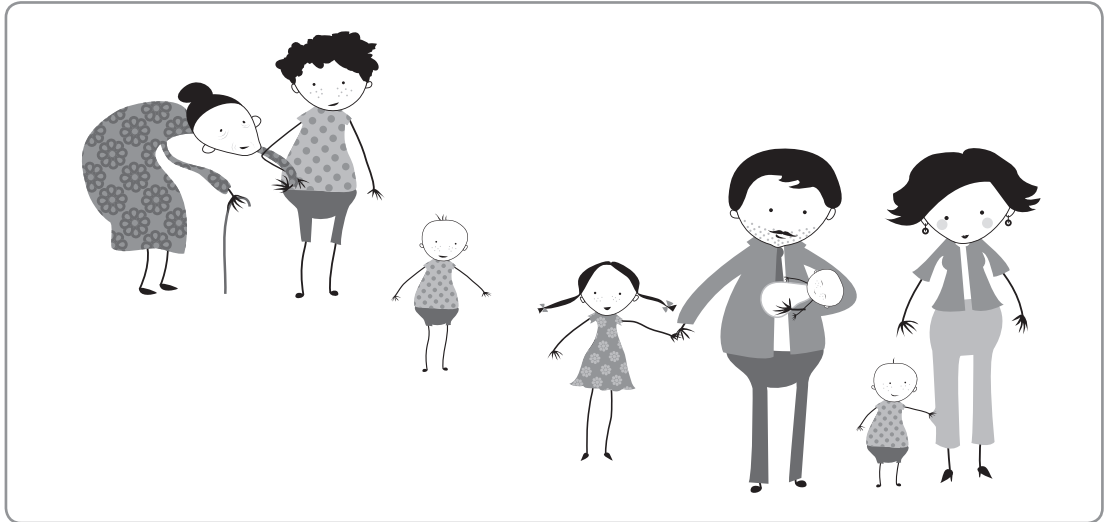


## 6. FAMILY AND ALTERNATIVE CARE

*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

Universal Declaration of Human Rights, Article 16.3



The Convention on the Rights of the Child (CRC) recognizes the family as the natural entity that best protects children and provides the conditions for their healthy development. The child is entitled to care, security and an upbringing that is respectful of his or her person and individuality. Article 3 of the CRC states that parents' guiding consideration should be the child's best interest.

Every child has the right to know and be cared for by his or her parents (Article 7). The CRC allocates responsibilities for the child's well-being to both parents and the state, with states obliged to recognize that primary responsibility for the upbringing and development of the child rest with the parents (Article 5), and to take various positive measures to support parents in performing this duty (Article 18). Parents also have the principal responsibility to ensure the child an adequate standard of living, but if they are unable to provide and care for their child, states have the responsibility to assist or intervene. (Article 27).

Parents should provide appropriate direction and guidance to the child, in a manner consistent with his or her **evolving capacities**, that is, recognising that, as the child grows older, he or she should have a greater say in personal matters (Article 14). In conformity with the CRC, parents have a commitment to view the child as a social actor and rights-bearing entity in itself and not merely as their property.

### What is a family?

In addition to the 'traditional' family of two married parents and their biological children, Europeans live in a variety of family structures such as:

- the multi-generational extended family
- the single-parent family, where one of the parents is absent, whether through divorce, desertion, death or other reasons
- the adoptive or foster family
- the recomposed nuclear family with a step parent and a natural parent and sometimes with both biological and step siblings



- the de facto union when two persons live together without being married
- the family with same-sex parents
- the family composed of children and their grandparents.

Increasingly, children are likely to experience transitions between different family living arrangements and to live with one parent or with stepparents. However, in all European countries at least two-thirds of children still spend the greater part of their childhood living as a family with both their natural parents.

No matter in what family structure the child lives, both parents have the mutual responsibility to support and care for their children, even if they are separated. Article 18 of the CRC recognizes the equal responsibility of both parents for the care and rearing of children. Several European governments are working to improve policies that cater to family and parenting needs, such as paternity leave for fathers and childcare for working couples. The provision of equal opportunities for children, irrespective of gender, status or family economy, is important in supporting the families in the parenting responsibilities.

## Challenges to European families

Families in Europe are facing many challenges:

- **Working parents:** Increasingly both parents are employed. Long working hours and the conflict between work and family responsibilities present many problems. At least 10% of parents in the European Union and 15% in the new European Union member states claim difficulty in fulfilling their family responsibilities due to overwork, with parents of children below three years of age reporting most problems.<sup>1</sup>
- **Single-parent households:** Overall around 80% of children in European countries live with both parents. However, the range varies considerably, from more than 90% in Greece and Italy to less than 70% in the United Kingdom. These figures reflect a strong geographic distribution with less than 9% of children in Belgium, Greece, Italy, Portugal and Spain living with a single parent while it rises to 15% in Denmark, Finland, Norway and Sweden. Between 10 to 15% of children live with single parents in Austria, The Czech Republic, France, Germany, Hungary, the Netherlands, Poland and Switzerland.<sup>2</sup>

The Council of Europe has addressed these challenges extensively. In 2006 the Committee of Ministers issued a recommendation to member states on policy to support positive parenting. It defined positive parenting as “behaviour based on the best interests of the child that is nurturing, empowering, non-violent and provides recognition and guidance which involves setting of boundaries to enable the full development of the child.” The recommendation further focused on the importance of:

- positive parenting
- public services to support parents
- services for parents at risk of social exclusion
- work and family life balance
- childcare provision services.<sup>3</sup>

Also in 2006 the Council reported on positive parenting in contemporary Europe, elaborating on the role of parents as well as proper treatment of children and non-violent upbringing. (See *Theme13: Violence*, page 280.) The report highlighted these elements as most important to children:

- **Basic care:** Meeting the child’s physical needs (e.g. for food, warmth, shelter, hygiene, appropriate clothing and medical care);
- **Ensuring safety:** Protecting the child from harm both in and outside the home;
- **Emotional warmth:** Ensuring that the child receives emotional support and feels valued;
- **Stimulation:** Stimulating the child’s learning and intellectual development through engagement with the child and promoting his or her educational opportunities;
- **Guidance and boundaries:** Setting limits and showing the child how to behave appropriately;



- **Stability:** Consistently providing emotional warmth and response from people who are important to the child.<sup>4</sup>

The report acknowledged that children may be separated from their parents for a variety of reasons: divorce, displacement of family members due to travel or war, death of one or both parents, trafficking or abandonment. Whatever its cause, such separation deeply affects children, jeopardizing their well-being, education and development. For this reason, children have a right to remain with their families except in grave cases where a judicial body deems it in the child's best interest (Article 9).

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**QUESTION:** *A fundamental principle of the CRC is the child's best interest. But who decides what is best? For example, who should decide whether it is in a child's best interest to remain with an incompetent parent? Other family members? The child? The state? Who else?*

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However, not every parent is capable or willing to provide positive parenting and not all children can benefit from being with their family. CRC Article 20 indicates that,

*A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provide by the State ... [which should] ensure alternative care for such a child.*

These measures are invoked only in extreme cases. In many European countries the child-protection system and childcare institutions provide high quality conditions for children in risk. However, in some countries many children are placed in institutions unnecessarily and for too long. Children who live outside families or without parental care are more vulnerable to discrimination, abuse and exploitation, as well as emotional and social impairment due to neglect.

Provisions for children's alternative care need greater attention, and include informal and formal fostering, kinship care and adoption. Community-based social services, such as day care, parenting education and home support, are also needed to strengthen the capacity of both parents and extended families, as well as communities who care for children whose parents are not available.

Many cities in Europe have street children. They are visible – they live and work in the streets – yet there is no reliable data regarding their identity and numbers, making it extremely hard for authorities to ensure that they receive vital health care or education and are kept safe from harm. They are also invisible because many people choose to ignore these children who represent the physical embodiments of the worst kind of failure in our societies. The problem is global and it is escalating, brought on by poverty, family disintegration, physical and mental abuse, abandonment, neglect and social unrest. Street children are vulnerable. Prostitution, trafficking, crime, drugs, gang violence and even police violence are all real risks for many; for others they are already reality.

## Working with children on family issues

When discussing family questions with children, facilitators should refrain from any stereotypical behaviour or expectation concerning the various family patterns. Children should understand and accept any forms of family and develop empathy and solidarity with each other. It is an important objective that children learn about their rights in the family, such as participation or non-violence.

Discussion of family life may bring up conflicting feelings in some children especially teenagers. Consultation with parents and caretakers may be helpful except in situations where domestic violence has been revealed during the activities. In such cases it is important that children understand they are not the responsible party for abuse, including sexual abuse, and they should be encouraged to communicate problems to friends and helpful adults in their environment. (See *Theme 13: Violence*, p. 280.)



## Relevant human rights instruments

### Council of Europe

Article 8 of the **European Convention on Human Rights** protects everyone’s “private and family life, his home and his correspondence” from state interference. This right emphasizes the importance of protecting the family circle, the social unit that nurtures most children to adulthood.

The Revised European Social Charter in its Article 16 protects the rights of children as family members:

*The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development”.*

There are other Council of Europe conventions that protect children’s rights if they are born out of wedlock, or when they are adopted. Rights of children and their best interest in legal procedures is guaranteed in the European Convention on the Exercise of Children’s Rights

### United Nations

The **Universal Declaration of Human Rights** declares the family to be “the natural and fundamental group unit of society and is entitled to protection by society and the State” (Article 16). The Declaration designates the family as one of the particular areas of life in which everyone is entitled to freedom from arbitrary interference (Article 12). It also entitles everyone with the “right to marry and to found a family” (Article 16). The Declaration does not define family, a term that in the twenty-first century can define many different combinations besides the traditional family of two parents and their genetic children.

The **Convention on the Rights of the Child** gives even greater emphasis to the importance of the family, declaring in its Preamble that it is not only the fundamental group of society, but also the “natural environment for the growth and well-being of all its members and particularly children” and recommending the family environment for “the full and harmonious development” of the child’s personality.

The Convention makes detailed provisions for the child who is separated from his or her family for a variety of causes, encourages reunification of the family and recognizes that in some cases the child’s best interest is to be separated from a family who cannot or will not adequately nurture the child (Articles 9, 10, 20, 21 and 22). However, a child’s parents are of prime importance. The state is required “to respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community” (Article 5). The importance of the family in defining a child’s identity is recognized in Article 7 and in the child’s inherent right “to know and be cared for by his or her parents” (Article 7). Parents are given the primary responsibility for the upbringing, development and financial support of the child, following the principle “that both parents have common responsibility for the upbringing and development of the child” (Articles 18 and 27). However, when parents cannot adequately provide for their child, the state is enjoined to assist them (Article 18.2).

As with the UDHR, the Children’s Convention bars “interference with the child’s privacy, family and home but also from attacks on his or her honour, an affirmation of the child inherent dignity” (Article 16). Furthermore, the child has the right to an education that encourages “respect for the child’s parents, his or her own cultural identity, language and values” (Article 29.c).

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### Useful Resources

- *Changes In Parenting: Children Today, Parents Tomorrow*, Conference of European Ministers Responsible for Family Affairs, Final Communique: Lisbon, Council of Europe, May 2006: [www.coe.int/t/dg3/youthfamily/source/2006minconFinaldeclaration\\_en.pdf](http://www.coe.int/t/dg3/youthfamily/source/2006minconFinaldeclaration_en.pdf)
- *Child Poverty in Perspective: An overview of child well-being in rich countries*: UNICEF Inno-



- centi Research Centre, Florence, 2007: [www.unicef-icdc.org/publications/pdf/rc7\\_eng.pdf](http://www.unicef-icdc.org/publications/pdf/rc7_eng.pdf)
- *Child Protection Information Sheet: Children Without Parental Care*: UNICEF, May 2006: [www.unicef.org/protection/files/Parental\\_Care.pdf](http://www.unicef.org/protection/files/Parental_Care.pdf)
  - Daly, Mary, ed., *Parenting in contemporary Europe: a positive approach*: Council of Europe, 2007.
  - *Explanatory Report on Policy to Support Positive Parenting*, 983 Meeting of European Committee for Social Cohesion, CM (2006)194 add: Council of Europe, December 2006:
  - Flaquer, Lluís, *Poverty in Southern Europe*: Barcelona, Institute of Childhood and Urban World, Sociology Department, Universitat Autònoma de Barcelona, 2005: [http://devel.ciimu.org/webs/wellchi/reports/workshop\\_2/ww2\\_flaquer.pdf](http://devel.ciimu.org/webs/wellchi/reports/workshop_2/ww2_flaquer.pdf)
  - Hantaris, Linda; Philipov, Dimiter; Billari, Francesco C., *Policy implications of changing family formation* (Population studies No. 49): Council of Europe, 2006.
  - *Rights of Children at risk and care*, Council of Europe, 2007.
  - Krieger, Hubert, *Family Life in Europe: Results of recent surveys on quality of life in Europe*, Paper presented at the Irish Presidency conference 'Families, change and social policy in Europe', Dublin, May 2004: [www.eurofound.europa.eu/docs/areas/populationandsociety/krieger040513.pdf](http://www.eurofound.europa.eu/docs/areas/populationandsociety/krieger040513.pdf)
  - *Recommendation Rec(2006)19 of the Committee of Ministers to Member States on Policy to Support Positive Parenting*: Council of Europe, 2006: <http://wcd.coe.int/ViewDoc.jsp?id=1073507&BackColourInternet=9999CC&BackColourIntranet=FFBB55&BackColourLogged=FFAC75>
  - *Which Are the Provisions in the Family Law that Foster Children's Well-being and Which Kind of Reforms Should Be Envisaged in this Respect?*, Wellchi Network Workshop 2: Sofia, Institute For Legal Studies, Bulgarian Academy Of Sciences, 2005: [www.ciimu.org/webs/wellchi/reports/workshop\\_2/w2\\_abstracts.pdf](http://www.ciimu.org/webs/wellchi/reports/workshop_2/w2_abstracts.pdf)

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## References

- 1 Krieger, Hubert, *Family Life in Europe: Results of recent surveys on quality of life in Europe*, Paper presented at the Irish Presidency conference 'Families, change and social policy in Europe', Dublin, 2004.
- 2 *Child Poverty in Perspective: An overview of child well-being in rich countries*, UNICEF Innocenti Research Centre, 2007.
- 3 *Recommendation Rec(2006)19 of the Committee of Ministers to Member States on Policy to Support Positive Parenting*: Council of Europe, 2006.
- 4 *Explanatory Report on Policy to Support Positive Parenting*, 983 Meeting of European Committee for Social Cohesion, CM(2006)194 add: Council of Europe, 2006.

