. Similarly to the Criminal Code, the Social Actions and Family Code provides that public and private persons join their interventions in order to implement the right to access to fundamental rights recognised for all citizens (Article L. 114-2). The Code establishes that the State has the duty to ensure the **equal treatment** of persons with disabilities on the whole territory and must define multiannual objectives for actions (Article L. 114-1).<sup>24</sup>

Concretely, this equal access requirement entitles children (and adults) with disabilities to have access to all institutions open to the public, for inclusive education, work and life, by 2015. In addition, public transport services and collective transport must be adapted by 2015.<sup>25</sup> Moreover, the creation and the functioning of the services of specialised transport for persons with disabilities and use of individual vehicles and their parking must be eased (Article L. 114-4). Furthermore, public spaces in cities must be accessible to persons with disabilities (Article L. 144-4). Finally, the compensation for the consequences of a person's disabilities aims at answering the needs of the person with disabilities, including any adjustments of home or of the work place that are necessary in order to fully enjoy citizenship and the capacity to be autonomous (Article L. 114-11).

For the time being, it is estimated that only 15% of the buildings open to the public are accessible to persons with disabilities.<sup>26</sup> It appears that accessibility is not as high on the agenda as other issues (such as education).

With respect to education, the Code of Education guarantees **accommodation** for children with disabilities in terms of conditions to pass test and exams, the support of an assistant, adapted communication and the possibility to bring adapted material and equipment into the classroom. In addition, children can benefit from an adapted education, where the student education programme can receive the necessary adjustments to ensure it.<sup>27</sup>

Children who claim that their right to non-discrimination is violated can directly contact the Human Rights Ombudsman.

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<sup>23</sup> The right to non-discrimination requires reasonable accommodation in the sense that 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, [must be made] where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms' (Article 2 CRPD). As a result, the application of the right to non-discrimination 'does not mean identical treatment', it may require 'taking special measures in order to diminish or eliminate conditions that cause discrimination'.

<sup>24</sup> The ultimate purpose being for 'persons with disabilities to enjoy all the autonomy they can enjoy' (Article L. 114-2).

<sup>25</sup> According to a report, 70% of the bus fleet in Paris is accessible to persons with disabilities. See Michael Fembek, Thomas H. Butcher, Ingrid Heindorf, Caroline Wallner (2011), 'Zero Project Report 2012', International study on the implementation of the un convention on the rights of persons with disabilities, Essl Foundation, Austria, November 2011, p. 36.

<sup>26</sup> *Atlantico* newspaper, 'Disability: all the buildings will not be accessible by 2015', 12 September 2012, available at: <http://www.atlantico.fr/pepites/handicap-tous-etablisements-ne-seront-pas-accessibles-en-2015-480323.html> (last accessed 7 March 2013); and Report on the implementation of accessibility rules for persons with disabilities in the building sector, 2011, available at <http://www.igas.gouv.fr/spip.php?article282> (last accessed 7 March 2013).

<sup>27</sup> Articles 112-1 and 112-2 of the Code of Education.

### 3.1.3. Evolving capacities of the child<sup>28</sup> (Art. 5 CRC and Art. 3 CRPD)

The CRC and CRPD require education and social services to take due account of the evolving capacities of the child. In particular, the design of the child's education and other living support should be individualised.

In France, the Commission on the Rights and Autonomy of Persons with Disabilities is in charge of assisting persons and children with disabilities towards their educational and professional goals. The Commission assesses the needs for financial support and determines which services or establishment is best to serve the child's needs (via an 'orientation decision'). To this end, when the evolution [of the child] justifies it, the legal representatives of the child or the establishment or service can ask for the revision of the orientation and counselling decision taken by the Commission on the Rights and Autonomy of persons with disabilities'.<sup>29</sup>

Each child should benefit from an adapted training/educational project, designed on the basis of an evaluation of his/her competences and needs, and including measures for implementing the training project. A multidisciplinary team is in charge of such evaluation (see below section 3.1.4). The periodicity of the evaluation should be adapted to the situation of the child, teenager or adult. During the evaluation process, the parents or legal representative of the child are invited to express their views. According to the results of the evaluation, each child is proposed a training/educational plan that comprises an individual education plan with the necessary adjustments favouring, when possible, inclusive education.<sup>30</sup>

### 3.1.4. The right to be heard/to participation (Art. 12 CRC; Arts. 7 and 30 CRPD)

As a general rule, **children have the right to express their views**. Article 371-1 of the Civil Code provides: 'Parents shall make a child a part of the judgments relating to him, according to his age and degree of maturity.' Similarly, Article 388-1 has been modified by Law n° 2007-293 reforming childhood protection<sup>31</sup> to provide that the child capable of discernment may, in all proceedings relating to him/her, without prejudice to the provisions as to his/her intervention or consent, be heard by the judge or the person appointed by the judge for that purpose when the interest of the child commands it. The child can also request to be heard. In this case, the judge must receive the request and can only deny it by a motivated decision. The child may be heard alone, with a counsel or a person of his/her choice, unless it is contrary to the welfare or best interests of the child, in which case the judge may appoint another person.

The judge must inform the child about his/her right to be heard to and to be assisted by a counsel.

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<sup>28</sup> The concept of evolving capacities of the child establishes that as children acquire enhanced competencies and experience, there is a reduced need for direction and a greater capacity for children to take responsibility for decisions affecting their lives. In light of the CRC, the concept of evolving capacities of the child entails that parents (or persons legally responsible) should have the right to provide, in a manner consistent with the evolving capacities of the child, appropriate guidance in the exercise by the child of his/her rights. See the report 'Study on Member States' Policies for Children with Disabilities' for more details on this concept.

<sup>29</sup> Article L. 241-6. – I of the Social Action and Families Codes.

<sup>30</sup> Article L112-2 of the Code of Education.

<sup>31</sup> Law n° 2007-293 (5 March 2007) that reforms childhood protection, *JORF* (Official Journal of the French Republic - *Journal Officiel de la République Française*) n°55, 6 March 2007, p. 4215.

**The parents tend to be given priority:** their views tend to be heard rather than those directly expressed by the children. This has been recognised and criticised by the persons interviewed within the framework of this project.<sup>32</sup>

The Commission on Rights and Autonomy of Disabled Persons and the public authorities that intervene in the establishment of the education programme have to hear the views of the child or, more commonly, of the parents or legal representative of the child.

More specifically, the Social Action and Families Code provides that the views of the child (his/her parents) must be taken into account regarding the award of financial assistance. The needs for assistance are set in a 'plan elaborated according to the needs, desires of the person with disabilities as they are expressed in the person's plan of life, formulated by the person with disabilities or the person's parents or legal representative when the person cannot express opinions' (Article L. 114-1-1).

Similarly, the parents of the child have to be consulted by the Commission on Rights and Autonomy of Disabled Persons (Article L. 241.7). The views of the child (her/his parents) must also be heard regarding her/his education project and 'the parents or representative of the disabled child or teenager formulate a choice for the educational establishment or a service that belongs to the category of establishments chosen by the Commission for on Rights and Autonomy of persons with disabilities' (Article L. 241.6 – I).

As an exception, the Social Action and Families Code provides that the child him/herself (and not the parents or legal representative) is to express his/her views 'as soon as [she/he] displays judgment' capacity (Article L. 146-8).<sup>33</sup>

The CRC Committee recommended that France 'ensure that the right to a hearing in all proceedings concerning a child is widely disseminated to parents, teachers, headmasters, public administration, the judiciary, children themselves and the society at large, with a view to increase opportunities for children's meaningful participation, including in the media.'<sup>34</sup>

### 3.1.5. Freedom from violence (Art. 19 CRC; Art. 16 CRPD)

French law **prohibits and sanctions physical and psychological violence against children**. Violence encompasses several offences (sexual and moral harassment, abuse of weakness, abandonment, and regular violence).

In addition, regarding domestic violence, Article 378-1 of the Civil Code provides: '[t]he father and mother who apart from any criminal sentence, either by maltreatment, or by usual and excessive consumption of alcoholic beverages or drug addiction, or by a notorious misconduct or criminal activities' or by lack of care or want of guidance, obviously endanger the security, health or morality of the child may be totally deprived of parental

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<sup>32</sup> Interview with the French Council of Disabled People and the Human Rights Ombudsman.

<sup>33</sup> Article L. 146-8 provides: 'A multidisciplinary team shall evaluate the needs for compensation of the person with disabilities and the person's permanent disabilities on the basis of the person's life project (...) and proposes an individual compensation. The team hears on its own initiative or upon a demand by the parents of the child with disabilities (...) As soon as the child displays judgment, the child himself shall be heard by the multidisciplinary team.'

<sup>34</sup> Committee on the Rights of the Child (2009), 'Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4', Fifty-first session, 11 June 2009, p. 10.

authority'.

These provisions are described in more detail below under section [3.2.2](#) where the peculiarities of violence suffered by children with disabilities are addressed.

### **3.1.6. Right to family life (Art. 9 CRC; Art. 23(3) CRPD)**

**The right to family life is guaranteed under French law.** Article 10 of the 1946 Constitution<sup>35</sup> provides: '[t]he Nation guarantees the conditions necessary for the development of the individual and the family.'

Similarly, Article 371-3 of the Civil Code guarantees the right not to be separated from the family when stating that '[a] child may not, without the permission of the father and mother, leave the family home and he may be removed from it only in cases of necessity as determined by statutory provisions.'

The judge of the *tribunal de grande instance* is competent to settle issues related to families, in particular, in watching over the safeguarding of the welfare of children. The judge may order measures to ensure protecting the continuity and effectiveness of family ties between the child with each of his/her parents.<sup>36</sup>

Assistance and support is provided to families with children with disabilities by the Department Houses for Persons with Disabilities (Social Action and Families Code, Article L. 146-3)<sup>37</sup> and the Service of Social Aid to Childhood (Social Action and Families Code, Article L. 221-1).<sup>38</sup>

In addition, families can receive an allowance for the education of the child if the child does not live in an institution (Article L. 245-1).<sup>39</sup>

### **3.1.7. Right to assistance (Art. 23 CRC; Arts. 23(5), 26 and 28 CRPD)**

**The right to assistance is firmly established under the French legal framework.** Article 11 of the 1946 French Constitution provides that '[t]he Nation guarantees to all, among others to the child, to the mother (...) health protection, rest and leisure.'

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<sup>35</sup>The 1946 Constitution has legally binding force since the 1958 Constitution refers to it.

<sup>36</sup> Article 373-2-6 of the Civil Code.

<sup>37</sup> Article L. 146-3 provides: 'The department house for persons with disabilities welcomes, provides information to, accompanies and advises persons with disabilities and their families (...) The department house for persons with disabilities provides the person with disabilities and his family with the necessary help in the formulation of a life project (...) The department house accompanies persons with disabilities and their families after the disability has been diagnosed and during the evolution of the disability.'

<sup>38</sup> Article L. 221-1 provides: 'The Service of Social Aid to childhood (*service de l'aide sociale à l'enfance*) is a departmental service that fulfills the following missions: 1° It provides a material, educative and psychological support to the children and their families (...) 2° In the locations where some risks of social maladjustment have been revealed, it organises collective actions that aim at preventing the marginalisation and at easing the inclusion and social promotion of the youth and their families.' Law n° 2007-293 (5 March 2007) that reforms childhood protection modified Article L. 221-1.

<sup>39</sup> Article L. 245-1 provides: 'Any person with disabilities (...) is entitled to receive compensation (...) III. The persons who receive the compensation can cumulate it with (...) 1° The allocation for the education of the child (...).' This allocation has risen 42,8% between 2005 and 2012 (French Government (2012), '*Rapport du Gouvernement au Parlement sur la mise en oeuvre de la politique nationale en faveur des personnes handicapées*', February 2012, p. 164).



Regarding financial assistance, the child allowance is to be aligned with the allocation for adults (Law n° 2005-102 - 11 February 2005 - on equal rights and opportunities, participation and citizenship for persons with disabilities, Article 13).<sup>40</sup> This financial assistance can be cumulated with the allowances received by the parents, provided that the child does not live in an institution (Social Security Code, Article L. 541-1).<sup>41</sup> The allowance received by the child is meant to cover the needs related to education, adjustment of home in order to be autonomous (Social Action and Families Code, Article L. 114-1-1).<sup>42</sup>

According to the literature, health care protection measures are considered significant, though not meeting all demands.<sup>43</sup> Some reports underline that financial assistance for persons with disabilities is not complete and has some gaps (for example, additional costs linked to transport are insufficiently taken into account).<sup>44</sup>

Waiting lists to receive financial assistance or placement are in place. An estimated 15,000 to 17,000 children have been on waiting lists to receive funding for their individual educational plans. In addition, a certain number of families with children with disabilities turn to neighbouring countries for a suitable place in an institution able to meet the needs of the child (e.g., around 2,000 French children are placed in Belgium).<sup>45</sup>

To resolve those issues, additional funding has been directed to offer more places and assistance. Between 2005 and 2007, 21,900 places have been created in institutions. More

<sup>40</sup> Article 13 provides: 'Within the three years after entry into force of this law, the awarding of compensation shall be extended to children with disabilities. Within five years, the provisions of this law that distinguishes persons with disabilities according to age when it comes to compensation shall be repealed.'

<sup>41</sup> Article L. 541-1 provides: 'Any person who is in charge of a child with disabilities is entitled to receive an allowance for the education of the child (*allocation d'éducation de l'enfant handicapé*) with disabilities, if the permanent incapacity of the child reaches a certain threshold. Additional allowance is provided for the child who suffers from a particularly severe disability that requires particularly costly spending or regularly requires support from a third person. (...) The allowance for the education of the child is not allocated if the child is in an institution on a full time basis and the State covers the costs. In this case, the allowance is still provided for periods of holidays or if the State does not cover any more the costs linked to the institution.'

<sup>42</sup> Article L. 114-1-1 provides: 'The person with disabilities is entitled to receive compensation for the consequences of his disabilities irrespective of the origins or nature of the disabilities, his age or mode of life. This compensation aims at answering the needs of the person with disabilities, be it childhood, education, (...) adjustments of the home or of the work place that are necessary in order to fully enjoy his citizenship and his capacity to be autonomous, the development of adjustment of service (...) These specific needs take into account the necessary welcoming and the accompanying of the person with disabilities who cannot express their needs. The needs for compensation are set in a plan elaborated according to the needs, desires of the person with disabilities as they are expressed in the person's plan of life, formulated by the person with disabilities or the person's parents or legal representative when the person cannot express opinions.'

<sup>43</sup> Camille Latimier et Jan Siska (2011), 'Children's rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 24.

<sup>44</sup> See for example Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, p.35 and pp.146-156 where the report reproduces the position of the associations of persons with disabilities. See also French Government (2012), '*Rapport du Gouvernement au Parlement sur la mise en oeuvre de la politique nationale en faveur des personnes handicapées*', February 2012, p. 186. See also Association des Paralysés de France (APF) (2012), '*Réflexions de l'APF, Contrôle de l'application de la loi n°2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées. Table ronde avec les associations représentatives des personnes handicapées et de leur famille*', 13 March 2012, p. 2.

<sup>45</sup> Finances General Inspection and Social Affairs General Inspection Report on the offer and needs and modality of financing for establishments and services for persons with disabilities (*Etablissements et services pour personnes handicapées offre et besoins, modalités de financement*), available at: [http://www.igas.gouv.fr/IMG/pdf/Rapport\\_ESMS\\_IGAS.pdf](http://www.igas.gouv.fr/IMG/pdf/Rapport_ESMS_IGAS.pdf) (last accessed on 7 March 2013).

particularly, 750 places for autistic children and teenagers have been created.<sup>46</sup> In 2009, 37,300 pupils with disabilities have been helped by 11,585 education specialised assistants. All in all, 24,600 job positions are dedicated to direct human support.<sup>47</sup>

### 3.1.8. The right to inclusive education (Art. 28 CRC; Art. 24 CRPD)

**The State is responsible for providing education to children.** Education for children with disabilities follows the following principles:

- The State provides the financial and human resources for the education of children with disabilities in mainstream education;
- Children with disabilities or illnesses should be registered in a school close to their home;
- If the child's needs require an adapted school setting and support, the child can attend a school where the support and education is adapted;
- A multidisciplinary team will assess the child with disability's needs, competences and measures taken, as well as adjustments needed to ensure the child's educational project, preferably in mainstream education;
- Children with disabilities in mainstream education can benefit from necessary adjustments, such as accommodation of the conditions for passing examinations or tests; adapted materials, etc.<sup>48</sup>

The Social Action and Families Code, in Article L. 241 -1 to Article L. 242 – 13, regulates the placement of children with disabilities in medico-social services or institutions. It provides that the assistance to children with disabilities should occur as early as possible and that the care for children with disabilities in such services or institutions is guaranteed by the State.

Education of children with disabilities is addressed in more detail below under section [3.2.4](#).

## 3.2. Specific issues faced by children with disabilities

### 3.2.1. Gender vulnerability

There are **no specific provisions** in French law regarding **gender discrimination and children with disabilities**. The general provisions prohibiting gender discrimination apply (Criminal Code, Articles 225-1<sup>49</sup> and 225-2).

The Criminal Code **prohibits sexual harassment** (Article 222-33). The criminal sanction is more stringent when children or children with disabilities suffer sexual harassment. Article 222-33 imposes three years of imprisonment and a fine of EUR 45,000 when such

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<sup>46</sup> *Secrétariat d'Etat chargé de la Solidarité (2009), 'Rapport du Gouvernement au Parlement relatif au bilan et aux orientations de la politique du handicap'*, February 2009, p. 18.

<sup>47</sup> *Ibid.*, p. 72.

<sup>48</sup> Articles 112-1 to 112-5 of the Education Code.

<sup>49</sup> Article 225-1 states: 'Any distinction between private persons based upon (...) their sex or their disabilities constitutes a discrimination. Any distinction between legal persons based upon (...) the sex or the disabilities of their members or some members of the legal person constitutes a discrimination.'

acts are committed: 1° By a person who abuses the authority conferred by his functions; 2° On a person under fifteen; 3° On a person whose particular vulnerability because of his age, sickness, disability, physical or psychological deficiency is visible or known.<sup>50</sup> In addition, the sterilisation of minors is forbidden in France (Public Health Code, Article L. 2123-2).<sup>51</sup>

The lack of a programme that addresses gender vulnerability of persons with disabilities has been criticised in the Concluding Observations of the Committee on the Rights of the Child in 2009.<sup>52</sup>

### 3.2.2. Violence

**No specific** provisions address the situation of **children with disabilities as victims of violence**. Instead, there are provisions that address violence suffered by children in general and vulnerable persons more particularly (a category that encompasses persons with disabilities) in the Criminal Code, on the one hand, and in the Social Action and Families Code, on the other hand.

The Social Actions and Families Code organises the State's intervention when children are in danger. The Service of Social Assistance to Children (*service de l'aide sociale à l'enfance*) is responsible for the care of children who face threats to their health, security, morality or development (Social Action and Families Code, Article L. 221-1).<sup>53</sup> The Service provides support to the family and the child who is at risk and puts into operation the actions aimed at protecting children or preventing danger.

The Criminal Code sanctions physical and psychological violence (Article 222-14-3).<sup>54</sup> It punishes a number of **acts of violence against children and vulnerable persons**, in particular, physical and psychological violence, abuse of vulnerable people (Article 223-15-

<sup>50</sup> Article 222-33 states: 'I. Sexual harassment means to repeatedly impose on someone comments or actions that have a sexual connotation (...) II. Using pressure in order (...) to obtain a sexual act constitutes sexual harassment (...) III. The facts reported above are punished (*two years of imprisonment and a fine of 30 000 euros*) These sanctions (...) three years of imprisonment and a fine of 45 000 euros are imposed when they are committed: 1° By a person who abuses of the authority conferred by his functions; 2° On a person under fifteen; 3° On a person whose particular vulnerability because of his age, sickness, disability, physical or psychological deficiency is visible or known (...).'

<sup>51</sup> Article L. 2123-2 provides: 'The tying of tubes or deference channels with a contraceptive purpose cannot be practiced on minors (...).'

<sup>52</sup> Committee on the Rights of the Child (2009), 'Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4', Fifty-first session, 11 June 2009, p. 18.

<sup>53</sup> Article L. 221-1 provides: The Service of Social Aid to childhood (*service de l'aide sociale à l'enfance*) is a departmental service that fulfills the following missions: 1° It provides a material, educative and psychological support to the children and their families (...) 2° In the locations where some risks of social maladjustment have been revealed, it organizes collective actions that aim at preventing the marginalization and at easing the inclusion and social promotion of the youth and their families.' (...) 3° It urgently puts into operation actions that protect the children, referred to in the first indent of this Article; (...) 5° It puts into operation actions that aim to prevent the situations that could endanger the children and (...) organizes the hearing, collection and transmission of information concerning the children whose health, security, morality are at risk or could be threatened or whose education or development are compromised or could be compromised, and contributes to their protection; (...) The Service controls the private or public persons who have received the child in order to supervise the moral and material conditions of the children's reception.' Law n° 2007-293 (5 March 2007) that reforms childhood protection modified Article L. 221-1.

<sup>54</sup> Article 222-14-3 provides: 'The cases of violence foreseen in this section are punished irrespective of their nature, including when the violence is psychological.'

2),<sup>55</sup> abandonment (Article 223-3),<sup>56</sup> sexual harassment (Article 222-33),<sup>57</sup> moral harassment (Article 222-33-2),<sup>58</sup> and regular violence (Article 222-14)<sup>59</sup>. However, the Criminal Code does not include a specific prohibition of corporal punishment.<sup>60</sup>

Article 221-4 sets as **aggravating circumstance** violence against children under 15 years of age and a person vulnerable as a result of his/her age, illness or physical or intellectual deficiency.

According to the literature, violence against children with disabilities is a concern in France. A survey conducted in 2008 reports that 24% of the children surveyed said they experienced abuse during childhood.<sup>61</sup> Abuse in residential care is reported as being particularly critical. According to a study conducted in 2002, '38% of abuse reported in residential institutions concerns children with intellectual disabilities'.<sup>62</sup>

A considerable proportion of this abuse is sexual in nature (70 per cent) and '60 per cent of the alleged perpetrators of abuse are co-residents'.<sup>63</sup> Verbal abuse is also reported as 'too common' and 'often tolerated' while 'psychological abuse is often not recognised at all'.<sup>64</sup> The reports point out the increase in the number of abuses reported, but this might not necessarily mean a worsening of the situation.<sup>65</sup>

Violence from public officers (and more particularly, law enforcement officers) remains an issue in France.<sup>66</sup>

**Violence at school** is also of **particular concern**. According to data available in 2009, 'almost two fifths of children with intellectual disabilities suffer discrimination at school. 89 per cent of young people with intellectual disabilities say they have suffered insults and

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<sup>55</sup> Article 223-15-2 provides: 'The abuse of weakness or ignorance of a child or of a person who is vulnerable because of his age, sickness, physical or mental disability, when this disability is visible or known to the abusive person, that made the child or person to perform an act or to refrain from performing an act that harm the child, that person is punishable (*three years of imprisonment and fine of 375 000 euros*) (...).'

<sup>56</sup> Article 223-3 provides: 'Abandonment of a person who is not able to protect himself because of his age or physical condition or psychological condition is punished (*5 years of imprisonment and fine of 75 000 euros*).'

<sup>57</sup> See definition in footnote 52

<sup>58</sup> Article 222-33-2 provides: 'Moral harassment means to harass someone with repeated acts that aim at or have as a consequence a damage (...) the physical or mental health of the person (*who suffers the harassment*) (...) It is punishable by two years of imprisonment and a fine of 30 000 euros.'

<sup>59</sup> Article 222-14 provides: 'Regular violence against a child under 15 or on a person whose particular vulnerability because of age, sickness, disability, physical or psychological deficiency is visible or known by the person who commits the act of violence are punishable: 1° Of 30 years of imprisonment when the person died; 2° Of 20 years when the violence lead to a mutilation or permanent damage.'

<sup>60</sup> This was already underlined in Committee on the Rights of the Child (2009), 'Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4', Fifty-first session, 11 June 2009, pp. 13-14.

<sup>61</sup> E. Guyavarch, '*Une estimation du 'chiffre noir' de l'enfance en danger par le biais des enquêtes de victimation*', *Observatoire National de l'Enfance en Danger (ONED)*, 2008, reported in: Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 10.

<sup>62</sup> '*Maltraitance envers les personnes handicapées : briser la loi du silence*' (*tome 2, auditions*), in *Rapport de la commission d'enquête sur la maltraitance envers les personnes handicapées accueillies en établissements et services sociaux et médicosociaux et les moyens de la prévenir*, 2002, reported in : Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 11.

<sup>63</sup> Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 11.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Committee on the Rights of the Child (2009), pp. 12-13.

teasing. 44 per cent have been marginalised. 29 per cent have been treated unfairly, and five per cent have been refused the enjoyment of a right'.<sup>67</sup> According to stakeholders, it is the duty of adults to ensure that children with disabilities do not suffer violence. To this end, there is a need to train professionals so as to how to responds to violence against children with disabilities. If adults know how to handle children with disabilities, they will better be able to support children and build a healthy relationship with them.<sup>68</sup>

The literature also reports that children who suffer violence **receive poor support**. According to a survey, only 2 per cent of child victims of violence received support.<sup>69</sup> More particularly, the literature expresses concern that some professionals do not take seriously enough the testimony of children.<sup>70</sup>

In addition, **cooperation among professionals is reported as unsatisfactory**.<sup>71</sup>

### 3.2.3. Children as vulnerable suspects

The French legal framework contains specific provisions on children as vulnerable suspects and another set of provisions that apply to persons with disabilities.

**Minority and disabilities are mitigation factors or factors that void criminal responsibility.** Article 122-1 of the Criminal Code provides that persons who suffered psychological troubles hampering the person's capacity to display judgment at the moment of the acts are not responsible. However, when the psychological troubles did not abolish the person's capacity to display judgment but only damaged or hindered the control of the person's act, the person remains punishable. Courts will nevertheless take into account this circumstance when deciding on the sanction.

Regarding **children**, Article 122-8 of the Criminal Code provides that minors who have the capacity to display judgment are criminally responsible. Special jurisdictions are competent to deal with child offenders: tribunals for children (*tribunaux pour enfants*, Article 7 Ordinance – *Ordonnance* - n° 45-174 of 2 February 1945 on child delinquents of the Ordinance, 'the Ordinance on child offenders').

The Ordinance on child offenders contains provisions that apply to children as vulnerable suspects.<sup>72</sup> In principle, when a minor (i.e. under 18 years of age) is taken into police custody, his/her parents or legal representative must be warned, unless this information could damage the investigations (Article 4 – II of the Ordinance). In addition, the minor placed under police custody must be informed about his/her right to meet a lawyer and be

<sup>67</sup> Camille Latimier et Jan Siska (2011), 'Children's rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 29, the authors refer to the data available in French Report to the Committees on the Rights of the Child (2009), 'Third and Fourth Periodic Reports', CRC/C/FRA/4, 21 February 2008.

<sup>68</sup> Stakeholder interview with the INSHEA.

<sup>69</sup> Camille Latimier et Jan Siska (2011), 'Children's rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 10.

<sup>70</sup> Ibid., p. 11. See also Florence Grandvalet (2011), 'Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with disabilities, National Report of France', February 2011, under Part II, 'abuse'.

<sup>71</sup> Camille Latimier et Jan Siska (2011), 'Children's rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 11.

<sup>72</sup> The latest modification relevant for the purposes of this report is Law n° 2011-392 (14 April 2011) on police custody, *JORF* (Official Journal of the French Republic - *Journal Officiel de la République Française*) n°0089 of 15 April 2011, p. 6610.

assisted by a lawyer (Article 4 – II and – IV of the Ordinance). A doctor must examine minors under 16 years of age who are taken into police custody within three hours after the minor has been apprehended (Article 4 – III of the Ordinance). The interrogation of a minor is video-recorded (Article 4 – VI of the Ordinance).

A child **under 13** cannot be brought to police custody (Article 4 - I of the Ordinance). As an exception, the child between 10 and 13 years can, according to the necessities of the investigation, remain at the disposal of a policy officer if a number of conditions are met. First, there must be concordant and severe indices that the child committed or attempted to commit an offence sanctioned by at least 7 years of imprisonment. Second, a judge of the State Counsel's Office (*magistrat du ministère public*) or an Examining Magistrate (*juge d'instruction*) or a magistrate from an institution specialised in childhood protection must have given his/her prior consent. Third, the length of the remaining time at the disposal of a policy officer is set by one of the afore-mentioned magistrates and cannot exceed 10 hours. This length can be prolonged once up to 10 hours. The length must be absolutely limited to the time necessary to present the minor before the judge, to take the statement of the minor, or to transfer the child to the competent body. Minors **between 13 and 15** can be brought to police custody for 24 hours. This length can be renewed once only if the suspected offence is sanctioned as a minimum by 5 years of imprisonment (Article 4 – V of the Ordinance). Minors **between 16 and 18** can be taken into custody for 24 hours. This length can be renewed once if the minor has been presented to the Public Prosecutor (*Procureur de la République*) and if the Public Prosecutor authorises the renewal in writing and motivates it (Criminal procedure Code, Article 63).

As for practice, in 2009 the UN Committee on the Rights of the Child reports the 'general negative attitude of the police towards children, in particular adolescents'.<sup>73</sup> The Committee recommended that 'the State party take measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within the society, including in the media and in school, and to promote positive and constructive attitude of the police towards children and adolescents'.<sup>74</sup>

Some provisions of the Criminal Procedure Code address the issue of **persons with disabilities**, but they are disseminated. Article 121 provides that several means should be made available to a hearing impaired person: any technical material that enables communication with a hearing impaired person or a sign language interpreter will be called to assist the judge if the person who is interrogated is hearing impaired. Alternatively, the judge can communicate with the hearing impaired person in writing if the hearing impaired person can read and write. Article 63-1 provides that a person who is hearing impaired must be similarly assisted when taken into police custody.

### 3.2.4. Inclusive education

#### *Legal framework*

The State has the duty to guarantee to the child (and the adult) 'equal access to education' (French Constitution of 1946, Article 13). The right to education is established under French

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<sup>73</sup> Committee on the Rights of the Child (2009), 'Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4', Fifty-first session, 11 June 2009, p. 8.

<sup>74</sup>Ibid.

law, in particular under the Education Code.<sup>75</sup> Moreover, regarding children and teenagers with disabilities, Law n° 2005-102 on equal rights and opportunities, participation and citizenship for persons with disabilities clearly prioritises the option of inclusive education.

**Inclusive education as a principle** is recognised in the Education Code, Article L. 112-1: 'The educational public service provides regular, professional or higher education for children or teenagers with disabilities. In matters falling within its competence, the State devotes sufficient financial and human resources necessary for education in mainstream education of children, teenagers or adults with disabilities.'

The same Article specifies that children with disabilities should be enrolled in a school that is the closest to his/her home and according to the child's choice. This obligation applies to kindergarten (children from the age of 3 years old) as well.<sup>76</sup>

In addition, Article L. 112-1 specifies that if the needs of the child or teenager with disabilities require that she/he receives educational services in a specific adapted environment, she/he can be enrolled in a specially adapted school, if referred by the school of the child's choice and if with the approval of his/her parents or tutor. The child keeps the right to possibly return to the school of her/his choice.

In the event where a mainstream school is not accessible to welcome the child with disabilities, it is for the competent territorial authority to bear the costs incurred by the transport to an institution farther from the child's home since it is responsible for guaranteeing accessibility to educational facilities.

Some additional provisions address the specific situation of **hearing impaired children**. Article 112-3 of the Education Code provides that 'In the education and schooling of hearing impaired young, the freedom to choose a bilingual communication (sign language and French language) is a right'.

Some adjustments are also foreseen regarding **alternative testing methods**. Article L. 112-4 of the Education Code provides for modifying the way of taking tests according to the child with disabilities: 'In order to guarantee the equality of opportunities among the candidates, adjustments on the conditions for the award of oral, written and practical exams shall be made when necessary because of disability. These adjustments may include in particular the granting of additional time, the presence of an assistant, adapted communication systems, the provision of adapted equipment or the utilisation by the candidate of his own adapted equipment.'

The Department House can allocate **specialised assistants** to help children with disabilities. The *Conseil d'Etat* (Supreme Administrative Court) specified that this assistance extends to extracurricular activities that are linked to education (*périscolaire*, school lunch in the case at hand).<sup>77</sup>

Regarding specialised assistants, a positive development has been recently adopted. Decree n° 2012-903 provides that specialised assistants must devote their time to one child (individualised approach). The Decree enables this support to be shared by children:

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<sup>75</sup> Education Code, Article L. 111-1 : 'Education is the first priority of national policy (...) The education public service is designed and organised according to pupils and students' needs (...) Right to education is guaranteed to all (...)'. See also Education Code, Article L. 111-2: 'Any child has the right to education (...)'

<sup>76</sup> CE 15 December 2010, n° 344729.

<sup>77</sup> CE 20 April 2011, n° 345434 and 345442.

when the circumstances will enable it, an assistant will work for and support several children. This is perceived as a positive development as it will lower the demand for specialised assistants who are currently not sufficient to meet demand. This scarcity hampers some children from having access to inclusive education. The new system introduces a flexibility that is expected to improve the overall situation of children with disabilities.<sup>78</sup>

Furthermore, **teachers** must receive **specific training** regarding children with disabilities during their initial training or in-service (Article L. 112-5 of the Education Code).

### ***Practical assessment***

**The State has been condemned** on several instances by administrative jurisdictions for not complying with its obligations regarding education. On 8 April 2009, the *Conseil d'Etat* (Supreme Administrative Court) ruled that the refusal to enrol a child with disabilities in a school entailed the State's liability.<sup>79</sup> More specifically, the *Conseil d'Etat* ruled that the difficulties inherent to disabilities must not deprive a child with disabilities of his/her right to education or hamper the obligation of result that binds the State (to ensure children's education).

The literature reports that significant efforts have been made to raise the number of school places available for children with disabilities and inclusive education. From a quantitative point of view, the proportion of children with disabilities in inclusive education kept increasing from 2003 to 2009<sup>80</sup> and to 2011.<sup>81</sup> Nevertheless, the literature also identifies a number of shortcomings.

For example, some **children with disabilities do not attend school** on a full time basis but on a part-time basis.<sup>82</sup> According to a report of July 2012, 20,000 children with disabilities do not attend school at all.<sup>83</sup>

A particular matter of concern is **vocational training** for children with intellectual disabilities, which is reported to be 'largely inadequate in quality, quantity and variety'.<sup>84</sup>

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<sup>78</sup> Stakeholder interview with the Human Rights Ombudsman.

<sup>79</sup> CE 8 avril 2009, M. et Mme L., n° 311434.

<sup>80</sup> *Secrétariat d'Etat chargé de la Solidarité (2009), 'Rapport du Gouvernement au Parlement relatif au bilan et aux orientations de la politique du handicap'*, February 2009., p. 75. The table is reproduced under 4.4.

<sup>81</sup> Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), *'Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées'*, *Rapport d'information n° 635*, July 2012, p. 50. ; stakeholder interview with the INSHEA - it was pointed out that the numbers should be handled carefully: the scope of the definition of children with disabilities is so wide that it encompasses some aspects that were not taken into account before. As a proof of this issue, the number of children who are educated in institutions remains stable.

<sup>82</sup> Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 18.

<sup>83</sup> Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), *'Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées'*, *Rapport d'information n° 635*, July 2012, p. 9. According to data gathered in 2007 (Paul Blanc (Member of the French Senat) (2007), *'Rapport d'information sur l'application de la loi n°2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées'*, *Rapport n° 359*, July 2007, p. 59), 28 000 children with disabilities did not attend school in 2007.

<sup>84</sup> Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 19.



**Training of teachers** is commonly reported as being insufficient.<sup>85</sup> 'Although 86 per cent of primary teachers say that they are prepared to have children with intellectual disabilities, they are held back by the lack of information and training (87 per cent of general teachers and 27 per cent of specialist teachers have not received training on intellectual disabilities)'.<sup>86</sup> There is also a **scarcity of specialised assistants**.<sup>87</sup> Specialised assistants do not always receive sufficient training and their contracts are reported to be precarious.<sup>88</sup> As a result of this scarcity, 4,213 children were not enrolled in school (data from January 2010).<sup>89</sup>

**Transition from primary to secondary school** is reported as being particularly problematic for children with intellectual disabilities; 55 per cent of children with intellectual disabilities leave the school system between primary and secondary school compared with 17 per cent of non-disabled children.<sup>90</sup>

One explanation given for this disparity is that the French system is extremely normative and the different schooling levels (*maternelle/primaire/secondaire*) are compartmentalised. Consequently, children with disabilities tend to censor themselves and focus on what they cannot do rather than focusing on what they can do.<sup>91</sup> Stakeholders considered the curricula as too rigid and not leaving enough room or flexibility for adaptation to the special needs and rhythm of children with disabilities.<sup>92</sup>

Stakeholders also noted the need to bridge mainstream and special education. More specifically, the training of medico-social education professionals and mainstream education professionals needed to be harmonised.<sup>93</sup> One concrete suggestion was for these professionals to share some common training and to establish a network.<sup>94</sup>

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<sup>85</sup> Stakeholder interview with the INSHEA, with the French Council of Disabled People, and with the Human Rights Ombudsman.

<sup>86</sup> Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 20. In the same sense, see Paul Blanc (Member of the French Senat) (2007), '*Rapport d'information sur l'application de la loi n°2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport n° 359*, July 2007., p. 53. See also Association des Paralysés de France (APF) (2012), '*Réflexions de l'APF, Contrôle de l'application de la loi n°2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées. Table ronde avec les associations représentatives des personnes handicapées et de leur famille*', 13 March 2012, p. 5.

<sup>87</sup> Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 20. In the same sense, see Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, pp. 59-60.

<sup>88</sup> Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 11.

<sup>89</sup> *Ibid.*, p. 20. See also Barbara Walter (2008), '*Rapport du Conseil Français des associations pour les Droits des Enfants sur l'avancée et du respect des droits de l'enfant en France et par la France*' (COFRADE), December 2008, p. 11.

<sup>90</sup> Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 21. In the same sense, see Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, p. 9.

<sup>91</sup> Stakeholder interview with the French Council of Disabled People.

<sup>92</sup> Stakeholder interview with the French Council of Disabled People and with the Human Rights Ombudsman.

<sup>93</sup> Stakeholder interview with the INSHEA.

<sup>94</sup> Stakeholder interview with the INSHEA.

Hearing impaired children and teenagers require particular support.<sup>95</sup> A proposal has been submitted to designate 'reference' primary schools that would be organised and planned at the *département* level and 'reference' secondary schools that would be organised and planned at the regional level.<sup>96</sup>

Autistic children are identified as particularly vulnerable and under-assisted. This poor support would explain why autistic children are reported to move to Belgium.<sup>97</sup> Children with cognitive disabilities are also identified as particularly vulnerable as these disabilities would not be properly identified and recognised (and consequently the enjoyment of rights is not guaranteed).<sup>98</sup>

Lastly, it has been reported that the situation of (inclusive) education varies from one *département* to another one.<sup>99</sup> In addition, a report of July 2012 underlines that medico-social services and education services do not sufficiently cooperate.<sup>100</sup>

### 3.2.5. Other particular issues faced by children with disabilities in France

The literature reports that some parents are 'openly critical of **the marginalisation** of certain children (in residential care) but others keep quiet for fear of losing their child's place at the institution'.<sup>101</sup> This reflects the impact of the lack of resources and sufficient schools with places for children with disabilities as well as special schools.

Another issue addressed in the literature is the gap between the number of families wishing to adopt children with special needs and the **number of children with special needs put forward for adoption**: '29 per cent of children in the care of the State are not put forward for adoption due to health problems or disabilities'.<sup>102</sup> A programme has been established for children with disabilities but no evaluation of this programme is available.

In addition, **access to leisure and cultural activities** for children with disabilities is reported as insufficient.<sup>103</sup>

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<sup>95</sup> Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, pp. 64-65.

<sup>96</sup> Paul Blanc (Member of the French Senat) (2007), '*Rapport d'information sur l'application de la loi n°2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport n° 359*, July 2007, p. 54.

<sup>97</sup> See also: Barbara Walter (2008), '*Rapport du Conseil Français des associations pour les Droits des Enfants sur l'avancée et du respect des droits de l'enfant en France et par la France*' (COFRADE), December 2008, p. 12.

<sup>98</sup> Stakeholder interview with the Human Rights Ombudsman.

<sup>99</sup> Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, pp. 25-26. In the same sense see: Committee on the Rights of the Child (2009), 'Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4', Fifty-first session, 11 June 2009, p. 5.

<sup>100</sup> Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, p. 9.

<sup>101</sup> Camille Latimier et Jan Siska (2011), 'Children's rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 11.

<sup>102</sup> *Ibid.*, p. 16.

<sup>103</sup> Committee on the Rights of the Child (2009), 'Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4', Fifty-first session, 11 June 2009, p. 16.

## 4. ASSESSMENT OF THE PRACTICAL IMPLEMENTATION OF THE RIGHTS AND LEGAL PRINCIPLES

### KEY FINDINGS

- The legal framework is satisfactory: legal provisions cover the rights of children with disabilities. Issues mostly relate to the practical implementation of the laws in place: the human and financial resources available remain insufficient for fulfilling the objectives pursued by the legal provisions.
- Reporting and enforcement are problematic. On the one hand, reliable data is not available. On the other hand, children and their parents are not sufficiently supported to lodge complaints.
- Administrative procedures are long and difficult. Consequently, some parents get discouraged and give up their rights as well as the rights of their children with disabilities. Stigmatisation also remains problematic.
- Children with disabilities and their parents can directly lodge complaints before the Human Rights Ombudsman and efforts are made to raise awareness of this possibility.
- The literature recommends: devoting more financial and human resources, improving access to public establishments (including schools), harmonising the practices of the various Department Houses for Persons with Disabilities, systematically involving children in the decisions taken and directly hearing their voices.

### 4.1. Enforcement and reporting mechanisms

Decisions adopted by the Commission for the rights and autonomy of persons with disabilities (*Commission des droits et de l'autonomie des personnes handicapées*) **can be contested** by a person or organism before the social security's technical litigation jurisdiction (*jurisdiction du contentieux technique de la sécurité sociale*). The procedure does not suspend the implementation of the decision, except when the decision refers to the designation of establishments or services that answer the needs of a disabled child or teenager and when the procedure is initiated by the child, his/her parents or legal representatives (Social action and families Code, Article L. 241 – 9).

The length of the procedure has been assessed during internal discussions within the French Senate. The concern was that the length could be extremely problematic for the child. Indeed, too long a delay could result in a child losing a school year. The proposed amendment requiring that the social security's technical litigation jurisdiction should adopt a decision within a month was rejected because such a requirement would be hard to respect.<sup>104</sup>

<sup>104</sup> Paul Jeanneteau (Member of the French National Assembly) (2011), '*Rapport tendant à améliorer le fonctionnement des maisons départementales des personnes handicapées et portant diverses dispositions relatives à la politique du handicap*', *Rapport n° 3146*, February 2011, pp. 50-51.

The **Human Rights Ombudsman** (*Défenseur des droits*) is an independent constitutional authority responsible for the respect of rights and freedoms by State administrations, local authorities, public establishments, or any organism vested with a public service mission. Any person whose rights have been breached by the above-mentioned public services can refer the issue to the Ombudsman who may also consider any case of its own motion. Within this institution, several delegates and experts support the Human Rights Ombudsman in his work.<sup>105</sup> Children and their parents can directly lodge complaints before the Ombudsman through the Internet website of the Ombudsman or by calling the services of Ombudsman.<sup>106</sup>

In order to facilitate the enjoyment of rights of persons with disabilities, a person linked to the Human Rights Ombudsman is designated within each *département* to be responsible for persons with disabilities' issues. This person receives and orientates individual complaints of persons with disabilities or of their representatives with regards to actions by competent services and authorities. This person also channels complaints to the Human Rights Ombudsman (*défenseur des droits*) (Social Action and Families Code, Article L. 146-13).

In practice, though information on how to lodge complaints is transmitted to children with disabilities and their families, no support is available to assist them in such a procedure.

## 4.2. Gaps, problems and issues in the implementation

**Not enough human and material resources** are allocated for implementing the programmes and measures foreseen by the legal provisions.<sup>107</sup> This shortage of resources is commonly highlighted, and is particularly crucial for the Department Houses for Persons with Disabilities.<sup>108</sup>

Furthermore, **cultural obstacle/stigmatisation** remains a barrier to the full enjoyment of the rights provided for children with disabilities. For example, the belief that children with disabilities do not have the capacities to go to secondary school remains widespread:<sup>109</sup>

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<sup>105</sup> See the website of the Human Rights Ombudsman for the organigram of the institution, available at: <<http://www.defenseurdesdroits.fr/sinformer-sur-le-defenseur-des-droits/organisation-generale-des-services/organigramme-des-services-du-defenseur-des-droits>> (last accessed 26 November 2012).

<sup>106</sup> Website of the Ombudsman: <<http://www.defenseurdesdroits.fr/>>. The Human Rights Ombudsman is the centralised authority that receives complaints. Before the creation of this institution, there existed several entities that received complaints. As a result, the same complaint was sometimes sent to several entities. Indeed, some complaints did call for such change to occur. This was the case, for example, for families who lodged complaints regarding children with disabilities who were refused access to education. On this last point, see: Human Rights Ombudsman (2012), 'Report – 2011', p. 19 and p. 33, available at: [http://www.defenseurdesdroits.fr/sites/default/files/upload/ddd\\_raq\\_2011.pdf](http://www.defenseurdesdroits.fr/sites/default/files/upload/ddd_raq_2011.pdf) (last accessed 7 March 2013).

<sup>107</sup> Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, pp. 42-44.; Committee on the Rights of the Child (2009), 'Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4', Fifty-first session, 11 June 2009, p. 5.; See also Barbara Walter (2008), '*Rapport du Conseil Français des associations pour les Droits des Enfants sur l'avancée et du respect des droits de l'enfant en France et par la France*' (COGRADE), December 2008, p. 10; and Florence Grandvalet (2011), 'Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with disabilities, National Report of France', February 2011, under 'Conclusions and recommendations.'; Also stakeholder interview with the French Council of Disabled People and the Human Rights Ombudsman.

<sup>108</sup> Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, p. 28.

<sup>109</sup> *Ibid.*, pp. 57-58.

such prejudices along with self-censorship are believed to hamper children with disabilities from continuing their studies.<sup>110</sup> Such stigmatisation is underlined in several reports.<sup>111</sup>

Moreover, parents of children with disabilities face long and demanding administrative procedures (for example, in terms of certificates). Some parents face such strong difficulties that they become discouraged and give up the assistance they are entitled to and which could support their child with disability to fully enjoy his/her rights.<sup>112</sup>

### 4.3. Best practices

**Awareness raising** actions on the situation of persons with disabilities aimed at easing their inclusion in society is required by law. The State collaborates with relevant associations and organisms in order to implement the obligation under Article 8 CRPD to provide regular information **to the public** on the different disabilities, the difficulties and the capacities of persons with disabilities (Social Action and Families Code, Article R. 114-2). Furthermore, the national observatory on training, research and innovation on disabilities (established in the Social Action and Families Code, Article L. 114-3-1) reports on training programs, research, innovation and prevention of disabilities. The observatory also formulates proposals for improvements in these fields (Social Action and Families Code, Article D. 114-4).

The **collaboration of persons with disabilities** (and associations that represent their interests) in the design and monitoring of policies and in decisions taken by institutions (for example, the Department Houses for Persons with Disabilities) is a regular practice welcomed by associations<sup>113</sup> as it enables persons with disabilities to be involved in decisions affecting them as required by Article 29 of the CRPD.

A number of culture and leisure activities supports are increasingly accessible to children with disabilities (museums, books, TV, movies), though the numbers are still considered insufficient.<sup>114</sup> Access to these extracurricular activities (*extra-scolaire*) could be eased if children could benefit from a specialised assistant in that respect.<sup>115</sup>

### 4.4. Data and monitoring mechanisms

Several monitoring and data mechanisms are put into place by law (Law n° 2005-102 on equal rights and opportunities, participation and citizenship for persons with disabilities modified the Social action and families Code).

<sup>110</sup> Ibid., p. 92. In the same sense, stakeholder interview with the Human Rights Ombudsman.

<sup>111</sup> Committee on the Rights of the Child (2009), 'Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4', Fifty-first session, 11 June 2009, p. 8. In the same sense, stakeholder interview with the INSHEA.

<sup>112</sup> Stakeholder interview with the French Council of Disabled People.

<sup>113</sup> Claire-Lise Champion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, p. 18.

<sup>114</sup> Government of France (2009), 'Written Replies by the Government of France to the list of Issues (Crc/C/Fra/Q/4) Prepared by the Committee on the Rights of the Child in connection with the consideration of the Third and Fourth Periodic Reports of France', Crc/C/Fra/4, 24 April 2009, pp. 57-69.

<sup>115</sup> On specialised assistant, see p. 32 of this report.

**The national solidarity fund for autonomy** (*la Caisse nationale de solidarité pour l'autonomie*) receives accounting data on allowances awarded to persons with disabilities (Social action and families Code, Article L. 247-1). **Department Houses for Persons with Disabilities** send data to the same Fund on their activities, the activities conducted by the multidisciplinary teams, and the Commission for the rights and autonomy of persons with disabilities (*Commission des droits et de l'autonomie des personnes handicapées*), and on the characteristics of persons with disabilities (Social action and families Code, Article L. 247-2).

The data collected and the comparative analysis performed by the ministry in charge of persons with disabilities and the **national solidarity fund for autonomy** (*la Caisse nationale de solidarité pour l'autonomie*) are transmitted to the departments and to the Department Houses for Persons with Disabilities (Social Action and Families Code, Article L. 247-7).

Despite this legislative framework, access to data is commonly identified as problematic.<sup>116</sup> For example, there is no statistical tool at national level for providing a full overview of children of the age to be at school. A proposal has been put forward to create such a tool.<sup>117</sup> Similarly, no such tool exists regarding accessibility to establishments open to the public and having public spaces (e.g., parks). Here again, a proposal has been put forward to create such a tool.<sup>118</sup>

The Human Rights Ombudsman expects to provide reliable data by the end of 2013, once common indicators and tools have been defined, concerning the numbers of complaints it receives regarding persons and children with disabilities.<sup>119</sup>

#### **Information on available data can be summarised as follows:**

- In 2011 the Human Rights Ombudsman received 1495 complaints related to children's rights. Approximately nine per cent of these complaints concerned issues related to disability.<sup>120</sup>
- In 2006, 2007 and 2008, 5 to 8 per cent of the complaints submitted to the (former) Children's Ombudsman concerned problems with regard to health or disability.<sup>121</sup>

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<sup>116</sup> Florence Grandvalet (2011), 'Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with disabilities, National Report of France', February 2011, Part I. See also Catherine Barral and Dominique Velche (2010), 'ANED country report on equality of educational and training opportunities for young disabled people', May 2010, p. 11. See also Michael Fembek, Thomas H. Butcher, Ingrid Heindorf, Caroline Wallner (2011), 'Zero Project Report 2012', International study on the implementation of the un convention on the rights of persons with disabilities, ESSL Foundation, Austria, November 2011, p. 68; Stakeholder interview with the French Council of Disabled People and with the Human Rights Ombudsman.

<sup>117</sup> Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, p. 9. In the same sense see French Government (2012), '*Rapport du Gouvernement au Parlement sur la mise en oeuvre de la politique nationale en faveur des personnes handicapées*', February 2012, p. 183.

<sup>118</sup> Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, p. 9 and p. 189.

<sup>119</sup> Stakeholder interview with the Human Rights Ombudsman.

<sup>120</sup> Human Rights Ombudsman (2012), 'Report – 2011', p. 97, available at: [http://www.defenseurdesdroits.fr/sites/default/files/upload/ddd\\_raq\\_2011.pdf](http://www.defenseurdesdroits.fr/sites/default/files/upload/ddd_raq_2011.pdf).

<sup>121</sup> Government of France (2009), 'Written Replies by the Government of France to the list of Issues (Crc/C/Fra/Q/4) Prepared by the Committee on the Rights of the Child in connection with the consideration of the Third and Fourth Periodic Reports of France', Crc/C/Fra/4, 24 April 2009, p. 62.

- For data on Disabled children in school - Year 2008-2009, see annex 3.
- For data on the evolution of the main modes of education of children and teenagers with disabilities, see annex 4.
- For data on the evolution of the number of children and teenagers accompanied by a specialised education assistant (*auxiliaire de vie scolaire*) between 2005 and 2011, see annex 5.
- For data on the type of disability of the persons who go to school, see annex 6.
- For data on the number of medico-social structures and places (January 1<sup>st</sup> 2009), see annex 7.
- For data on the evolution of the number of children in inclusive education since 2003, see annex 8.

#### 4.5. Recommendations given by the literature

The recommendations can be systematised as follows:

##### Sufficient human and material resources

- A common proposal is that France should provide sufficient human and material resources in order to concretely implement the rights of children with disabilities.<sup>122</sup>
- Compensation/allowances should be adjusted to the needs of persons with disabilities (additional costs linked to transport etc.).<sup>123</sup>
- Teachers' training should be reinforced.<sup>124</sup>
- The practices of Department Houses for Persons with Disabilities should be harmonised at the national level.<sup>125</sup>
- Furthermore, the cooperation between education services and medico-social services should be reinforced.<sup>126</sup>
- Awareness raising campaigns among the general population should be increased in order to ease the inclusion of children with disabilities in society.<sup>127</sup>

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<sup>122</sup> Florence Grandvalet (2011), 'Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with disabilities, National Report of France', February 2011, under 'Conclusions and recommendations'.

<sup>123</sup> Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, p.36.

<sup>124</sup> *Ibid.*, pp. 62-63.; Stakeholder interview with the INSHEA underlined that the training of professionals who work with children with disabilities is insufficient.

<sup>125</sup> Claire-Lise Campion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, p.26. Stakeholder interview with the INSHEA.

<sup>126</sup> *Ibid.*, pp. 63-64. Stakeholder interview with the INSHEA.

<sup>127</sup> Florence Grandvalet (2011), 'Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with disabilities, National Report of France', February 2011, under 'Conclusions and recommendations'; and Michael Fembek, Thomas H. Butcher, Ingrid Heindorf, Caroline Wallner (2011), p. 46.

## Inclusive Education

- The individual follow-up and support to children regarding their education plan should be strengthened in order to help them to succeed to reach secondary education.<sup>128</sup>
- Children are directly heard only as an exception. The presence of children (and their lawyers) should be systematised.<sup>129</sup>
- Hearing impaired children and teenagers require particular support. A proposal has been submitted: to designate 'reference' primary schools that would be organised and planned at the departmental level and 'reference' secondary schools that would be organised and planned at the regional level.<sup>130</sup> The UN Committee on the Rights of the Child recommended a coordinated approach in the whole country.

## Implementation of rights recognised under law

- Families should be better informed about their children's rights, as well as the treatments and services available.<sup>131</sup>
- A statistical tool at the national level that would provide a complete overview of children of the age to be at school, as well as an overview of accessibility to the public establishments and public spaces (e.g. parks), should be created.<sup>132</sup>
- The UN Committee on the Rights of the Child recommended that France should
  - 'Provide training and stability for professional staff working with children with disabilities, such as medical, paramedical and related personnel, teachers and social workers';
  - 'Develop a comprehensive national strategy with appropriate gender sensitivity for the inclusion of children with disabilities in the society'; and
  - 'Undertake awareness-raising campaigns on the rights and special needs of children with disabilities, which encourage their inclusion in society and prevent discrimination and institutionalisation.'<sup>133</sup>

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<sup>128</sup> Catherine Barral and Dominique Velche (2010), 'ANED country report on equality of educational and training opportunities for young disabled people', May 2010, p. 12.

<sup>129</sup> Stakeholder interview with the French Council of Disabled People.

<sup>130</sup> Ibid.

<sup>131</sup> Florence Grandvalet (2011), 'Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with disabilities, National Report of France', February 2011, under 'Conclusions and recommendations'.

<sup>132</sup> Claire-Lise Champion et Isabelle Debré (Members of the French Senat) (2012), '*Contrôle de l'application des lois sur l'application de la loi n° 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*', *Rapport d'information n° 635*, July 2012, p.9. In the same sense, stakeholder interview the INSHEA.

<sup>133</sup> Committee on the Rights of the Child (2009), 'Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: France, CRC/C/FRA/CO/4', Fifty-first session, 11 June 2009, p. 17.



## 5. CONCLUSIONS

The French legal framework recognises the rights of children with disabilities. However, the practical implementation of those rights is often problematic.

Similarly, the law also effectively provides for the principle of the best interests of the child; however, this principle is rarely put into action by authorities.

The right to non-discrimination on the grounds of disability is established via the sanctioning of discrimination in the Criminal Code. Necessary adjustments and appropriate measures are required in several areas such as education, access to transport and buildings. However, the requirement of reasonable accommodation is limited in scope to employment and training. While legislation imposes a duty to render transport and spaces open to the public accessible, in practice only 15 per cent of buildings open to the public are accessible to persons with disabilities.

French law does not include a general requirement to consider the evolving capacities of the child; however in some areas such as education and social welfare, the evolving capacities of the child are taken into consideration.

The right of the child to express his/her views and to be heard are recognised. But in practice the voice of the parents tends to be given priority over the views of the child.

Various forms of violence against children are sanctioned by law. However, corporal punishment is not explicitly prohibited and violence against children remains a great concern in France. A survey conducted in 2008 reported that 24 per cent of the children with disabilities surveyed experienced abuse during childhood.<sup>134</sup> Abuse in residential care is reported as being particularly critical. Verbal abuse is also reported as 'too common' and 'often tolerated' while 'psychological abuse is often not recognised at all'.<sup>135</sup> Violence at school is of particular concern: according to data available in 2009, almost two fifths of children with intellectual disabilities suffer discrimination at school. The literature also reports that children who suffer violence receive poor support.

The legal framework provides the right to assistance, including access to health care, family allowance, and financial and human assistance. However, the number of places available to receive children with disabilities remains too low; some families have placed their children with a disability in residential care in Belgium. In addition, waiting lists exist to access certain financial assistance.

Inclusive education as a principle is recognised in the Education Code and children with disabilities are entitled to benefit from several measures (support of a specialised assistant, additional time when passing exams, alternative testing methods ...). However, implementation problems remain due to insufficient resources, access to schools and accessibility. The transition from primary to secondary school is considered particularly problematic for children with intellectual disabilities. The school curriculum is often too

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<sup>134</sup> E. Guyavarch, 'Une estimation du 'chiffre noir ' de l'enfance en danger par le biais des enquêtes de victimation', *Observatoire National de l'Enfance en Danger (ONED)*, 2008, reported in Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 10.

<sup>135</sup> Camille Latimier et Jan Siska (2011), 'Childrens' rights for all implementation of the UN Convention on the Rights of the Child for children with intellectual disabilities', Brussels, Inclusion Europe, October 2011, p. 11.

rigid, not leaving enough room or flexibility for adaptation to the special needs and rhythm of children with disabilities. Furthermore, hearing impaired children, autistic children and children with cognitive disabilities are identified as requiring particular support and as under-assisted.

In sum, while the regulatory framework is sufficient for protecting the rights of children with disabilities, in practice the following obstacles to the full enjoyment of those rights are identified:

- 1) the necessary material and human resources are considered insufficient to fulfil the objectives set by law (this is particularly true for the training of teachers);
- 2) stigmatisation remains a serious problem and results in 'self-censorship', mainly in relation to the failure of most children with disabilities to transit from primary to secondary school;
- 3) though compliance mechanisms exist, children and their parents are not sufficiently supported in lodging complaints if their rights are violated.

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## ANNEX 1 – SUMMARY TABLE

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<b>Best interests of the child</b>	
<p><b>Law n° 2007-293 (5 March 2007) that reforms childhood protection introduced the following provision:</b></p> <p><b>Social action and families Code</b></p> <p><b>Article L112-4</b></p> <p>The interests of the child, his/her fundamental physical, intellectual, social and emotional needs and respect of the rights of the child must guide any decision that concerns the child.</p>	<p>Effective implementation.</p> <p>The principle of best interests of the child is recognised under French law. In addition, Article 3 of the CRC is directly applicable.</p>
<b>Non-discrimination</b>	
<p><b>Criminal Code</b></p> <p><b>Article 225-1</b></p> <p>Any distinction between natural persons based upon (...) their sex or their disabilities constitutes a discrimination.</p> <p>Any distinction between legal persons based upon (...) the sex or the disabilities of the members or some members of the legal person constitutes a discrimination.</p> <p><b>Article 225-2</b></p> <p>A discrimination (...) against a natural or legal person is punishable by three years of imprisonment and a fine of 45 000 euros when:</p> <p>1° A good or a service has not been provided;</p> <p>2° The normal conduct of any economic activity has been interfered with;</p> <p>3° Refusal to hire the person, to sanction a person, or to dismiss a person;</p> <p>4° The provision of a good or a service has been conditioned on (<i>the disabilities</i>);</p> <p>5° A job offer, traineeship or period of education has been conditioned on (<i>the disabilities</i>);</p>	<p>Incomplete implementation.</p> <p>The Criminal Code sanctions the discrimination on the grounds of disability. However, the requirement to reasonable accommodation is limited in scope to employment and trainings, despite the fact that the legislation requires necessary adjustments and appropriate measures in several areas such as education, access to transport and buildings, and spaces open to the public accessible.</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>When the discriminatory refusal foreseen under 1° is committed in a public place or in order to refuse access to this place, the sentence shall be 5 years of imprisonment and fine of 75 000 euros.</p> <p><b>Article 225-3</b>            Exceptions to Article 225-2:            2° Discriminations based upon (...) disability when the refusal to hire the person or the dismissal is based upon an incapacity that is medically certified (...).</p> <p><b>Social action and families Code</b>  <b>Article L. 114-1</b>            Any person with disabilities shall be entitled to benefit from the solidarity of the whole nation which guarantees to the person with disabilities access to fundamental rights recognised to all citizens and the full enjoyment of his/her citizenship.            The State is responsible for the equality of treatment of persons with disabilities on the whole territory and defines multiannual objectives of actions.</p> <p><b>Article L. 114-2</b>            The families, the State, local entities, public establishments, social security organisations, associations, public groups and public and private enterprises shall cooperate in order to implement the obligation provided in Article L. 114-1 (<i>solidarity and enjoyment of fundamental rights</i>) with the view, among others, to ensure persons with disabilities' enjoyment of all the autonomy.            For that purpose, the action developed shall aim at ensuring the access of the child, the teenager and the adult to all the institutions open to the whole population and his/her enjoyment of inclusive education, work and life. The action guarantees the assistance and support for families and relatives of the persons with disabilities.</p> <p><b>Article L. 114-4</b>            In order to ease the displacements of disabled persons, measures shall be adopted at the regulatory</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>level (<i>executive</i>) in order to adapt the public transport services or to progressively adapt the construction of vehicles that ensure public transport, and to ease the creation and the functioning of the services of specialised transport for persons with disabilities, or the use of individual vehicles and their parking. The adjustments of public spaces in cities shall be accessible to persons with disabilities.</p> <p><b>Public health Code</b>  <b>Article L. 2123-2</b>                      The tying of tubes or deference channels with a contraceptive purpose cannot be practiced on minors.</p>	
<i>Evolving capacities of the child</i>	
<p><b>Provisions introduced or modified by Law n° 2005-102 (11 February 2005) on equal rights and opportunities, participation and citizenship for persons with disabilities</b>  <b>Social action and families Code</b>  <b>Article L. 241-6. - I</b>                      When the evolution (<i>of the child or teenager</i>) justifies it, the legal representatives of the child or teenager or the establishment or service can ask for the revision of the curriculum and counselling decision taken by the Commission on the Rights and Autonomy of persons with disabilities. (...)</p> <p><b>Education code</b>  <b>Article L. 112-2</b>                      In order to ensure that the child benefits from an adapted training project, each child, teenager or adult shall be entitled to an evaluation of his/her competences, needs, and measures implemented for the purposes of a training project. The periodicity of the evaluation shall be adapted to the situation of the child, teenager or adult. This evaluation is performed by the multidisciplinary team referred to in Article L. 146-8 of the Social action and families Code (<i>see below under child participation</i>). The parents or the legal representatives are invited to express their views.</p>	<p>Effective implementation.</p>



Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>According to the results of the evaluation, each child, teenager or adult shall be proposed a training project that comprises an individual education project with the necessary adjustments that favour, when possible, inclusive education.</p>	
<b><i>Right to participate /right to be heard</i></b>	
<p><b>Civil Code</b>  <b>Article 371-1</b>            (...) Parents shall make a child a party to judgments relating to him/her, according to his/her age and degree of maturity.</p> <p><b>Law n° 2007-293 (5 March 2007) that reforms childhood protection modified the following provision:</b>  <b>Article 388-1</b>            In all proceedings relating to him/her, a minor capable of discernment may, without prejudice to the provisions as to his intervention or consent, be heard by the judge or the person appointed by the judge for that purpose when the interests of the child command it. This hearing for the child who so requests, is a right. Where a minor so requests, his/her hearing may be denied only by a judgment setting out specially the grounds on which it is based. She/he may be heard alone, with a counsel or a person of his choice. Where that choice does not appear to be consonant with the welfare of the child, the judge may appoint another person. The hearing of a minor does not confer on her/him the status of a party to the proceedings. The judge must make sure that the child knows about her/his right to be heard to and to be assisted by a counsel.</p> <p><b>Social action and families Code</b></p> <p><b>Article L. 114-1-1</b>            (...) The needs for compensation shall be established in a plan elaborated according to the needs and desires of a person with disabilities, as they are expressed in the person's plan of life, formulated by</p>	<p>Effective implementation.</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>the person with disabilities or the person's parents or legal representative when the person cannot express his/her opinions.</p> <p><b>Article L. 241-6. – I</b> When the parents or representative of the disabled child or teenager formulate a choice for the educational establishment or a service that belongs to the category of establishments chosen by the Commission for rights and autonomy of persons with disabilities, the Commission must mention this establishment in the list of proposed establishments(...).</p> <p><b>Article L. 241-7</b> The parents or representatives of the child or teenager with disabilities are consulted by the Commission for rights and autonomy of the persons with disabilities. They can be assisted by a person they choose, or be represented.</p> <p><b>Article L. 146-8</b> A multidisciplinary team evaluates the needs for compensation of the person with disabilities and the person's permanent disabilities on the basis of the person's life project (...) and proposes an individual compensation. The team acts on its own initiative or upon the request from the parents of the child with disabilities. (...) As soon as the child displays judgment, the child herself/himself is heard by the multidisciplinary team. (...)</p>	
<i>Right to be free from violence</i>	
<p><b>Civil Code</b> <b>Article 278-1</b> The father and mother who, apart from any criminal sentence, either by maltreatment, or by regular and excessive consumption of alcohol or drug addiction, or by a notorious misconduct or criminal activities or by lack of care or willingness of guidance, obviously endanger the security, health or morality of the child, may be withdrawn parental authority.</p>	<p>Incomplete implementation.</p> <p>In French law there is no specific provision on violence suffered by children with disabilities. But existing legislation sanctions</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p><b>Social action and families Code</b>  <b>Article L. 114-2</b>  The families, the State, local entities, public establishments, social security organisations, associations, public groups and public and private enterprises shall cooperate in order to implement the obligation provided in Article L. 114-1 (<i>solidarity and enjoyment of fundamental rights</i>) with the view, among others, to ensure persons with disabilities' enjoyment of all the autonomy.  For that purpose, the action developed shall aim at ensuring the access of the child, the teenager and the adult to all the institutions open to the whole population and his/her enjoyment of inclusive education, work and life. The action guarantees the assistance and support for families and relatives of the persons with disabilities.</p> <p><b>Law n° 2007-293 (5 March 2007) that reforms childhood protection modified the following provision:</b>  <b>Article L. 221-1</b>  The Service of Social Aid to childhood (<i>service de l'aide sociale à l'enfance</i>) is a departmental service that fulfils the following missions:  1° It provides a material, educative and psychological support to the children and their families (...) who are confronted with difficulties that could endanger the health, security, morality of children or severely compromise their education or physical, affective, intellectual or social development (...).  2° In the locations where some risks for social adaptation has been revealed, it organises collective actions that aim to prevent the marginalisation and at easing the inclusion and social promotion of youngsters and their families (...).  3° It urgently puts into operation some actions that protect the children referred to in the first indent of this Article; (...)  5° It puts into operation actions that aim at preventing the situations that could endanger the children and (...) organises the hearing, collection and transmission of information concerning the children whose health, security and morality are endangered or could be endangered or whose</p>	<p>violence against children and vulnerable persons (including persons with disabilities). Are punished (among others): physical and psychological violence, abuse of weakness, abandonment, sexual and moral harassment. However, corporal punishment is not explicitly prohibited.</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>education or development are compromised or could be compromised, and participates to their protection;</p> <p>(...) The Service shall control the private or public persons who have received the child in order to supervise the moral and material conditions of the children's development.</p> <p><b>Article L. 221-9</b> The control of the Service is performed by the General Inspection of Social Affairs (<i>inspection générale des affaires sociales</i>).</p> <p><b>Criminal Code</b> <b>Abuse of weakness or ignorance</b> <b>Article 223-15-2</b> The abuse of weakness or ignorance of weakness of a child or of a person who is vulnerable because of her/his age, sickness, physical or mental disability when this disability is visible or known by the abusive person that made the child or person to perform an act or to refrain from performing an act that harm the child or person shall be punishable (three years of imprisonment and fine of 375 000 euros). (...)</p> <p><b>Article 223-3</b> Abandonment of a person who is not able to protect himself because of his age or physical condition or psychological condition shall be punishable (5 years of imprisonment and fine of 75 000 euros).</p> <p><b>Article 222-33</b> I. Sexual harassment means to repeatedly impose someone certain comments or actions that have a sexual connotation (...). II. Using pressure in order (...) to obtain a sexual act constitutes sexual harassment (...). III. The facts reported above are punishable (two years of imprisonment and a fine of 30 000 euros) These sanctions (...) three years of imprisonment and a fine of 45 000 euros when they are</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>committed:</p> <p>1° By a person who abuses of the authority conferred by her/his functions;</p> <p>2° On a person under fifteen;</p> <p>3° On a person whose particular vulnerability because of her/his age, sickness, disability, physical or psychological deficiency is visible or known (...);</p> <p><b>Moral harassment</b></p> <p><b>Article 222-33-2</b> Moral harassment means to harass someone with repeated acts that aim at or have as a consequence a damage to (...) the physical or mental health of the person (<i>who suffers the harassment</i>) (...). It shall be punished by two years of imprisonment and a fine of 30 000 euros.</p> <p><b>Article 222-14</b> Regular violence on a child under 15 or on a person whose particular vulnerability resulting from his/her age, sickness, disability, physical or psychological deficiency is visible or known by the person who commits violence shall be punished:</p> <p>1° Of 30 years of imprisonment when the person died;</p> <p>2° Of 20 years when the violence lead to a mutilation or permanent damage; (...)</p> <p><b>Article 222-14-3</b> The acts of violence covered in this section shall be punished irrespective of their nature, including when the violence is psychological.</p>	
<b>Right to family life</b>	
<p><b>French Constitution of 1946</b> Article 10. The Nation guarantees the conditions necessary for the development of the individual and the family.</p>	Effective implementation.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p><b>Civil Code</b>  <b>Article 371-3</b>                      A child may not, without the permission of the father and mother, leave the family home and he may be removed from it only in cases of necessity as determined by a statute.</p> <p><b>Article 373-2-6</b>                      A judge of the <i>tribunal de grande instance</i> in charge of family causes shall settle issues brought before him in the framework of this Chapter in watching in particular over the safeguarding of the welfare of minor children.                      The judge may order measures that allow protecting continuity and effectiveness of the keeping of the bonds of the child with each of his parents. (...)</p> <p><b>Social action and families Code</b>  <b>Article L. 146-3</b>                      The departmental house of persons with disabilities welcomes, provides information to, accompanies and advises persons with disabilities and their families (...) The departmental house of persons with disabilities provides the person with disabilities and her/his family the necessary help in the formulation of life project (...) The departmental house accompanies persons with disabilities and their families after the announcement of the disabilities and during the evolution of the disabilities.</p> <p><b>Law n° 2007-293 (5 March 2007) that reforms childhood protection modified the following provision:</b>  <b>Article L. 221-1</b>                      The Service of Social Aid to childhood (<i>service de l'aide sociale à l'enfance</i>) is a departmental service that fulfils the following missions:                      1° It provides a material, educative and psychological support to the children and their families (...).                      2° In the locations where some risks of social maladjustment is revealed, it organises collective actions that aim at preventing the marginalisation and at easing the inclusion and social promotion of</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>youngsters and their families (...).</p> <p><b>Article L. 245-1</b>            I. Any person with disabilities (...) is entitled to receive compensation (...).            III. The persons who receive the compensation can cumulate it with (...).            1° The allocation for the education of the child (...).</p>	
<b>Right to assistance</b>	
<p><b>French Constitution of 1946</b>            Article 11. The Nation guarantees to all, among others to the child, to the mother (...) health protection, rest and leisure. Any human being who cannot work because of his age or because of physical or mental state has the right to receive from the Nation the decent means of existence.</p> <p><b>Law n° 2005-102 (11 February 2005) on equal rights and opportunities, participation and citizenship for persons with disabilities</b>  <b>Article 13</b>            Within the three years after entry into force of this law, the awarding of compensation shall be extended to children with disabilities. Within five year, the provisions of this law that distinguish persons with disabilities according to age when it comes to compensation shall be repealed.</p> <p><b>Social action and families Code</b>  <b>Article L. 114-1-1</b>            The person with disabilities is entitled to receive compensation for the consequences of her/his disabilities, irrespective of the origins or nature of the disabilities, her/his age or mode of life. This compensation aims at answering the needs of the person with disabilities, be it childhood, education, (...) adjustments of home or of the work place that are necessary in order to fully enjoy his citizenship and her/his capacity to be autonomous, the development of adjustment of service (...) These specific answers take into account the necessary welcoming and the accompanying of the</p>	<p>Effective implementation</p> <p>The right to assistance is provided in the legal framework, including access to health care, family allowance, financial and human support, in various areas (mostly education and at home)</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>person with disabilities who cannot express their needs. The needs for compensation are set in a plan elaborated according to the needs and desires of the person with disabilities as they are expressed in the person's plan of life, formulated by the person with disabilities or the person's parents or legal representative when the person cannot express opinions.</p> <p><b>Social security Code</b> <b>Article L. 541-1</b> Any person who is in charge of a child with disabilities is entitled to receive an allocation for the education of the child with disabilities (<i>allocation d' éducation de l' enfant handicapé</i>), if the permanent incapacity of the child reaches a certain threshold. Additional compensation shall be provided for the child who suffers from a particularly severe disability that requires particularly costly spending or regularly requires help from a third person. (...) The allocation for the education of the child shall not allocate if the child is in an institution on a full time basis and the State covers the costs. In this case, the allocation is still paid for periods of holidays or if the State does not cover any more the costs linked to the institution.</p>	
<i>Right to education (including inclusive education)</i>	
<p><b>French Constitution of 1946</b> Article 13. The Nation guarantees to the child and the adult equal access to education (...) The organisation of public education (...) is an obligation of the State.</p> <p><b>Education Code</b> <b>Article L. 111-1</b> Education is the first national priority (...) The education public service is designed and organised according to pupils and students' needs (...) Right to education is guaranteed to all (...).</p> <p><b>Article L. 111-2</b></p>	<p>Effective implementation</p> <p>The State has a duty to provide education to children. The legislation clearly set a preference for the education of children with disabilities in mainstream schools. Hence, it recognises inclusive education. In addition, in accordance with the Education</p>



Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Any child has the right to education (...).</p> <p><b>Education Code. Chapter 2. Specific provisions for children and teenagers with disabilities.</b></p> <p><b>Article L. 112-1</b></p> <p>The educational public service provides scholar, professional or superior education for children or teenagers with disabilities. In matters falling within its competence, the State devotes the sufficient financial and human means that are necessary for the inclusive education of children, teenagers or adults with disabilities.</p> <p>The child or teenager with disabilities shall be enrolled in the school that is the closest to her/his home and of her/his choice.</p> <p>If the needs of the child or teenager with disabilities require that he receives educational services in a specific environment, he can be enrolled in another school by the competent public authority, upon a proposal of the school of his choice and with the approval of his parents or tutor. This enrolment does not exclude that the child or teenager might return to the school of her/his choice.</p> <p>(...) When an inclusive education has been decided by the Commission on Rights and Autonomy of persons with disabilities but the education institution is not accessible, the costs incurred in order to transport the child or the teenager to an institution that is located farer are borne by the local authorities in charge of accessibility to education facilities.</p> <p><b>Article L. 112-2</b></p> <p>(...) According to the results of the evaluation, each child, teenager or adult is proposed a training project that comprises an individual education project with the necessary adjustments that favour, when possible, inclusive education.</p> <p><b>Article L. 112-2-1</b></p> <p>The follow-up education teams are set up in each Department. They monitor the follow-up of the decisions undertaken by the Commission on Rights and Autonomy of persons with disabilities.</p> <p>(...) Theses teams can, with the agreement of the parents, propose to the Commission a modification</p>	<p>Code and children with disabilities are entitled to benefit from several measures (support of a specialised assistant, additional time when passing exams, alternative testing methods, etc.)</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>of the curriculum and counselling of the child or teenager.</p> <p><b>Article L. 112-3</b>                      In the education and schooling of young hearing impaired persons, the freedom to choose a bilingual communication (sign language and French language) is a right.</p> <p><b>Article L. 112-4</b>                      In order to guarantee the equality of chances among the candidates, oral, written and practical exams are adjusted when such adjustments are necessary due to the disability of the student. These adjustments can include additional time, the presence of an assistant, an adapted communication system, availability of adapted equipment or the utilisation by the candidate of her/his own adapted equipment.</p> <p><b>Article L. 112-5</b>                      During their initial and life-long training, teachers receive a specific training regarding children with disabilities.</p>	

**ANNEX 2 – STATISTICAL INFORMATION**

Number of violation <sup>136</sup> Year	Violence	Gender discrimination	Other discrimination	Criminal suspects
2007				
2008				
2009				
2010				
2011				

As described in the report under section 4.4, access to reliable data is extremely difficult. Hence, no data can be found with the view to filling the table. Available data is mentioned in the report and reproduced under section 4.4.

<sup>136</sup> Cases reported to any relevant body; depending on the availability of data.

## ANNEX 3 – CHILDREN WITH DISABILITIES IN SCHOOL – YEAR 2008-2009

### Disabled children's schooling - Year 2008-2009<sup>a</sup>

Year 2008-2009		Integration			Schooling in specialised institutions (3)	
		individual	collective	Total	Hospitals	Medico-educational
<b>1er degree</b>	cycle 1	27 891	7 107	.	.	.
	cycles 2 et 3	46 560	33 124	.	.	.
	<b>Total</b>	<b>74 251</b>	<b>(clis) 40 231</b>	<b>114 482</b>	3 905	59 210
<b>2nd degree</b>	1er cycle	35 301	4 900			
	2ème cycle	9 621	599			
	indifférencié	775	8 995			
	<b>Total</b>	<b>45 697</b>	<b>(upi) 14 494</b>	<b>60 191</b>	2 408	9 981
<b>Total général</b>		<b>119 948</b>	<b>54 725</b>	<b>174 673</b>	<b>6 313</b>	<b>69 191</b>

### Distribution by Impairment – Year 2009 (1st degree)<sup>1a</sup>

Cognitive functions disorders	46 757	41 %
Mental health disorders	26 933	24 %
Specific learning difficulties (dyslexia, dysphasia, dyspraxia, etc.)	12 548	11 %
Motor functions disorders	6 762	
Visceral, metabolic, nutritional functions disorders		
Visual functions disorders	5 131	
hearing functions disorders	2 374	
Several associated functions	4 117	

Catherine Barral and Dominique Velche (2010), p. 27

## **ANNEX 4 - STUDY ON MEMBER STATES' POLICIES FOR CHILDREN WITH DISABILITIES - EXECUTIVE SUMMARY**

There are about 100 million children in the European Union and about 80 million European persons with disabilities. While the number of children and the number of persons with disabilities is well documented, the same cannot be said of children with disabilities. Children with disabilities combine different factors of vulnerability. As children the protection of their rights requires the adoption of special measures that are recognised by the UN Convention on the Rights of the Child (CRC). As individuals with disabilities, they are particularly vulnerable EU citizens who deserve specific safeguards and protection as acknowledged by the UN Convention on the Rights of Persons with Disabilities (CRPD).

Children with disabilities and their families face on a daily basis specific problems such as the lack of assistance and support for their inclusion in schools, experiences of violence and the lack of proper tools for reporting them, difficulties in accessing buildings or services or troubles in being heard and participating in decisions affecting their lives.

The Conventions include provisions addressing these concerns and providing protection to the right to enjoy all human rights and freedoms with no discrimination ensuring

- equality of opportunities and accessibility,
- the best interests of the child as a consideration in all actions concerning them,
- the evolving capacities of children with disabilities as a consideration in decisions affecting them,
- the right to be heard in proceedings and decision-making processes affecting the child and the right to a full and effective participation,
- the right to family life,
- the right to effective access to education and inclusive education,
- the right to health care,
- the right to assistance, and
- freedom from violence.

This study is structured to mirror the requirements of both conventions reflecting the main rights of children with disabilities to be implemented generally in the EU due to the high rate of ratification by EU Member States. Moreover, in December 2010, the European Union became a party to the CRPD. In doing so, the EU recognised the challenges persons with disabilities face in securing the fulfilment of their rights and assumed the responsibility for its implementation alongside Member States. The EU's responsibility towards the implementation of the CRC is of a different scale. Despite the lack of ratification by the EU, the CRC rights and principles guide the EU policies and action since the Treaty recognises the rights of the child as an EU objective.

This study assesses the current situation with respect to the rights of children with disabilities in the EU and the need for EU legislation or for other measures. The options to act at EU level are framed within the extent of the competences conferred by the Treaties, which can be exclusive, shared or supporting competences (Article 2 TFEU).

The current EU legislative and policy framework give recognition to the Conventions' rights and principles applicable to children with disabilities and a certain degree of implementation. However, the existing EU legislation relevant to this area is mainly sectoral (i.e., employment or immigration). The legislation addresses the situation of persons with disabilities separately from the rights of the child, whereas there is a need to consider children with disabilities as they face multiple discrimination, on the basis of age as well as disability, and to tailor measures to ensure that their rights are respected.

### **A. Comparative analysis of national legal frameworks**

The comparative analysis of the national legal frameworks on children with disabilities' rights in 18 Member States<sup>137</sup> is based on a set of criteria developed to enable an assessment of comparable data reported in each national study. The criteria are based on the requirements within each right and principles identified as pertinent to the situation of children with disabilities.<sup>138</sup> The criteria are derived from the text of both conventions and the CRC General Comments on their interpretation.

Overall, the 18 Member States have in place comprehensive legal frameworks reflecting the main aspects of the rights and principles identified under the CRPD and CRC. While it may be stated that the rights of children with disabilities are broadly recognised under national legal systems either through general or specific legislation, their practical implementation revealed to be problematic in most Member States.

Consideration of the **principle of best interests of the child** is generally recognised under national laws. However, implementation is mostly limited to family and social protection decisions affecting children and the specific needs of children with disabilities are not recognised. The country studies found a lack of understanding of what the principle entails, along with insufficient development of the concept through law or jurisprudence and an overall lack of implementing rules.

The **right to non-discrimination** based on disability or age is reflected in national legislations, however, the implementation of the right is generally only partial and the reasonable accommodation measures are generally insufficient to guarantee the right. In practice, accessibility remains a key problem in most Member States. Reference to the multi-discrimination factors faced by children with disabilities or girls with disabilities is rarely acknowledged. There is a lack of monitoring results and of data on cases of right's violations that could help define more effective measures.

Most countries partially take account of the **evolving capacities** of the child mainly on the basis of considerations of age, maturity and development of the child. However, the situation of children with disabilities is not specifically acknowledged. The implementation is limited to a certain type of decisions and Member States tend to primarily take into consideration the child's age, which for children with disabilities may not be relevant and which can effectively exclude them from decision making processes that affect them.

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<sup>137</sup> For this study 18 Member States legal frameworks have been analysed: Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, the Netherlands, Malta, Poland, Romania, Slovenia, Spain, Sweden and the United Kingdom. Those countries have been selected by the European Parliament in the Terms of Specifications of this study.

<sup>138</sup> 8 rights and principles have been identified as most relevant to the situation of children with disabilities: the best interests of the child, the right to non-discrimination, the consideration of evolving capacities, the right to participation/to be heard, the right to be free from violence, the right to family life, the right to assistance and the right to education.

The **rights to participation and to be heard** in decision making processes affecting children with disabilities are recognised under the legislation of the 18 Member States. However, their implementation is often limited to some sectoral procedures mostly regarding family law and at a certain extent in education. In practice, children with disabilities are not systematically involved and do not get to participate in public and private life at the same level than their able-peers.

In general **freedom from violence** is recognised by Member States' legislation. However, abuse against children with disabilities is a key problem acknowledged in all country reports. Violence occurring in institutions is of particular concern. The lack of systematic data and the difficulty for victims to report abuses do not allow an overview of the situation needed for the adoption of appropriate policies and measures.

The **right to family life** is widely recognised in the laws of the selected Member States. However, insufficient guidance and support to families for the integration of the child with disabilities and for helping them in their day to day lives is a key problem in most of the 18 Member States. Without proper assistance, families with difficulties might give up on their responsibility leading to a situation where alternative options are unlikely and institutionalisation is the only response available.

Overall the right to various forms of **assistance** (financial, social, health care, etc.) both for children with disabilities and for their families is recognised in legislation or regulatory rules. However, again in most cases assistance is sectoral (mainly social and health) and insufficient (financially and human assistance). The economic crisis is contributing to the removal and reduction of assistance in most Member States. Access to assistance is often perceived not as an instrument enabling protection of rights but rather as a discretionary measure subject to budget constraints.

All Member States recognise the **right to education** in their Constitutions or legal frameworks; however, the ability to access the school of choice for children with disabilities remains very challenging in practice. Mainstream schools remain largely inaccessible to children with disabilities in many Member States, while in other countries schools have insufficient resources and support for the child with disabilities is scarce. In addition, teachers in mainstream schools lack training and awareness on the needs of children with disabilities and programmes are not systematically adapted to them.

**Compliance mechanisms** are weak and lack adaptation to the situation of children with disabilities. Lack of information and guidance to families with children with disabilities on their rights, procedures and competent authorities decreases their ability to access these tools.

On the basis of these findings, the study sets forth conclusions and recommendations for EU action, taking into account the competence of the EU conferred by the Treaties on a range of policy areas, including disability and children's rights.

## B.1 The role of the European Union

The EU has no explicit competence on children with disabilities. However the EU framework contains provisions recognising the EU's role to promote the protection of the rights of the child as an EU objective as well as its competence to combat discrimination based on disability. Furthermore, the Charter of Fundamental Rights of the European Union, with similar legal value as the Treaties, recognises the right to non-discrimination on ground of disability in Article 21 and the rights of the child under its Article 24. This recognition, while important, cannot extend the competences of the EU as conferred by the Treaties.

The EU, together with Member States in areas of shared competence or national competence, is bound by the CRPD obligations and is required to take the necessary measures to combat discrimination on the grounds of disability within the framework of Article 19 TFEU or in other matters falling within EU competence. Article 19(1) TFEU provides the legal basis for EU action (see among others the proposal for equal treatment Directive of 2008<sup>139</sup>) but the unanimity requirement makes achieving agreement under this legal base difficult. Article 19(2) provides the possibility for the EU to adopt basic principles and incentive measures to support Member States' action to combat discrimination through the ordinary legislative procedure.

Neither the above mentioned proposal for an equal treatment Directive nor any other EU measures provide for a **definition of disability**. Prior to the adoption of the CRPD, in a judgment in July 2006, the Court of Justice of the European Union (CJEU) defined disability in the same sense as the CRPD within the context of employment policy as 'a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life'.<sup>140</sup> Recently, the CJEU has further developed this concept<sup>141</sup> stating that disability results from barriers hindering the full and effective participation of the person concerned in professional life *on an equal basis with other workers* and calling on the employer to take reasonable accommodation measures.

EU action is also possible when linked to other policy areas of EU competence. Several issues related to the rights of the child with disabilities are linked to EU policies such as social policy, economic, social and territorial cohesion, transport, freedom, security and justice all of which are shared competence. In addition, the EU has the option to take action to support Member States policies in a number of areas affecting children with disabilities such as education, sports, youth or health.

## B. 2 Existing relevant EU secondary legislation

The **best interests of the child as primary consideration in actions relating to children** is a fundamental requirement recognised in EU legislation. Article 7 of the Mediation Directive 2008/52<sup>142</sup> requires the mediator to take into account the best interests of the child when deciding whether the child can give evidence in judicial proceedings. The

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<sup>139</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:en:NOT> (last accessed 6.5.13).

<sup>140</sup> Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, *Sonia Chacón Navas v Eurest Colectividades*, pt 43.

<sup>141</sup> Judgment of the Court, Joint cases C-335/11 and C-337/11 of 11 April 2013, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab* (C-335/11) and *HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening acting on behalf of Pro Display A/S* (C-337/11), pt 47.

<sup>142</sup> Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.



Family Reunification Directive<sup>143</sup> requires Member States' authorities to consider the best interests of children when examining an application for family reunification (Article 5)<sup>144</sup>. The protection of the best interests of the child is explicitly mentioned in Council Directive 2004/81/EC<sup>145</sup> on victims of trafficking in human beings.

**Non-discrimination** at EU level is currently addressed by four EU Directives to combat discrimination on the basis of protected grounds such as sex, racial or ethnic origin, religion or belief, age and sexual orientation, most of them restricted to the area of employment.<sup>146</sup> They lay down rules 'for combating discrimination (...) with a view to putting into effect in the Member States **the principle of equal treatment**'.<sup>147</sup> Disability is recognised as grounds for discrimination under Directive 2000/78/EC and, furthermore, protection of equality between men and women in matters of employment and occupation under Directive 2006/54/EC applies to persons with disabilities. Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin does not include disability as a protected ground. Directive 2004/113/EC on equal treatment between women and men in access to supply of goods and services refers to discrimination on grounds of sex but not on age or disability.

The European Commission has acknowledged the differences of protection provided across the various grounds and published a proposal for a Directive in 2008 aiming at completing the legal framework on anti-discrimination law and providing for a more equal level of protection across the grounds<sup>148</sup>.

Other measures in policy areas such as the internal market or transport have an impact on children with disabilities' access to services with no-discrimination. For example, Directive 2001/85/EC on the carriage of passengers, requires accessibility features for persons with reduced mobility and visually impaired persons. Other instruments cover rights of persons with disabilities when travelling by air, accessibility to lifts, in carrying out public procurement or in measures for telecommunication<sup>149</sup>.

Within the remit of its competences, the EU's action to combat discrimination is complemented with activities by the EU Institutions to improve knowledge about discrimination (e.g. by raising awareness), support intermediary actors (e.g. NGOs, social partners and equality bodies) to improve their capacity to combat discrimination and to encourage the exchange of national good practices.

The consideration of children's **evolving capacities** is recognised in the Brussels II*bis*

<sup>143</sup> Council Directive 2003/86/EC, on the right to family reunification.

<sup>144</sup> 'Developing indicators for the protection, respect and promotion of the rights of the child in the European Union' FRA, March 2009, available at [http://fra.europa.eu/sites/default/files/fra\\_uploads/358-RightsofChild\\_summary-report\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf).

<sup>145</sup> Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who has been the subject of an action to facilitate illegal immigration.

<sup>146</sup> Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast directive); Directive 2004/113/EC on the principle of equal treatment between women and men in the access to and supply of goods and services; Directive 2000/43/EC on the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

<sup>147</sup> Article 1 Directive 2000/43/EC.

<sup>148</sup> Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426). It is currently blocked in the Council.

<sup>149</sup> 'Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities VC/2008/1214', European Commission, Brussels, 2010, Executive Summary available at [http://www.efc.be/programmes\\_services/resources/Documents/UN\\_Convention\\_Summary\\_EN.pdf](http://www.efc.be/programmes_services/resources/Documents/UN_Convention_Summary_EN.pdf).

Regulation 2201/2003 which requires courts to hear the view of the child according to his/her age or degree of maturity. The same formulation is found in EU legislation concerning immigration and asylum in relation to unaccompanied minors.

Children's right **to participation** is recognised in some Commission strategic documents including the 2005 'European policies concerning youth', the 2006 'EU strategy on the rights of the child', the Youth in Action Programme and the EU Agenda for the Rights of the child of 2011. EU legislation on immigration and asylum recognise the right of the child to be heard during proceedings under the Brussels II*bis* Regulation 2201/2003.

The EU has adopted a number of measures on the **protection of children from violence**<sup>150</sup> relating to child trafficking, to the sexual exploitation of children and to the protection of victims including several Directives<sup>151</sup> that have been adopted to replace some of these instruments. For example, the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, focus on the protection of children which are more vulnerable than adults and establishes more severe penalties when the offence is committed against vulnerable persons such as children and persons with disabilities.

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of the victims of crime recognises that a victim of crime should be treated without discrimination based on any ground including age and disability. Lastly, Directive 2011/92/EU on combating sexual abuse, the sexual exploitation of children and child pornography<sup>152</sup> provides the need for specific protection of children with disabilities.

The **right to family life** and the maintenance of the child in family context is at the heart of Council Regulation 2201/2003 Brussels II*bis* (EC)<sup>153</sup>. In the field of immigration policies, the right of the child to family life is ensured by the rules on family reunification<sup>154</sup> and the provisions of the Directives on asylum<sup>155</sup> regarding unaccompanied minors and the respect for the family unit.

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<sup>150</sup> Framework Decision 2002/629/JHA on combating trafficking in human beings; Council Directive 2004/81/EC on the residence permit issued to third-country nationals victims of trafficking in human beings; Council Framework Decision 2004/68/JHA on combating sexual exploitation of children and child pornography; Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings; Council Resolution 2001/C 283/01 on the contribution of civil society in finding missing or sexually exploited children. Decision No 1351/2008/EC establishing Safer Internet Programme 2009-2013.

<sup>151</sup> Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

<sup>152</sup> Article 1 Directive 2011/92/EU.

<sup>153</sup> Council Regulation (EC) No 2201/2003, concerning jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

<sup>154</sup> Council Directive 2003/86/EC on the right to family reunification; Council Regulation (EC) No 343/2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; Council Directive 2004/83/EC of on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who need international protection; Directive 2008/115/EC, on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>155</sup> Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons; Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers; Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals, stateless persons or refugees as persons who otherwise need international protection; Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting or withdrawing refugee status.

The principle of **maximum inclusion in society** of children with disabilities is reflected in strategy documents such as the Disability Strategy 2010-2020<sup>156</sup> and the EU 2020 Programme in relation to education and training<sup>157</sup>. The 2003 Council Resolution on equal opportunities for Pupils and Students with Disabilities<sup>158</sup> addressed the problem of access to education by children with disabilities. In 2010, the Resolution of the European Parliament on mobility and inclusion of children with disabilities<sup>159</sup> stressed the need to ensure full respect for the rights of the child, including the right to education and the right to participate in community life of children with disabilities. The EU Institutions also support the **European Agency for Development in Special Needs Education**, the independent organisation acting as a platform for collaboration on special educational needs and the promotion of full participation within mainstream education and training<sup>160</sup>.

### C. Recommendations for EU action

When evaluating the need for specific recommendations aimed at improving the situation of children with disabilities, it is important to highlight that children with disabilities are first and foremost children with the same needs as any other children and who should be beneficiaries of all rights recognised by the CRC. Their intrinsic difference with their peers needs to be recognised for designing appropriate legislative and policy measures.

#### *Horizontal issues*

- As a first and general recommendation, all EU Member States which have not already done so should ratify the two conventions referred to in this study and implement their provisions by adopting national legislation and ensuring its practice.
- The European Commission, liaising with the UN Secretariat for the CRPD and the UN Secretariat for the CRC, should ensure Member States understanding and implementation of several definitions of the Conventions that are cornerstones for the implementation of the rights of children with disabilities, namely the definition of "disability", the "best interests of the child" and the "evolving capacities of the child". They should lead the development of initiatives to ensure that the specificities of children with disabilities are taken into account.

To that end, it is recommended that the Commission takes the initiative to provide clarification at EU level of the CRPD definition of "disability" as it is considered to be too broad in practice and its implementation at national level is therefore difficult. The development of guidance documents, exchange of best practices and promotion of existing manuals are recommended.

- The European Commission should take action to promote that children with disabilities are considered in existing mainstreaming initiatives for non-discrimination and equal treatment.
- The EP, the Council and the Commission should promote the development of national

<sup>156</sup> Area of action 5 of the Commission Communication European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe COM(2010) 636 final.

<sup>157</sup> Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020'), 2009/C 119/02, OJ C 119/2, of 28 May 2005.

<sup>158</sup> Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04.

<sup>159</sup> European Parliament Resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 (2010/2272(INI)).

<sup>160</sup> European Agency for Development in Special Needs Education website available at <http://www.european-agency.org/about-us>.

information tools to assist families with children with disabilities to understand the legal frameworks applicable to them, including access to assistance measures, competent authorities, procedures and compliance mechanisms. Specific tools addressed to these families could include an EU web portal which could be linked, where possible, to national portals providing full information on rights, requirements, criteria for implementation, competent authorities, and coordination systems. This initiative could bring citizens closer to the EU.

- The EU Institutions should take a leading role in promoting awareness-raising on issues concerning the rights of children with disabilities, their interests and specific needs in order to promote the full implementation of the principle of best interests of children with disabilities. The EP and the Council could also use their budgetary powers to provide for financing of awareness-raising campaigns.

### ***Best interests of the child***

- While most countries have legislation recognising the principle of best interests of the child, only few Member States contain in their legislation a general requirement for its systematic consideration in all decisions affecting children. Some Member States (such as Sweden and the UK) have introduced child impact assessments of proposed legislation. It is recommended that the European Commission promotes the exchange of these initiatives and develops a guide on methodologies for carrying out these child impact assessments implementing the best interests of the child principle.

### ***Right to non-discrimination***

- The concept of reasonable accommodation in relation to the specific situation of children with disabilities needs clarification and further development to define the boundaries for the use of disproportionate burden. The EU, through the Commission, could support this through exchange of best practices at national level on the implementation of reasonable accommodation covering different situations. This would help defining the baselines from which the respect of the right requires public authorities' action and prevents it from being subject to arguments of disproportionate costs.
- The 2008 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, if adopted, has the potential of addressing the situation of children with disabilities. Amendment 37 introduced by the European Parliament refers to multiple discrimination. Within this context, clarification could be introduced in the recitals of the proposed Directive in order to ensure that the situation of children with disabilities is considered as a part of its scope.
- The European Commission's draft for an upcoming European Accessibility Act should explicitly cover children with disabilities' access to goods and services, at least with a reference to multiple discrimination cases.

### ***Evolving capacities of children with disabilities***

- The EP should consider ways to raise awareness and promote taking into account the evolving capacities of children, including children with disabilities, with the aim to have the principle applied in all decision making processes affecting them.
- Any new legislation on child-friendly justice should include consideration of the ability of the child with disabilities to be heard in judicial proceedings affecting them. The

Commission should ensure that these provisions are included in the anticipated EU law on special safeguards for suspected or accused persons who are vulnerable, including children, or the anticipated EU law for the recognition and enforcement of decisions on parental responsibility.

- Furthermore, it is recommended that the European Commission, the Council and the EP promote the use of the Council of Europe Guidelines on child-friendly justice and support training for the relevant professionals at all levels.

### ***Right of participation of children with disabilities***

- The anticipated European Accessibility Act could provide for the development of tools to ensure the participation of children with disabilities in the consultation processes of the legislative and policy initiatives affecting them.
- The EP should explore ways to raise awareness on the requirements needed to ensure the right of participation of children with disabilities through concrete measures such as simulation of plenary meetings in the EP involving children with disabilities, guaranteeing physical access to the EP buildings or designing tools to ensure non-physical participation.

### ***Right to be heard of children with disabilities***

- In order to enable effective implementation of the right to be heard by children with disabilities, changes in the attitudes of judicial, administrative and enforcement officers are needed. To that end, the EP, the Council and the Commission should encourage Member States to develop awareness-raising actions and training addressed at public authorities.
- The Commission in preparing legislation on child-friendly justice, should ensure that adequate steps are taken to identify the ability of the child to express his/her views in judicial proceedings affecting them, enabling a climate of trust between the child and the judicial and enforcement officers and providing reasonable accommodation to ensure the effective right to be heard of children with disabilities.

### ***Freedom from violence***

- It is recommended that the EP, the Council and the Commission promote the development of statistical information on the situation of violence affecting children, and in particular children with disabilities. Furthermore, they should promote the development of indicators (such as disability, children, girls, family environment) to be mainstreamed in other policy or general surveys so as to provide systematic data on the situation of children with disabilities.
- The European Commission and the EP should promote FRA to examine the situation of violence against children, particularly in institutions, including children with disabilities as they are particularly vulnerable. The necessary funding should be proposed to the budgetary authority.
- The European Commission should consider in particular the need for measures at EU level aimed at reducing the number of cases of violence against children, especially children with disabilities, in Member States (both in a domestic context and in public institutions). The Commission could start preparatory work by organising working

groups with Member States experts to consider:

- proposals for ensuring that Member States set up preventive measures and proper monitoring systems to detect cases of violence and abuse against children,
  - the set up of control mechanisms and regular inspections,
  - peer reviews or the Open Method of Coordination for implementation of proposals,
  - access to information and communication services targeted at improving the system of complaints concerning children's right to freedom from violence.
- The Commission could promote the organisation of specialised EU-wide training and workshops amongst professionals to share knowledge on complaint procedures, reporting measures and accessibility of communication services for children with disabilities, especially for children with severe disabilities or intellectual impairments. The budgetary authority should provide adequate funding for these activities.

### ***Right to family life of children with disabilities***

- The Commission, the Council and the EP should encourage Member States to set up appropriate support structures for families with children with disabilities in order to reduce the risks of the child losing family life while safeguarding the best interests of children with disabilities.
- Within the Open Method of Coordination, the Commission should develop Guidelines on minimum requirements of residential institutions with regards to children with disabilities. The Guidelines would aim at ensuring that residential care centres have a small number of users and the capacity to host children with autism or with intellectual disabilities.
- The Commission should propose to the budgetary authority the use of EU funds for the protection of children's right to family life, prioritising funds for families while ensuring that the good quality of the institutions is maintained.

### ***Access to assistance***

- A special single national body (with regional offices) responsible for the management of services, budget and assistance of children and their families should be established in order to ensure consistency, coordination, effectiveness, increase accessibility and better guidance for families on the funding support available.
- The EP should continue to lead actions on children with disabilities to inform Member States on the negative impacts of budget cuts on implementation of their rights, especially in the field of education, social protection and health care.
- Within the European Semester process, the Commission should provide appropriate recommendations to Member States on how to use existing resources effectively instead of just cutting the necessary assistance for children with disabilities who belong to the most vulnerable citizens.

### ***Access to inclusive education***

- The Commission should develop actions to support Member States in improving education systems for children with disabilities through the Open Method of Coordination or peer review while respecting their general competence for matters

related to education. Action at EU level could include:

- Development of best practice guides and recommendations on the minimum type of resources needed in mainstreaming schools, and on the role of parents and children with disabilities in decision-making processes affecting children with disabilities or the development of education objectives;
- Promotion of training for teachers on better understanding of children with disabilities' needs and evolving capacities, teaching methodologies and handling of children with specific disabilities in a class together with their able-peers;
- Promotion of teaching tools that help the inclusion of children with disabilities in schools and outside of schools such as the Council of Europe's COMPASS manual;
- Promotion of anti-bullying and anti-stigmatisation initiatives, including awareness-raising campaigns promoting inclusion of children with disabilities; and
- Development of quality objectives for education offered to children with disabilities and the promotion of initiatives to maintain the support for higher education.

### ***EU Funding***

- The EP, the Council and the Commission should promote among Member States the use of the Structural Funds to foster the development of quality social services provided for children with disabilities, while facilitating the implementation of the Voluntary European Quality Framework for Social Services;
- The EP, the Council and the Commission should promote the development of family and community-based alternatives with the purpose of de-institutionalisation.
- The EP, the Council and the Commission should encourage the use of structural funds for improving accessibility and inclusive education.

## ANNEX 5 - OVERVIEW OF RELATED STUDIES

<b>Name of the Study</b>	<b>PE number</b>	<b>ISBN number</b>
Study on Member States' Policies for Children with Disabilities	<b>PE 474.416</b>	<b>978-92-823-4548-1</b>
Country Report on Belgium for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.417</b>	<b>978-92-823-4542-9</b>
Country Report on the Czech Republic for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.418</b>	<b>978-92-823-4549-8</b>
Country Report on Estonia for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.419</b>	<b>978-92-823-4561-0</b>
Country Report on Finland for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.420</b>	<b>978-92-823-4552-8</b>
Country Report on France for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.421</b>	<b>978-92-823-4562-7</b>
Country Report on Germany for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.422</b>	<b>978-92-823-4553-5</b>
Country Report on Greece for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.423</b>	<b>978-92-823-4563-4</b>
Country Report on Hungary for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.424</b>	<b>978-92-823-4554-2</b>
Country Report on Ireland for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.425</b>	<b>978-92-823-4564-1</b>
Country Report on Italy for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.426</b>	<b>978-92-823-4555-9</b>
Country Report on Malta for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.427</b>	<b>978-92-823-4565-8</b>
Country Report on the Netherlands for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.428</b>	<b>978-92-823-4556-6</b>



Country Report on Poland for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.429</b>	<b>978-92-823-4566-5</b>
Country Report on Romania for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.430</b>	<b>978-92-823-4567-2</b>
Country Report on Slovenia for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.431</b>	<b>978-92-823-4557-3</b>
Country Report on Spain for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.432</b>	<b>978-92-823-4558-0</b>
Country Report on Sweden for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.433</b>	<b>978-92-823-4568-9</b>
Country Report on England, Wales and Northern Ireland for the Study on Member States' Policies for Children with Disabilities	<b>PE 474.434</b>	<b>978-92-823-4559-7</b>



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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