

GUIDELINES ON THE ASSESSMENT AND DETERMINATION OF THE BEST INTERESTS OF THE CHILD

GUIDELINES FOR PROFESSIONALS



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**CONSULTANTS IN THE
MAKING OF GUIDELINES:** Mirsada Bajramović
Suzana Bubić, PhD Professor Emeritus

EDITOR Berina Ceribašić

REVIEW Udžejna Habul, PhD

**COORDINATION AND
ADMINISTRATIVE
SUPPORT:** Goran Jurić
Zehra Salman
"Our Children" Sarajevo

PROOFREADING Maida Mehić

GRAPHIC DESIGN Aida Redžović

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AUTHORS:

Area of public policies, laws and bylaws pertaining to children:

Asst. prof. Nada Grahovac, PhD – coordinator, RS Institution of the Ombudsman for Children; Saliha Đuderija, MSc, BiH Ministry of Human Rights and Refugees / Council for Children, Jasmina Mujezinović, NGO *Foundation of Local Democracy / Stronger Voice for Children Network*;

Area of family and social protection:

Dr. Suzana Bubić, professor emeritus – coordinator, Faculty of Law at *Džemal Bijedić University* in Mostar, asst. prof. Ljubo Lepir, PhD – coordinator, Faculty of Political Science at Banja Luka University, Sadmira Čajo, FBiH Ministry of Labor and Social Policy, prof. Džamna Duman Vranić, PhD, Faculty of Law at Sarajevo University, Tatjana Novaković-Manojlović, RS Ministry of Health and Social Welfare, Mirsada Poturković, Cantonal Centre for Social Work Sarajevo, Jasna Sofović, independent expert;

Area of children's education:

prof. Lejla Kafedžić, PhD – coordinator, Faculty of Philosophy at Sarajevo University, Hašima Ćurak, BiH Agency for Pre-Primary, Primary and Secondary Education, prof. Ivana Zečević, PhD, Faculty of Philosophy at Banja Luka University, Zorica Garača, RS Ministry of Education and Culture, Nada Uletilović, NGO *Hi Neighbour Banja Luka / Stronger Voice for Children Network*;

Area of health:

Mirsada Bajramović – coordinator, NGO *Country of Children in BiH, Tuzla / Stronger Voice for Children Network*, Draženka Maličbegović, CMO MD, BiH Ministry of Civil Affairs, Marin Kvaternik, MD, RS Public Health Institute, Erna Topuz, NGO *Sun, Mostar / Stronger Voice for Children Network*;

Area of civil court proceedings:

Nikola Sladoje – coordinator, BiH Ministry of Justice, Božana Vulić, District Court in Banja Luka, Katica Artuković, Cantonal Court in Široki Brijeg / HJPC, Aleksandra Marin Diklić, BiH Institution of Ombudsman for Human Rights;

Area of criminal proceedings:

prof. Elmedin Muratbegović, PhD – coordinator, Fakultet za kriminalistiku, kriminologiju i sigurnosne studije Univerziteta u Sarajevu, Jasna Pečanac, Prosecutor's Office of FBiH, Olga Lola Ninković, District Court in Banja Luka.

PARTICIPANTS IN THE WORK OF EXPERT GROUPS:

Goran Jurčić, FBiH Ministry of Education, prof. Tamara Pribišev-Beleslin, PhD, Faculty of Philosophy at Banja Luka University, Meagan Smith Hrle, independent consultant and UNICEF Bosnia and Herzegovina employees: Danijela Alijagić-Dolovac, Mario Tokić, Sanja Kabil, Selma Kazić, Sandra Kukić, Fatima Čengić.

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FOREWORD

The leading principle of the **best interests of the child** is defined in Article 3 of the United Nations Convention on the Rights of the Child as a professional standard that public and private institutions of social welfare, courts of law, administrative authorities and legislative bodies and civil society organisations must adhere to in the performance of their duties. This principle does not only apply to activities that involve children directly (such as education, guardianship or legal disputes) but to all other activities that can have a direct or indirect effect on them (i.e. budget allocation or employment policy). Accordingly, stakeholders (public and private) must carefully assess **the effect their actions will have on a child** in terms of the potential consequences of the intended measures and allow for adequate oversight in order to ensure proper implementation of the selected measures.

The leading principle of the best interests of the child is an umbrella clause that serves as a guideline in cases that conflict with the rights from the Convention or where none of the provisions set forth in the Convention are applied. Thus, the Convention on the Rights of the Child provides for the universal standardisation of the human rights of children. According to the available information, Bosnia and Herzegovina generally recognises these standards, yet the level of compliance remains weak.

In its Concluding Observations dating from October 2012, the United Nations Committee on the Rights of the Child cited the following observation on the second to fourth consolidated periodic reports of Bosnia and Herzegovina. The Committee called for more efficient implementation of its recommendation pertaining to the best interests of the child. This led to the inclusion of the measure to issue **Guidelines for Determining the Best Interests of the Child** in all sectors within the Action Plan for Children of Bosnia and Herzegovina 2015-2018. The Council of Ministers of Bosnia and Herzegovina adopted the Guidelines in June 2015, entrusting the preparation of the guidelines to the Stronger Voice for Children network of NGOs.

The Guidelines for Determining the Best Interests of the Child are intended to assist professionals working with and for children as well as civil society representatives in ensuring (in an equal and non-discriminatory manner) that the principle of the best interests of the child is adequately recognised and applied consistently in practice across all sectors. This includes legislative, administrative and court proceedings, policies, programmes and projects benefiting or affecting children, especially those deprived of a family environment.

It is our hope that the guidelines will contribute to the prioritisation of the principle of the best interests of the child and help ensure full compliance with the principle of regulation and proper implementation of alternative measures of care, including the institutional placement of children.

President of the Council for Children of Bosnia and Herzegovina
Assistant Minister for Human Rights
M.Sc. Saliha Đuderija



Excerpt from the Review of the Guidelines on the Assessment and Determination of the Best Interests of the Child

These Guidelines examine in detail the elements of the assessment and determination of the best interests of the child and activities which the relevant bodies and authorities should undertake to uphold the best interests of the child. This makes for an excellent handbook for all decision makers to use in their everyday work. Owing to the structure of the Guidelines, with carefully selected areas in which the needs for assessment and determination of the best interests of the child are properly and comprehensively analysed (taking into account specific circumstances of every child in a given situation and at the given time), their application to decisions related to the rights of the child will contribute to the harmonization of the criteria for decision making. However, such harmonization will not limit the discretion of the decision maker, who will be free to select those elements listed, or not, in the Guidelines, that will be considered a priority in the given case, or proceeding.

Applying the Guidelines in practice, all professionals working with and for children will be able to contribute more to the reinforcing of the 'best interest of the child' standard, by determining and explaining why their respective decisions ensure the well-being of the child. This will prevent and remove the disregard, endangerment and breaches of the rights of the child and allow for the removal of past obstacles in the assessment and determination of the child's best interests. All of this will contribute to better protection of the rights and interests of children. Guidelines are particularly useful in this regard, as the list of specific elements in each area is actually a 'desired outcome' of the synergy between academics and practitioners and their combined approach to practical considerations.

One should not forget, however, that the practical application of the Guidelines depends not only on their target audience (professionals, bodies and authorities in charge of regulating and conducting proceedings involving the matters affecting the child and before which agreement on such matters is reached), but also on those stakeholders who should facilitate their implementation (policy makers, police officials and students who have learnt of the value of these Guidelines). Accordingly, the Guidelines should encourage policy makers to contribute to the strengthening of competencies of all professionals working with children and greater accountability of decision makers who have disregarded the Guidelines. The attitudes of professionals towards the Guidelines and the degree to which the elements of assessment and determination of the best interests of the child are considered in all areas will be the best indication of our own commitment and of the times we live in.

Professor Udzejna Habul, PhD



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I INTRODUCTION

(Suzana Bubić, PhD, Professor Emeritus)

1.1. Reasons for creating the Guidelines

The best interests of the child is defined in the Convention on the Rights of the Child (hereinafter, CRC) as one of the basic principles: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” (Article 3, paragraph 1)

This provision on the best interests of the child is incorporated into many other documents pertaining to children, including the Council of Europe Strategy for the Rights of the Child (2016-2021).

The primary consideration of the best interests of the child does not, however, imply that the child’s best interests have absolute priority over the interests of other persons or communities. The competent authority must find a suitable compromise in cases where there is a conflict between the interests of the child’s and the rights of other persons.

“If harmonization is not possible, the interests of all parties involved must be considered and analysed, but a larger weight must be attached to what serves the child best.” (Paragraph 39 of General Comment No. 14 (2013) on the right of the child to have his/ her best interests taken as a primary consideration (hereinafter, Comment No. 14) by the United Nations Committee on the Rights of the Children).

“Paramount consideration of the best interest of the child, rather than primary consideration, is foreseen only in case of adoption” (Article 21 of the CRC).

Definition of this principle as a basic standard is not provided for in the Convention. It lacks specificity, and therefore, its content must be defined on a case-by-case basis, taking into account several factors and elements objectively and specifically. The competent authorities may not question, neglect, jeopardise or violate any rights guaranteed under the Convention and its protocols as well as national legislation when determining and assessing the best interests of the child. The purpose of the best interest of the child is to ensure the full, genuine and efficient realisation of all rights under the Convention (Comment No. 14, paragraphs 4 and 82).

The Guidelines for the Assessment and Determination of the Best Interests of the Child covers multiple elements of the child’s best interests. Since the needs, demands and interests of every child are unique and distinctive, decision makers do not have to consider all elements in each individual case nor apply those elements in the same manner and assign them the same weight or content.



“Every case warrants determination of relevant elements, their content and significance compared to other elements. Every element must be analysed against other elements to ensure balance, especially if some elements are in conflict” (Comment No. 14, paragraphs 80 and 81).

The Guidelines also discuss the activities that the competent authorities and institutions should undertake to protect the best interests of the child.

When preparing the Guidelines, the intention was to include as many elements of the best interests of the child as possible, especially those deemed more important. However, this list is not exhaustive, and any elements not covered by the Guidelines that appear in practice should be considered for inclusion. If justified and useful, the Guidelines should be updated to accommodate them.

Two key factors are required to ensure the best interests of the child. The first is that professionals working with children and deciding on issues pertaining to children should possess the necessary knowledge and skills, acquired through interdisciplinary training on the rights and needs of children and through direct communication with children of all ages in different situations. The second is that every dispute involving a child should be resolved in the shortest possible time in order to prevent the onset of permanent and potentially irreparable damaging consequences for the child.

The purpose of the Guidelines is only achievable if the recommendations are respected and implemented in practice. Therefore, it is recommended that all relevant parties make extensive use of the Guidelines in the course of their work.

1.2. Purpose of the Guidelines

The Guidelines are intended to assist all authorities and decision makers responsible, either directly or indirectly, for ensuring and protecting the rights of children. The Guidelines assist in the interpretation and application of legal and other regulations in all sectors relevant to the rights of children and on their status within the family, community, education or healthcare institution, social care institution, including court and administrative proceedings. The intention is to improve the implementation of regulations and through this make the process of determining the best interests of the child more efficient, adequate and comprehensive. Moreover, a further objective of the Guidelines is the promotion of an interdisciplinary approach to decision-making. This applies to all issues but to determining the best interests of the child in particular.

The Guidelines were devised as an instrument to be used by decision makers when assessing and determining the best interests of a child. The Guidelines help decision makers take into account the particular characteristics of each child and their unique circumstances as well as the time required for the decision, whilst protecting the child's best interests. Decision makers are free to decide which elements they want to prioritise in each specific case and which elements not to consider if consideration of such elements would jeopardise any of the rights enjoyed by the child.

1.3. Target group

The Guidelines are intended for professionals and institutions competent to implement procedures that bring decisions on issues concerning children as well as the authorities before whom agreements on such issues are reached. These include judges, prosecutors, legal associates in the courts and prosecutor's



offices, authorised officials, attorneys, professional staff of the guardianship authorities (social workers in particular), professionals in healthcare and institutions of education as well as other persons involved in the upbringing and education of children, authorised mediators and professionals in the legislative and executive branches of government. Policymakers, police officials and students can also benefit from the Guidelines.

1.4. Basic principles

The Guidelines are based on the basic principles outlined in the Convention on the Rights of the Child, taken over from and confirmed in other documents pertaining to children, and the jurisprudence of the European Court of Human Rights. In addition to applying the **basic principle** of the **best interests of the child**, all competent authorities, institutions and decision makers should comply with the three remaining principles in all cases involving individual children, children as a group or children in general:

- **Ensure non-discrimination for the child, his/her parents or legal guardians**, on the grounds of race, skin colour, gender, language, religion, political or other beliefs, national, ethnic or social origin, property, developmental difficulties, family origin or any other circumstances (Article 2, paragraph 1).
- **Ensure the right to life and, to the maximum extent possible, the survival and development of the child** (Article 6).
- **Ensure the child's freedom to form and express his/her views** at each court or administrative proceeding concerning the child and respect for the child's views (Article 12).



II ELEMENTS FOR THE ASSESSMENT AND DETERMINATION OF THE BEST INTERESTS OF THE CHILD



II 1. COMMON AND GENERAL ELEMENTS FOR THE ASSESSMENT AND DETERMINATION OF THE BEST INTERESTS OF THE CHILD

The elements for assessing and determining the best interests of the child are numerous and diverse in terms of their content and the effect they have on children, depending on the situation and the decision being taken. Therefore, these elements must be considered in line with the given context and on a case-by-case basis.

Although it is not possible to generalise about what is best for a child, certain elements are common and general and therefore must be considered when assessing the best interests of a child. Comment No. 14 lists these elements as those relevant to most of the situations that befall a child or group of children whose best interests require protection.

1. The child's view: Regardless of who is taking the decision on an issue concerning a child in a given situation, the fundamental element and means for assessment and determination of the child's best interests are the child's own views on the issue. The child must be given the opportunity to influence how his/her best interests are determined in line with his/her age and level of maturity.

2. A child's identity: Every child is unique, and this is why it is essential to pay attention to their identity and personal features, such as gender, sexual orientation, origin, religion and cultural identity, when determining their best interests.

3. Preserve the family environment and maintain the child's relationship with his/her parents and family members: A child should only be separated from his/her family through the application of measures assigned by the competent authorities if there are no alternative measures available for the protection of the child. In the event that the child is separated from one or both parents and/or other family members, provisions must be made to enable the child to maintain regular and meaningful direct contact with them.

4. The care, protection and safety of a child: The well-being of a child must be ensured in all situations and through all decisions on issues relating to the child. This includes their material, physical, educational and emotional needs as well as the need for affection and physical and emotional security.

5. Vulnerability (for reasons of, amongst others, disability, belonging to a minority group, being a victim of violence, a migrant or a refugee): What constitutes the best interests of a child in a specific situation of vulnerability will differ from those of other children as well as from children in the same vulnerable position, because each child is unique.

6. A child's right to health and his/her health condition: Children must have access to unconditional and appropriate healthcare. This includes preventive and medical care, regardless of their status in terms of health insurance.



7. The right of a child to education: Education is a fundamental human right of each child, and this is guaranteed through a number of international documents and through the legislature in Bosnia and Herzegovina. This right correlates to other rights, and their realisation contributes to the quality of life of each individual in Bosnia and Herzegovina.



II 2. SPECIFIC ELEMENTS FOR THE ASSESSMENT AND DETERMINATION OF THE BEST INTERESTS OF THE CHILD



1.

ELEMENTS WITHIN THE PREPARATION OF PUBLIC POLICIES, LAWS AND BYLAWS PERTAINING TO CHILDREN FOR ASSESSING AND DETERMINING THE BEST INTERESTS OF THE CHILD

Nada Grahovac, Saliha Đuderija, Jasmina Mujezinović



1. Adoption and harmonisation of policies, laws and bylaws

The United Nations Convention on the Rights of the Child¹ obliges State parties to take all appropriate legislative, administrative and other measures to ensure that every child can implement every right recognised in the Convention (Article 4). This implies full alignment of the national legislation with the Convention to enable direct application of its provisions and basic principles. In the context of the Convention, States must see their role as fulfilling clear legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children (General Comment No. 5: General Measures of Implementation of the Convention, 1.11.) (Hereinafter, Comment No. 5).

The State parties through their competent authorities, “shall take” appropriate measures. This wording does not leave any room for speculation on whether specific measures should be taken or not. State parties are under strict obligation to take “all appropriate measures” (United Nations Committee on the Rights of the Child, General Comment No. 13, The Right of the Child to Freedom from all Forms of Violence, paragraph 37).

These measures pertain to legislative action and are to be implemented by different sectors. They include the adoption of strategic documents to improve child protection, prevention programmes and support services for children, the obligatory adoption of a multidisciplinary approach and the education of both children and those adults who work with children. The purpose of these measures is to meet the needs of children and enable them to exercise their right to protection.

The realisation of a child’s rights requires systemic solutions. To ensure efficient implementation of the Convention and the strengthening of the childcare system, the Committee on the Rights of the Child has defined a series of measures and activities that each State party should undertake to ensure full enjoyment of all of the rights enshrined in the Convention by all children, “*through legislation, the establishment of coordinating and monitoring bodies - governmental and independent, comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes.*” (Comment No. 5, paragraph 9)

The measures that the Committee insists upon primarily are described below.

a) Adoption of a long-term strategy for children

The principle of the best interests of the child implies the full and genuine enjoyment of all rights listed under the Convention by all children and this, in turn, requires a rights-based approach and the active participation of each entity responsible for protection. It is, therefore, crucial to have a comprehensive strategy in place to act as a long-term plan for the improvement of the social care of children.

The adoption of a strategy for children (in line with the respective competencies defined in the constitutions) underlines the recognition of the need to identify the problems that undermine the realisation of child’s rights across different sectors as well as the need to adopt policies aimed at improving the status of children from birth to adulthood in all segments of society.

¹ Bosnia and Herzegovina assumed the obligations pertaining to the Convention on the Rights of the Child through its notification of succession in 1993.



Furthermore, by adopting the strategic document, the State party has to fulfil the requirements of the Convention on the Rights of the Child and other international instruments that oblige the State party to ensure the realisation of all rights for all children under equal conditions.

The main objective of the strategic document is the effective promotion of child rights and the protection of children in exercising their rights through the implementation of international and national standards pertaining to children. This entails identification of the most common issues that undermine the realisation of child rights, the protection of children and their rights, the development of long-term policies, measures and activities based on the actual needs of children and the determination of priorities to improve child protection in all segments of society.

Based on a multidisciplinary approach, the strategic document should include an overview of sustainable measures to ensure the full realisation of all rights by all children. Accordingly, the objectives of the strategic document must be realistic and achievable.

A multidisciplinary approach to the adoption and implementation of the strategic document must emphasise the fact that all rights enjoyed by children are fundamental and equally important. It is not possible to rank these rights according to grounds of importance because children must be able to exercise fully each and every right guaranteed to them as they grow up. Similarly, it is not possible to rank the rights and principles of the Convention according to their perceived significance or importance. Considering that the concept of the child's best interests is the primary criterion that must be fulfilled in all activities related to children (actions and decisions, policies, proposals, services and procedures), the long-term strategic document must ensure that each sector takes the best interests of the child as the primary consideration.

Bearing in mind the definition of the term 'child' in the Convention on the Rights of the Child and the four basic principles of the Convention (1) the best interests of the child, 2) the right to life, survival and development, 3) the child's right to express his/her views and 4) the right to non-discrimination) the **strategic document should cover:**

- civil rights and liberties;
- social protection, family environment and alternative care;
- healthcare;
- education, cultural activities and leisure;
- special measures of protection.

The strategic document should also ensure the following:

- development of implementation programmes covering a specified period with clearly defined activities, the entities in charge of the activities and deadlines;
- mandatory coordination between the entities in charge of child protection;
- mechanisms for supervision and continued monitoring, regular updating and periodic reporting.

Lastly, the strategic document should foresee measures to ensure **equal access to justice for all children** in all situations in the realisation of their rights, making certain that the principle of the best interests of the child is a primary consideration.



b) Alignment of legislation with the Convention

Having accepted the Convention on the Rights of the Child, the State party assumes the obligation to take all appropriate legislative measures (see *Article 4*) and align its legislation fully with the requirements and basic principles of the Convention. Alignment of the legislation must be a continuing process that involves a comprehensive analysis of the laws² currently in force as well as proposed laws by “considering the Convention not only article by article but also holistically, recognizing the interdependence and indivisibility of human rights.” (Comment No. 5, paragraph 18)

Aligning the legislation with the Convention, in accordance with the constitutional competencies, means that every piece of sectoral legislation (in the fields of education, family relations, healthcare and other areas) must clearly recognise the basic principles of the Convention and ensure that efficient procedures are in place and accessible to children in the event of a violation of their rights. These procedures include protection mechanisms, **provision of the necessary information, representation of children and procedures for the resolution of complaints and appellate proceedings**. Children in the education system should know who to contact at their school to report a violation of their rights and how to report a violation. They should know how to request a review of the decision of the body of the first instance and who will perform that review at their school. The same principle applies to other systems.

Through the alignment of its legislation with the Convention, the State party is obliged to enable all children **to exercise their right to express their views and to be heard**. Consequently, each sectorial law must recognise this right and enable children to exercise their rights within their family and school as well as within the healthcare and social sectors. This is achieved by ensuring that the views of children are given due consideration not only in the decision-making process but also during the drafting of regulations and appropriate measures and their subsequent evaluation.

In order for **adequate implementation** of the aligned legislation, appropriate bylaws, in accordance with the laws and the deadlines defined in these laws, need to be adopted. Adoption of bylaws is mandatory as it prevents different interpretations and approaches to the implementation of the laws. Without bylaws, the approach to the realisation of child rights would not be harmonised, and this would prove detrimental to the best interests of children.

Alignment of the legislation is a process that involves **systemic monitoring of the effect of the implementation of the existing legislation** pertaining to child rights and their protection.³ This ascertains whether the current legal solutions meet the needs of children and to what extent. Analysis of the implementation of the existing legislative framework is not an end in itself but rather the basis for new legislative measures and activities.

² For illustrative purposes, until the law prescribes that convicted perpetrators of the criminal offence of child sexual abuse do not qualify for a reduction in sentence they will remain eligible for a reduction in sentence under the same conditions specified in the law as the perpetrators of other offences.

³ The current legal solutions have proven to be ineffective in enabling children to exercise their right to maintenance. No official data exists on the number of parents who fail to comply with their statutory obligation to provide for their child through the payment of maintenance, either by failing to pay maintenance or by paying maintenance periodically or to an amount lower than that ordered by the court. There is no official data on the number of proceedings instigated for protection under the family Law or the effects of those proceedings.



Multi-sector and inter-sector cooperation is essential for the realisation and protection of child rights. Coordination is required not only in individual cases dealt with by different sectors, which may involve the protection of children from violence, placement of children without parental care and support and assistance for children with developmental disabilities, but also in the planning and development of policies, the adoption of appropriate legal frameworks, determination of priorities within the realisation of the rights and interests of children and their protection and in the exercise of supervision. Inadequate coordination will result in disjointed activities, and the shifting of responsibility among the entities responsible for the protection and this could jeopardise the implementation of child rights and prove contrary to the best interests of children.

2. Standards of professional conduct

2.1. The purpose of professional standards and their advantages

Standards of professional conduct govern different fields of life. As a rule, these standards are based on professional experience in the implementation of international and national regulations and on the protection of human rights and fundamental freedoms of individuals and groups. These standards define the elements of professional work and the competencies that the relevant institutions, bodies and professionals should possess in order to ensure that the beneficiaries receive the best possible service.

In Bosnia and Herzegovina, a common practice in areas pertaining to children has been to develop procedures, guidelines, instructions and similar material that is in line with the Convention on the Rights of the Child and that outline the required standards deemed relevant and applicable for the protection of the best interests of children. However, the implementation of professional standards in specific sectors dealing with child protection has proven to be more difficult and more demanding.

When developing professional standards, institutions and organisations should define their activities based on the following general principles:

1. All children enjoy equal rights to protection from abuse and exploitation.
2. Every child should be encouraged to reach his/her full potential.
3. Every child should be protected from discrimination.
4. All professionals working with and for children have the responsibility and duty to support the provision of care and protection for children.
5. Competent institutions working with partner organisations must ensure the minimum standards of child protection within their programmes.

One of the advantages of professional standards in child protection is a reduction in the risk of the violation of child rights. As a rule, these standards provide instruction on appropriate behaviour toward children as well as guidance on how the competent institutions and organisations should respond to violations of child rights. By developing and adopting standards, institutions and organisations not only express their commitment to ensuring the child's best interests but also help persons that work with and for children



to improve their practices and to prevent the violation of child rights. It is crucial, considering that child protection is usually placed within the competence of local authorities, that all levels of government apply professional standards equally, which is the purpose of all standards.

2.2. Activities related to the development of professional standards that are in the best interests of children

In order for professional standards to be developed and applied efficiently and in the best interests of children, institutions and organisations should implement the following activities:

- Prepare an official document on child safety (Child Protection Policy).
- Prepare instructions for implementation of the Child Protection Policy with clear guidelines and defined measures to be taken in the event of suspected violations of child safety.
- Implement measures to prevent the potential undermining of a child's best interests by employees who either directly or indirectly come into contact with the child. This could include the adoption of additional criteria for the employment of persons to work with or for children (aimed at preventing the employment or engagement of persons who might be a threat to children) and introducing clear procedures concerning the transportation of or travel with children and time spent in the company of children. Guidelines should be adopted on the treatment of children, such as a code of conduct or rulebook on professional conduct toward children. Such guidelines would contribute to the minimisation, if not elimination, of situations in which a child's safety is jeopardised as well as help prevent false accusations made against professionals and other persons who come into contact with children.
- Ensure that all authorities providing services to children at all levels comply with professional standards.
- Introduce procedures for the processing of cases of reported discrimination and adopt a plan of training for professionals working with and for children.
- Advise children, professionals and the general public about documents that are in the process of enactment.

To ensure that the above-mentioned objective is achieved, institutions and organisations should undertake the following activities after developing professional standards:

- Ensure the delivery of training and professional advancement activities for the professional staff in charge of child safety.
- Ensure that both the children and the professionals have access to assistance and advice on the fulfilment of their roles related to child protection.
- Ensure and oversee implementation of standards.
- Establish cooperation with partners in order to promote compliance with standards in the best interests of children.



3. Overseeing the implementation of regulations

Overseeing the implementation of regulations, in accordance with international standards, that directly affect the best interests of children includes an assessment of the following:

- the extent of alignment of the specific regulation with international standards in the field of the human rights of children,
- efficient implementation of the regulation most suited to the best interests of the child.

In legal practice in Bosnia and Herzegovina, oversight is deemed to comprise of two components:

- inspection, carried out by the inspection authorities in line with the applicable national legislation;
- monitoring the implementation of the law, which the competent institutions perform through the preparation of reports concerning the implementation of the given legislation.

3.1. Inspection

The competent institutions and/or inspection authorities are mandated to perform inspections to ascertain the extent to which the regulations are being implemented, including regulations in the field of child rights protection. The inspection authorities can pronounce administrative measures to prevent or remedy irregularities in the implementation of regulations and undertake other statutory measures in line with their mandate.

The purpose of inspection also includes prevention and promotion of social responsibility within the realisation of statutory obligations. The inspection is organised in accordance with the laws of the Federation of Bosnia and Herzegovina, cantonal legislation, the laws of Republika Srpska and Brčko District of Bosnia and Herzegovina. The inspection authorities, within the scope of their respective jurisdiction, are involved directly in the protection of the best interests of the child. Regulatory measures imposed by an inspection authority, especially in the field of education and child labour, are particularly necessary as these measures are based directly on the child's best interests.

3.2. Monitoring implementation of the law (reporting)

Reports⁴ on the implementation of legislation in the field of child rights protection provide an insight into the legal actions undertaken by the public administration authorities and an assessment of their performance in terms of protection, monitoring and the promotion of child rights. These reports also provide an overview of the situation seen from the perspective of professionals and recommendations for the removal of deficiencies and irregularities from the implementation process. The bodies of public administration have an obligation to file their reports and thus enable access to information for all interested parties, including civil society.

⁴ Reporting pertains to the provision of information to the bodies of public government, politicians, international bodies, civil organisations and the general public. It is based on an assessment and analysis of a wide range of data. This process entails the continued and systemic collection of data and information.



In many instances, such reports are the only source of initial information necessary to evaluate the performance of the institutions responsible for the protection of child rights. The quality of these reports is, therefore, of paramount importance. The methodology employed in drafting the report should rely on the following factors:

- professional and analytical monitoring of the implementation of specific legal provisions;
- data and indicators related to the activities carried out by the professional staff implementing the legislation on child protection;
- identification of the bodies implementing the law and maintaining official records;
- child participation, whenever possible;
- cooperation with representatives of civil society;
- monitoring of the process of aligning the legislation with international standards in the field of child protection.

Within the context of the reporting process, a clear distinction must be made between activities aimed at sharing information with the public on the one side and the assessment of the effect of the legislative on the other. This is primarily for the purpose of the preparation and publication of a plan of advisory activities involving civil society.

3.2.1. Data collection

Data on children and their rights can be collected by means of measurement, evaluation and monitoring, depending on the purpose of the data collection. Data collection can be a useful tool within the context of the protection of the best interests of children, but only if it enables the following:

- the continued long-term use of the established data collection systems;
- performance of analyses aimed at indicating the level of compliance with the best interest standard and child protection in general;
- monitoring of developments and changes in the status of certain vulnerable groups of children;
- monitoring implementation of the laws and policies on prevention of discrimination against children;
- preparation of reports and recommendations in the event of child rights violations;
- informing the public, decision-makers, and other relevant stakeholders about the status of child rights.

3.2.2. Records

Records on children represent an essential tool in the reporting process. These records should be maintained in such a way that enables the inspection of data. Such data could help identify the types of protection enjoyed by children as well as its scope and quality or lack of. All existing records on children should be protected adequately, and only authorised persons should have access to personal data.



In order to ensure respect for the principle of the child's best interests, records should include as much data as possible on children:

- age,
- gender,
- disability,
- education,
- family and social status,
- health status,
- contextual information on vulnerable groups and areas,
- other data pertaining to the rights and the type of protection enjoyed by children.

4. Research with children and on children

Research with and on children can be focused on different objectives. This could include the advancement of scientific and professional knowledge on children and their functioning (physical, cognitive, social and emotional), identification of the problems experienced by children and finding solutions to improve social care for children.

Children usually participate in research when the information sought cannot otherwise be obtained. The participation of children requires an approach that takes into account their vulnerability. Therefore, special attention should be paid to protecting these children from potential abuse during the research process and in ensuring their best interests. All research must comply with the principles of the Convention on the Rights of the Child and especially the provisions on the child right to express his/her own views. Children must be given the opportunity to express, in line with their age, needs and abilities, their opinions on the research.

As one of the activities that the State party should undertake to ensure implementation of the principle of the best interests of the child within research, in its Comment No. 14 (2013) the Committee on the Rights of the Child advises the State (paragraph 15, item e), "when establishing, monitoring and evaluating data collection to ensure that the child's best interests are explicitly spelled out and, where required, support research on children's rights issues."

4.1. Ethics in research

Research involving children as participants must comply with the principals and standards of the Code of Ethical Research with Children and on Children (hereinafter, the code of ethical research) as well as with the rights of respondents (children) defined therein.⁵ The code of ethical research obliges all researchers conducting research with and on children to ensure the physical, emotional and psychological well-

⁵ The Code on Ethical Research with Children and on Children in Bosnia and Herzegovina, Council of Ministers, 28 May 2013.



being of the children. In addition, all researchers must comply with the code of ethics for their respective professions.

The code of ethical research regulates the status of children and their families as participants in various research, whether humanistic, social, educational, medical or other, in terms of how the research could affect their integrity either directly or indirectly. The primary purpose of the code of ethical research is to educate researchers, children, parents/guardians and the general public about the basic ethical principles and standards that must be respected during the performance of any research involving children. Pursuant to the code of ethical research, any research with children and on children requires thorough preparation; this includes a clear set of instructions for researchers whose research is centred on children.

Ethical research involving children should comprise the following activities:

- Select a research methodology that is adjusted to children and their evolving abilities and needs.
- The relevant approval for the research must be obtained from the competent institution.
- Inform the children who are participants in the research and their parents/guardians about the type of research being conducted in a language that they can understand and ensure that they correctly understand the objectives, purpose and procedures of the research.
- The differences between children, in particular, their gender, ethnic origin, religious affiliation and beliefs, cultural identity and vulnerability (children with developmental disabilities, members of ethnic minorities, victims of violence, migrants and refugees) must be taken into account.
- Along with the child's informed consent, approval for the child's participation must be obtained from the parents/guardians.
- A safe and pleasant environment must be provided for the implementation of the research.
- Anonymity and confidentiality must be guaranteed concerning the decision regarding a child's participation in the research and of the data obtained through the research.
- The children and their parents/guardians must be informed about the results of the research in language that they can understand.
- The welfare of the children must be prioritised throughout the different stages of the research.

A set of practice standards has been developed to ensure the quality participation of children within the research process. 1) An ethical approach that requires transparency, honesty and accountability, 2) the participation of children is relevant and voluntary, 3) ensuring a child-friendly enabling environment, 4) equality of opportunity, 5) staff are effective and confident, 6) participation promotes the safety and protection of children, 7) ensured follow-up and evaluation.⁶

4.2. Ensuring the principle of the best interests of the child in research

The following activities are intended to ensure that the principle of the best interests of the child is respected in research involving children.

- Identify the problems and objectives of the research in relation to the improvement of the status of children and the realisation of their rights.

⁶ Practice Standards in Children's Participation, Save the Children, 2005.



- Define the manner of the child’s participation and prepare clear instructions for the researchers.
- Obtain the child’s informed consent and the consent of the parents/guardians (written or verbal permission is required from the parents for children under the age of 15. Only the child’s informed consent is required for children over the age of 15, but the parents/guardians must be informed in writing about the content and objectives of the research).
- Respect and acknowledge individual and cultural differences between children, without prejudice or stereotypes.
- The child must be given the opportunity to express his/her views, and these views must be respected and honoured.
- Communication appropriate to the child must be used and adjusted to suit the child’s level of vulnerability.
- The conclusions of the research must be elaborated.
- The results and effect of the research must be presented with emphasis on the manner in which the results of the research will help to achieve the following:
 - expand knowledge on children,
 - understand the child’s perspective,
 - improve the status of children in society.

The results and effect of the research should contribute to the following:

- improve the status of children and the realisation of their rights;
- the healthy psychological and physical development of children, their inclusion in society and their participation in decision-making processes;
- promote the general well-being of children as a precondition for the well-being of the family and society.

5. Training

The Committee on the Rights of the Child defines in General Comment No. 14 (2013) the activities that the State party should undertake to ensure implementation of the principle of the child’s best interests in training activities, including the obligation of “providing training on the child’s best interests and its application in practice to all those making decisions that directly or indirectly impact on children, including professionals and other people working for and with children.”

In the Concluding observations of the Committee on the Rights of the Child concerning the consolidated second to fourth periodic reports of Bosnia and Herzegovina (2012), the Committee reiterated its earlier recommendation that the State party should take the primary responsibility for the provision of adequate and systematic training and sensitisation of professionals working with and for children (police officials, members of parliament, judges, attorneys, healthcare staff, teachers, school administration personnel and other professionals as needed).



The key issues in Bosnia and Herzegovina are the lack of adequate and systematic training and sensitisation on child rights, a lack of child protection professionals working with and for children, inadequate working conditions for professionals and the insufficient number of experts and their unequal regional representation.

Methodological diversity and discontinuity have been a downside of training delivered thus far in Bosnia and Herzegovina in terms of the duration and access to training for all professionals. Institutions in the system must direct their strategic planning and activities toward ensuring appropriate and continued the training of professionals responsible for protecting the rights and interests of children and of those whose decisions either directly or indirectly have an effect on children. Training must have continuity and must be available to everyone.

The following activities must be undertaken in order to develop **adequate training standards**:

- Establish a system of training certification and accreditation.
- Improve cooperation, especially between governmental institutions and the NGO sector, and make the best use of available civil society resources (seminars, education programmes, manuals, booklets and research findings).
- Adopt a child-centred approach. Implementation of the principle of the best interests of the child in training activities requires an approach that is 1) mindful of the child's individual needs, 2) most appropriate to the child's development and 3) able to protect the child and allow him/her to exercise his/her rights.



2.

ELEMENTS FOR THE ASSESSMENT AND DETERMINATION OF THE BEST INTERESTS OF THE CHILD IN THE AREA OF FAMILY AND SOCIAL PROTECTION

Jasna Sofović, Suzana Bubić, Džamna Duman Vranić, Sadmira Čajo,
Tatjana Novaković-Manojlović, Mirsada Poturković, Ljubo Lepir



1. Knowledge and determination of the parentage of the child

Article seven of the Convention on the Rights of the Child and the national family laws recognise the right of the child to know his/ her parentage, subject to certain limitations. All other rights to which the child is entitled depend on the exercising of this particular right. It relates closely to the right to name and the preservation of identity, which is characterised by gender, age, level of maturity, citizenship, religion, cultural identity and language. Psychologically speaking, identity is the view that the individual has of himself/herself. This view provides continuity for the existence of his/her personality, and if this continuity is disrupted, the child can develop an identity crisis as well as a deeper psychological crisis.

A birth certificate containing a citizen's personal identification number is the main form of an identification document. A lack of identification of a child often leads to breaches of other rights and exposes the child to the risk of trafficking in human beings and in organs, recruitment for war, illegal adoption and other types of abuse.

Since the Convention on the Rights of the Child provides that this right must be guaranteed "as far as possible" (Article 7), the competent authorities must take all possible measures to ensure this right and to work in the best interests of the child in cases where the national legislation provides for the possibility to determine the parentage of the child. According to the national law, a child's parents cannot be identified through court proceedings in cases of complete adoption of children and children conceived through medically assisted fertilisation.

a) In order to establish **a legal relationship between the parent and the child** and in order to prevent a situation where the wrong person is identified as the parent, the assessment and determination of the best interests of the child requires that the registrar and guardianship authorities conduct specific tasks.

- When the father's data was not entered into the register, undertake all necessary activities to obtain the mother's declaration on the identity of the father of the child (Family Law of the Federation of Bosnia and Herzegovina and the Family Law of Republika Srpska).
- Of the guardianship authority:
 - Consider and determine the possibility that the person acknowledging the parentage is the biological father/mother of the child, based on which the authority will decide whether to deny their approval of the recognition of paternity/maternity (Family Law of the Federation of Bosnia and Herzegovina) or their recommendation to the guardian to agree with the recognition (Family Law of Republika Srpska and the Family Law of Brčko District).
 - Following the mother's declaration on the presumed father of the child, the guardianship authority is required to undertake all necessary activities to obtain the statement of the man in question regarding recognition of paternity (Family Law of the Federation of Bosnia and Herzegovina and the Family Law of Republika Srpska).
 - File a paternity/maternity suit if the father/mother failed to do so unless such a determination is considered detrimental to the child (e.g. if the person in question displays antisocial behaviour) or may have an adverse effect on the mother-child relationship.
 - Finalise maternity and paternity disputes within a reasonable deadline (Mikulić versus Croatia and Jevremović versus Serbia).



b) In cases of **adoption**, the guardianship authority is required to ensure the following to assess and determine the best interests of the child:

- Provide advice to the adoptive parents, when deemed necessary, on ways to tell the adopted child that he or she is adopted or to refer them to counselling at an appropriate institution (Family Law of the Federation of Bosnia and Herzegovina and the Family Law of Brčko District). To inform the adoptive parents about the benefits of telling the adopted child about the adoption and to recommend that they tell the adopted child that he or she has been adopted (Family Law of Republika Srpska).
- To allow a minor adopted child to examine the adoption case file and collect data on his or her biological parents, only after it has been determined that the child is ready and prepared to do so (Family Law of the Federation of Bosnia and Herzegovina and the Family Law of Brčko District).
- To assess and determine whether a minor adopted child should be allowed to examine the entire adoption case file or if parts of the file containing potentially detrimental information should be removed. Potentially detrimental information includes information that the biological parent exhibits antisocial behaviour or that the child was conceived through rape or incest (Family Law of the Federation of Bosnia and Herzegovina and the Family Law of Brčko District).

2. Exercising parental care/parental rights

All decisions on parental care (Family Law of the Federation of Bosnia and Herzegovina and the Family Law of Brčko District)/parental rights (Family Law of Republika Srpska) in their entirety or decisions on particular parental duties or child's rights must centre on the best interests of the child. Decision makers must always bear in mind that these decisions affect the development of the child and the relationship between the parents and the child in the years to come. The ultimate goal of such decisions is to ensure a happy childhood and upbringing, physical and mental health and the emotional development of the child on his/her path to adulthood.

Yet the elements used in assessing and determining the best interests of the child are not the same across all scenarios in this field. Therefore, they should be analysed separately. Despite the type of situation at hand, the individual needs of each child must be determined on a case-by-case basis, and the opinions of children capable of understanding their situation and the situation that is the subject of the decision have to be heard.

2.1. Parental care/parental rights when the parents and child live together

In cases where the parents and the child live together, parental care is provided jointly, equally and in agreement, (Family Law of the Federation of Bosnia and Herzegovina and the Family Law of Brčko District) and "unless otherwise provided for under the law" (Family Law of Republika Srpska), with the most substantial likelihood and guarantees that the best interests of the child is ensured.

Intervention on the part of a competent authority may be required in two situations. The first is when the parents cannot agree on the parental care of the child in terms of exercising one of the child's rights



or fulfilment of their tasks and responsibilities. The second is when different opinions on these matters exist between the child and the parents. In the first situation, the dispute is resolved by the court through non-contentious proceedings (Article 141, paragraph 3 of the Family Law of the Federation of Bosnia and Herzegovina) or by the guardianship authority (Article 85, paragraph 2 of the Family Law of Republika Srpska and Article 124 paragraph 3 of the Family Law of Brčko District).

In the second situation, referred to above, family laws do not provide for exclusive jurisdiction. However, based on the general powers or duty of the guardianship authority to undertake measures ex officio to protect the personal rights and act in the best interests of the child and the property rights of the child, it is presumed that the guardianship authority will decide on the matter. In the event of a dispute between the child and the parents or because of their conflicting interests, provisions on the appointment of a special guardian exist. This indicates that the guardianship authority has this option at its disposal in the second situation. Disputes must be resolved in the best interests of the child, which always has priority over the opinion of the parents.

Disagreement regarding the upbringing, education and employment of a child

Parents living together as a family may disagree on the education of their child or the child's choice of school or profession as well as on upbringing and disciplinary methods applied to the child.

Parents have significant discretion in this area. The only limitation is the obligation to observe the principle of the best interests of the child. However, the right to freedom of thought, conscience and religion enshrined in the Convention on the Rights of the Child (Article 14, paragraph 1) is limited by the recognition of parents right and duty to provide direction to the child in the exercise of his or her rights in a manner consistent with the evolving capacities of the child (Article 14 paragraph 2). Parents have the right to educate and teach their child in conformity with their own religious and philosophical convictions (Protocol 1 to the European Convention on Human Rights, Article 2).

When the child and parents cannot reconcile their differing positions and desires, the competent authority should consider the following elements when assessing and determining the best interest of the child.

a) In relation to the upbringing

- The child should be brought up in the spirit of peace, dignity, tolerance, freedom and solidarity.
- The right of the child to freedom of thought, conscience and religion should be fostered, and the child should be directed in the exercise of these rights in a manner consistent with his/her evolving capacities.
- Any detrimental influence on the part of parents on the development of the child should be removed. Such an influence can result from the parents' insistence that the child participates in religious ceremonies or rituals.
- The spractising of harmful religious practices should be prevented.
- One parent cannot convert the child to another religion or raise the child as a member of a religion different to that of the parents at the time of the marriage or the spirit of the religion in which the child was raised until that point without the consent of the other parent (Hoffman versus Austria).
- The social and cultural context in which the child is brought up should be considered.



b) In relation to education

- The direction of the child's education should focus on the development of the child's personality and his/her physical abilities, developing respect for human rights and fundamental freedoms, preparing the child to become a responsible member of society and to care for the environment.
- The child's general and specific psychological and physical abilities, health status, affinities, school achievements to date and the child's justified wishes conveyed by the child.
- The economic standing of the child's parents.

c) In relation to employment

- Employment that causes harmful consequences for the health of the child and has a negative impact on the child's development and regular education should be prevented.

2.1.1. Disagreement regarding the medical treatment of the child

Parents may disagree on the medical treatment or the method of treatment of their child or the application of preventive measures. Laws in the field of medical law regulate issues pertaining to the health or treatment of the child. Protection of the best interests of the child in this field falls under the jurisdiction of the guardianship authority and the courts. The guardianship authority issues an approval for the medical intervention or treatment of the child if there is a conflicting interest between the child and the parents or if the parent acts contrary to the best interests of the child (Article 22 of the Law on Rights, Duties and Responsibilities of Patients in the Federation of Bosnia and Herzegovina and Article 25 of the Law on Healthcare of Republika Srpska). The Law on Healthcare of Brčko District does not provide for the powers of the guardianship authority. Instead, it stipulates that the attending health professional shall inform the guardianship authority if he or she believes that the legal representative acts contrary to the best interests of the child. Conflicting interests of the child and the parents can also include failure on the part of the parents to agree on a given medical intervention.

If both or one parent disagrees with organ and/or tissue transplantation, regardless of whether the child is a donor or a recipient, the family legislation provides that consent shall be given by the guardianship authority (Family Law of Republika Srpska and the Family Law of Brčko District) or the court or guardianship authority (Family Law of the Federation of Bosnia and Herzegovina) (see the introduction to section 2.1).

The competent authority assessing and determining the best interests of the child should engage appropriate medical specialists in the process and take the following elements under consideration:

- medical factors;
- emotional and other factors, including psychological and social benefits for the child;
- the child's opinion or consent;
- the reasons provided by one or both parents as justification for their opinion, including if the opposition of the parents to a medical procedure is unacceptable and if their opinion is based solely on religious or cultural convictions;
- if the parents agree/request that traditional interventions or rituals be performed on the body of their child, if a member of a specific religious or cultural community, is deemed unacceptable because such an intervention would not contribute to the child's recovery or improve the child's health.



2.2. Custody of the child and exercising parental rights when the parents live separately

If the parents live separately, the competent authority may render different decisions. The competent authority in the Federation of Bosnia and Herzegovina is the court, while the guardianship authority is only involved during mediation or divorce proceedings, pending the final judgment of dissolution of the marriage. Jurisdiction is divided in Republika Srpska between the court and the guardianship authority. The provisions of the Family Law in Brčko District are contradictory, wherein one provides for the jurisdiction of the court, and the other provides for the jurisdiction of both the court and the guardianship authority.

The competent authority can decide on sole custody, entrust one parent with the care and upbringing of the child, entrust the care and upbringing of the child to another person or an institution or entrust the child to the protection and care of another person. Pursuant to the Family Law of the Federation of Bosnia and Herzegovina, the competent authority can also decide on joint custody. Many elements need to be considered as part of the assessment and determination of the best interests of the child when rendering either decision or amendments thereto.

2.2.1. Joint custody

The Family Law of the Federation of Bosnia and Herzegovina provides for the possibility to decide on joint custody when the parents do not live together. The court will not opt for joint custody only when it deems it contrary to the best interests of the child (Article 142, paragraph 3). This is because the participation of the parent with whom the child does not live in the upbringing, healthcare, education and all other important decisions that affect the child guarantees the healthy and stable development of the child. In addition, an agreement between the parents on this type of care, with a positive assessment and acceptance by the court, is the best guarantee that the parent with whom the child does not live will successfully meet all of his/her obligations toward the child. This relates in particular to the voluntary honouring of child support obligations, which eliminates or reduces the likelihood of future judicial proceedings.

When deciding on joint custody, the assessment and determination of the best interests of the child require that the following elements be taken into consideration.

a) In relation to both parents

- The ability
 - to exercise joint parental authority and commitment to such an arrangement,
 - honour parental obligations and respect the rights of the other parent,
 - agree on the manner of upbringing for the child (as demonstrated by the parental care to date) and to honour such an agreement.
- The ability, preparedness, willingness and the desire to cooperate on the care of the child and to reach agreement on all matters that affect the life and upbringing of the child after the dissolution of the marriage.
- Ability and willingness to
 - decide together on matters of importance to the child,
 - put the needs of the child first and adapt to them.



- Demonstrate a willingness to adapt to and modify parental care modalities in accordance with the child's needs.
- Have a clear understanding of the role of the other parent.
- Recognise and make the distinction between the role of parent and the role of marital partner.
- One or both parents accept this custody arrangement.
- The absence of
 - any form of addiction,
 - domestic violence (especially against the child),
 - mental illness,
 - previous neglect of the child,
 - heated and intense altercations between the parents.

b) For the child

- The child does not oppose this custody arrangement.

2.2.2. Sole custody and entrusting the care and upbringing of children

The court decides on the award of sole custody to the parent with whom the child remains, if joint custody is deemed contrary to the best interests of the child (Family Law of the Federation of Bosnia and Herzegovina); the court or guardianship authority decides on the parent to whom the child will be entrusted for care and upbringing (Family Law of Republika Srpska) or decides on awarding custody to the parent with whom the child lives (Family Law of Brčko District). If it is satisfied that the best interests of the child are served, then the competent authority accepts the agreement between the parents.

Several factors need to be considered when deciding on which parent will be entrusted with the care and upbringing of the child.

a) In relation to both parents

- The quality of the parents' relationship and their respective relationship with the child:
 - the nature and extent of the conflict between them and the role each parent has in continuing and potentially aggravating the conflict;
 - consequences that the conflict between the parents has on the child, including the child in the conflict (or not), the need to protect the child from the ongoing conflict and prevent burdening the child with the conflict (or not);
 - violent behaviour toward each other by one or both parents and toward the child;
 - the attitudes and opinions of the parents on parental care and exercising parental rights;
 - level and quality of the emotional connection between the parents and the child;
 - the likelihood that a child with developmental difficulties, disability or specific health problems will achieve proper development and protection in the community where the child will live.
- Greater ability and willingness of the parent:
 - Ensure the child's development and allow for the formation or preservation of the child's personal and familial identity.



- Understand the needs and emotional experiences of the child and meet the emotional and psychological needs of the child rather than his/her own.
- Care for the child's life and health directly and on a daily basis and take care of the child and meet all of his/her needs, in particular special needs (in so doing, separate the needs of the child from his/her own); prevent the child from adopting antisocial behaviour and protect the child from all forms of violence, molestation, abuse and neglect; monitor and control the child's behaviour and (if necessary) cooperate with the appropriate medical facilities on preventive and curative measures.
- Facilitate the child's relationship with the other parent and include the other parent in the child's life post-divorce. Cooperate on and discuss all decisions affecting the child with the other parent and thus maintain the continuity of parental care.
- Allow unimpeded personal contact and the nurturing of the relationship between the child and the parent with whom the child does not live and respect the child's psychological and emotional connection with the other parent.
- Enable the child to maintain a stable and solid relationship with other family members.
- Adapt to the post-divorce situation and the child's new role in this environment.
- Allow the child to exercise his/her rights and respect the child's right to express and have his/her opinions taken into consideration, in accordance with the age and maturity of the child.
- Raise the child in line with the law and respect the right of the child to freedom of thought, conscience and religion.
- Ensure the child's education, as prescribed by the law, and engage directly or indirectly in the child's education. Respect the right of the child to choose his/her school and profession in line with his/her abilities and affinities.
- Fulfil all duties regarding the child's property not acquired through work and in line with the statutory limitations.
- Parents must be motivated to exercise parental care and parental rights.
- If one or both parents suffer from any disease or addiction, this must not influence their ability to provide appropriate daily care for the child.
- One parent might demonstrate greater success in exercising parental care and parental rights or in fulfilling the child's needs.
- The affiliation of one or both parents to a specific religion or religious practice might have a detrimental effect on the child. This could lead to social and psychological consequences for the child and have a negative impact on the child's upbringing (Palau-Martinez versus France, Hoffmann versus Austria, Deschomets versus France and Ismailova versus Russia).
- The sexual orientation of one of the parents is not a decisive factor in deciding on the award of custody to the other parent/entrusting the child to the other parent for care and upbringing (Salgueiro da Silva Mouta versus Portugal).
- The parent with whom the child will live must provide secure and appropriate housing.
- Conditions must be in place for the healthy psychological and physical development of the child.
- Financial security must be assured for the child.
- The child must have continuity of care and attachment to the parent with whom he/she will live.



b) In relation to the child

- Age, maturity, gender, health status or disability and living conditions to date;
- feelings and opinions;
- the child's desire to live with one of the parents, if both parents are equally capable of caring for the child (considering the child's age and maturity and ability to formulate and express his/her own opinion);
- the physical, emotional, material, social, health and educational needs of the child;
- emotional attachment to the parent with whom the child will live and the need for a constant and stable environment;
- the child's attachment to and the stability of the relationship with those adults and siblings from whom the child will be separated and those with whom the child will live;
- ability to adapt to the new environment (school, friends, groups) and the system/regime in the new family, of one or both parents, (how the new partner of the parent treats the child and the other parent, the ability of the new partner to care for the child properly, how the child is treated by other children in the new family and the level of attachment of the child to the extended family (if any) of the parent with whom the child will live).

c) In relation to the larger community in which the child lives/will live

- The child can grow up in a safe environment free from crime, war, infectious diseases and such like;
- the child's needs, desires and feelings are acknowledged as relevant, and the child lives in an environment free from discrimination on the grounds of race, origin, religion and such like;
- various forms of support are available to the child and his/her family;
- opportunities exist for the child to pursue education and develop his/her talents;
- opportunities exist for the child to maintain contact and socialise with friends and peers who have a positive influence on his/her development and behaviour;
- the child has a stable environment and continuity of the circumstances in which he/she lives, avoiding drastic and sudden changes for which the child has not been prepared.

2.3. Placement of the child and entrusting another person or an institution with the care and upbringing of the child/entrusting another person with the care and upbringing of the child when the parents live separately

If both parents are unable or incompetent to exercise parental care/parental rights (Article 142, paragraph 5 of the Family Law of the Federation of Bosnia and Herzegovina and Article 125, paragraph 3 of the Family Law of Brčko District) or if necessary for the protection of the best interests of the child (Article 304, paragraph 2 of the Family Law of Federation of Bosnia and Herzegovina and Article 275, paragraph 2 of the Family Law of Brčko District) or when the best interests of the child so requires (Article 90, paragraph 2 of the Family Law of Republika Srpska), the competent authority may decide on the placement of the child and entrusting another person or an institution with the care and upbringing of the child/decide on entrusting another person with the protection and upbringing of the child (*for more on competencies, see section 2.2.*).



When rendering such a decision, the competent authority will consider the following elements in its assessment and determination of the best interests of the child.

- Ability and willingness of ‘another person’:
 - to care for the life and health of the child directly and on a daily basis;
 - meet the basic and special needs of the child and protect and ensure the child’s ability to exercise his/her rights;
 - ensure the appropriate development of the child;
 - protect a child with developmental difficulties, disability or specific health problems;
 - enable the preservation of the personal and family integrity of the child and ensure continuity in the child’s upbringing and his/her ethnic, religious, cultural and linguistic background.
- An emotional connection must exist between the child and ‘another person’.
- The child must be able to adapt to the environment in which he/she will live.
- The child needs to maintain contact with his/her biological family through regular personal contact and relationships in order to facilitate easier and faster reintegration of the child into his/her biological family (unless the family demonstrates a severe lack of capacity to do so or if such contact would harm the child’s development).
- The child should be able to adapt to the larger community in which he/she will live (*see section 2.2.2.c*).

2.4. Maintaining personal relationships and direct contact between the child and the parent with whom the child does not reside

Regular personal relationships and direct contact between the child and his/her parent/parents with whom he/she does not reside is a separate right provided for under the Convention on the Rights of the Child and the national family laws.

Maintaining a connection between the child and his/her parents reduces the negative effects of their separation and the mental and psychological health and emotional development of the child. Enabling the continuity and development of close ties and love between them will lead to ideal conditions for the child’s development. Since regular contact is vital for the child and in the best interests of the child in the long term, such contact can only be restricted or forbidden when it is not possible to protect the child’s interests.

The Family Law of the Federation of Bosnia and Herzegovina and the Family Law of Brčko District acknowledge the child’s right to maintain his/her relationship and contact with grandparents. These laws also provide for such contact between children who do not reside with the same parent or reside with other persons. The Family Law of Republika Srpska recognises the child’s right to maintain personal relationships with relatives and other persons with whom the child is particularly close. All three laws provide that such contact and relationships must be in the best interests of the child.

An adequate assessment and determination of the best interests of the child, when deciding on relationships and contact in judicial proceedings, (Family Law of the Federation of Bosnia and Herzegovina) or procedure before the guardianship authority (The Family Law of Republika Srpska and the Family Law of Brčko District provides, through contradictory provisions, for the jurisdiction of the court and the guardianship authority) requires that the following be resolved:



- The mode and time of contact should be determined so as to
 - correspond to the age and developmental stage of the child, his/her needs, school obligations and the physical distance between the child and his/her parents as much as possible (direct contact through visitation, going out together, weekly and annual holidays and contact by letter, telephone and electronic mail);
 - be in alignment with the working hours and available time of the parents in order to allow for efficient direct contact and respect for and enforcement of the decision rendered (Gluhaković versus Croatia).
- The location for the contact should be
 - determined in advance and the parties should not be allowed to change the venue once the decision on contact has been made;
 - the most convenient for the child;
 - neutral and acceptable to the parents in order to prevent any potential conflict that would negatively affect the child;
 - provide all of the necessary conditions for unimpeded contact (e.g. an appropriate room at the kindergarten or social work centre).
- If the child is to stay at the home of the parent with whom he/she does not reside during visitation hours (whether during the day, at weekends, during annual leave or school break and when the child spends the night at the home of that parent) it should be checked in order to ensure that it provides appropriate conditions for the child's stay.
- The frequency and duration of the contact should be determined in line with the quality of the relationship between the parent and the child and the need for its preservation and improvement.
- The procedure and decision-making should be as short as possible in order to prevent permanent or irreversible damage to the relationship between the child and his/her parent.
- It should be determined whether such contact will have a positive influence on the comprehensive development of the child and be of benefit to the child.
- Restricted or supervised visitation conducted in dedicated spaces should only be imposed when necessary, because of a parent's health problems, an extended period without contact between the child and the parent, domestic violence, the risk of child abuse or abduction, for the moral protection of the child, in consideration of the child's health or to protect the child from the harmful influence of the parent.
- Periodic reviews of the need for restricted/supervised contact should be performed. Once it is deemed that such a restriction/supervision is no longer required, then a decision to terminate the supervision should be rendered.
- Contact between the child and the parent should only be prohibited if the child cannot be protected by less restrictive measures, which would achieve the purpose of the contact without breaching the right of the parent to respect for family life. The prohibition of contact must be justified and proportionate and only ordered in exceptional cases where such contact would have an adverse and detrimental effect on the child. The latter encompasses established physical or psychological health risk, the danger of compromising the child's morals, such contact having an upsetting effect on the child (e.g. because of a previous absolute lack of any interest by the parent in the child), the child is deemed capable of opposing such contact, incidence of violent behaviour by one parent toward the other or toward the child or if the child's life, health and upbringing would be endangered.



In the context of **enforcement** of decisions on the exercise of parental care/rights and maintaining of personal relationships and direct contact, the best interests of the child require that the competent authority ensure the following measures:

- Undertake the steps necessary to facilitate and support enforcement in a manner adjusted to the specific circumstances of each case (Hokkanen versus Finland).
- Implement practical measures that will encourage the parents to participate in family therapy or to agree on preparatory contact (Fiala versus the Czech Republic).
- Facilitate cooperation and encourage agreement among all stakeholders.
- Excluded or limit coercive measures whenever possible. This does not mean that they should not apply if it is the only way to ensure enforcement (Ignaccolo – Zenice versus Romania).
- Implement all possible measures and activities to reconnect the child with the parent(s) or to ensure that family ties are maintained (Šobota-Gajić versus Bosnia and Herzegovina and Damnjanović versus Serbia).
- If the reunion cannot be achieved immediately after the decision is rendered, implement measures and activities to prepare the child and parents for a reunion as soon as possible. The aim is to prevent irreversible consequences to the relationship between the child and the parent with whom he/she does not reside, due to the time lapse. This includes arrangements for the child to see a psychologist or social worker (Ignaccolo - Zenide versus Romania, Santos Nunes versus Portugal and Šobota-Gajić versus Bosnia and Herzegovina).
- Make every reasonable effort to enforce the interim measure of maintaining contact (V.A.M versus Serbia).

2.5. Measures targeting parents in order to protect the rights and interests of the child

Parents who exercise parental care/parental rights in violation of the interests of the child are subject to various measures, with a range of consequences. Yet one should not ignore the fact that living with his/her parents is in the best interest of the child. Therefore, child protection should be achievable through measures that do not result in the child's separation from his/her parents. Separation of the child from the family is only in his/her best interest if less stringent measures cannot protect the child.

Pursuant to the Family Laws of the Federation of Bosnia and Herzegovina and Brčko District, the first group of measures falls within the powers of the guardianship authority and the second comes under the jurisdiction of the court. Pursuant to the Family Law of Republika Srpska, only the court can decide on the deprivation of parental rights. The lawmakers gave broader powers to the guardianship authority than to the court. The court can only impose measures explicitly regulated by the law whereas the guardianship authority can also order other measures necessary for the protection of the rights and best interests of the child, even if they are not stipulated explicitly.



a) The guardianship authority must consider the following elements when imposing a measure within its powers.

In relation to the child

- Age;
- physical and psychological development, character traits, affinities and habits;
- development and upbringing to date;
- family and social circumstances of the child to date;
- the possibility to use less stringent measures to rectify the identified deficiencies;
- the need to make a decision and ensure child protection within the shortest possible period;
- the personal, health, family, financial and social situation of the child and the parents in relation to the decision on the duration of the measure.

In relation to parents

- The willingness and capacity of parents to
 - abide by the decision rendered;
 - bring their social, financial and personal situation and relationship into order, with the help of the guardianship authority.
- The willingness of parents to
 - seek help through counselling, health, social welfare, educational or other professional organisations;
 - correct their mistakes and cooperate with the person supervising the exercise of parental care/ parental rights.

b) When imposing a measure within its powers, the court must consider the following aspects:

- the possibility or lack thereof of rectifying the situation through less stringent measures or a less drastic form of intervention;
- the compatibility of the measures imposed on the parents with the overall goal to reintegrate the child back into the biological family, which is the ultimate goal in cases involving the separation of a child from his/her parents;
- the need for the shortest possible duration of the measure, which should be terminated as soon as the parents are prepared, capable and willing to take the child back into their care and provide normal conditions for the child's life, development and upbringing;
- the restriction or prohibition of personal relationships or contact between the child and his/her parents should only be ordered when such contact harms the further development of the child and for the purpose of removing the cause of the separation as soon as possible and to facilitate the reintegration of the child back into the biological family once the measure has been terminated.



c) Once the court has imposed a judicial measure

The guardianship authority must ensure the best interests of the child:

- Appoint a special guardian to the child. The guardian will have the duty to take the actions necessary in order to protect the child.
- In line with the particular circumstances of each case and the specific needs of the child, select the adequate form of child protection.

3. Child support and protection of the property rights and interests of the child

Certain elements that can contribute to the principle of the best interests of the child and the problems encountered in practice should be highlighted within the context of the applicable laws in Bosnia and Herzegovina.

In line with statutory requirements, certain elements must be considered when determining the amount of child support.

a) Needs of the child

- In terms of age, the needs of a preschooler and a child of school age are different, for instance, in terms of hygiene, nutrition, clothing and footwear.
- The level and type of educational needs differ between children of lower primary and higher primary grades and secondary school pupils. These differences also depend on the type of secondary school, for example, a vocational school incurs higher costs (specialised literature, materials for practical classes, etc.).
- Extracurricular activities incur additional costs, such as sports and dance equipment.
- Gender also brings different types of costs.
- The child's previous living standard is a relevant consideration.
- Social and economic circumstances, determined during the visit by the social worker (e.g. lives with one parent in a rented apartment), are critical factors.
- The place of residence also dictates living costs.
- A child that demonstrates talents is another variable to be considered.

b) Capacities and abilities of the parent who is obliged to provide child support

- All income of the parent paying child support is considered. In addition to salary, pension and disability allowance, this includes any revenue generated through the property (e.g. lease or rental), fees, etc. The determination of this amount requires cooperation between the social work centre (with the court's approval) and the relevant institutions, namely the tax administration, pension insurance bureau and other financial agencies. This is the only way to determine the actual capacity and ability of the given parent to pay child support.



- The actual capacity to generate higher income requires additional attention and effort on the part of the competent authority. It takes into account the age and health condition, fitness for work (if a parent invokes a health condition it will not be accepted as relevant without supporting medical records) and opportunities for work in the place of residence of the given parent (a young and healthy parent who is not working full-time can generate additional income through various types of jobs).
- The number of children supported, including children born in other relationships up to the completion of the main hearing.
- The income of the parent with whom the child will reside is relevant.
- Unforeseen or unplanned costs are also admissible.
- The cost of caring for a child or children is reported as a financial cost.
- The cost of maintaining a personal relationship and direct contact between the child and the parent with whom the child does not reside is admissible.
- Although considered relevant, loans and debts only affect the amount of child support in a few cases. This applies when the parent paying child support submits and proves that following the dissolution of the marriage he/she took over the payment of a loan taken during the marriage for the purpose of buying an apartment or house where the child will continue to reside with the other parent (the custodial parent/parent exercising parental rights). When making this decision, the court will consider the loan period and the amount of the monthly instalment along with all other facts pertaining to the matter.

In order to establish these elements/apply the criteria, the following must be ensured in **proceedings in regard to child support** conducted against one of the parents:

- In order to help the parents agree on child support, increased efforts in terms of mediation are instigated.
- The social welfare services and the employment service work jointly to assess the capacities of the payer of child support.
- The social work centres strengthen their activities to assess the capacity of the parent liable for child support in cases where the ability to pay child support cannot be determined using objective parameters.
- The social work centre provides a written opinion that clearly presents the facts considered in a given case.
- A detailed breakdown of the facts is provided in each separate case because a factual foundation is crucial for the successful resolution of the case, and this is in the best interests of the child.
- The social work centres instigate proceedings for child support ex officio. In cases where employees of the social work centres fail to abide by this statutory obligation the centres have adequate means of sanctioning their employees; however, it should be noted that the social work centres hardly ever exercise this power in practice.
- The decision on child support is submitted to the land registry office for the purpose of summary entry of the decision. The court acts in this manner in the best interests of the child. The Law on land books does not limit the subject of the entry, and therefore there are no obstacles to the application of the proposed solution, especially since it is fully in line with the best interests of the child. This prevents mala fide actions by the parent paying for child support.



The community is obliged to conduct the following in order to secure the child's right to child support:

- create the prerequisites for parents to 'have the opportunity to earn',
- create public policy to help parents utilise such an opportunity,
- create public policy to provide child protection and to comply with constitutional obligations.

b) Protection of the child's property rights and interests

Parental care includes the protection of the child's property interests and the responsibility on the part of the parents to ensure the child's benefit in this regard. The child may own property acquired through various grounds, such as work, inheritance, gifts or through scholarships. The child may be the owner of a property as the holder of the right but cannot dispose of that property until he/she acquires legal capacity.

Parents should care for the child equally, jointly and in agreement. Therefore, they have a duty to protect the child's property interests. The duties and rights of parents regarding property include management, proper use of income and the disposal of property. Yet their level of independence in fulfilling these duties and exercising these rights is limited. When managing the property, they are limited to the duty of being a good owner (*bonus pater familias*). When using the income, they are limited according to the purpose of its usage, and this limitation is double in the case of the disposal of property and requires both a justifiable purpose and the approval of the guardianship authority.

In each individual case of exercising these duties, the following should be considered in the best interests of the child:

- The child has the right to express his/her opinion and wishes (in line with the child's age and level of maturity).
- The child has the right to be appropriately informed about the decision.
- The obligation of the social work centre to take action pursuant to the law in response to every incident of negligence on the part of the parents in relation to the protection of the child's property interests (The social work centre sanctions employees who fail to take action pursuant to the law).
- Emphasise/specify the meaning of 'continuous supervision by the social work centre'.
- When conducting legal transactions and assessing if a specific legal transaction is in the child's best interest, additional legal advisers/experts should be engaged if there is insufficient information on whether the transaction would benefit or harm the child. These experts will analyse and estimate the best property interests of the child in each specific case. For example, in a probate dispute or in bankruptcy proceedings involving a company in which the child owns a certain number of shares as an owner or co-owner as well as in all proceedings where decisions affect a business in which the child owns shares or in cases where the child owns securities, etc.
- The guardianship authority issuing an approval for the disposal of the child's property should establish whether the support, treatment or education of the child would be at risk without such disposal. In other words, whether support for the child could be provided by other means, namely from the person obliged to pay child support.
- When determining 'other important interests of the child', such as in the case of approval referred to in the previous item, the disposal of the property must ensure future benefit for the child.



4. International parental child abduction

The principle of the best interests of the child is fundamental within the context of international parental abduction in respect to decisions on the return of a child and allowing visitation rights (contact with the child). It has to be considered primarily pursuant to Article 3, paragraph 1, of the Convention on the Rights of the Child. This is despite the fact that The Hague Convention on the Civil Aspects of International Child Abduction (hereinafter, The Hague Convention) does not expressly mention it and only refers to the “interest of the child.”

The European Court of Human Rights also refers to the importance of the best interests of the child in such cases. The Court has reiterated in many decisions that the abduction of a child is in violation of their best interests and that the concept of the best interests of the child is different here from that used in custody cases. The Court views that it has to be assessed as an exception to the rule on the return of the child, as stipulated in The Hague Convention (e.g. *G.S. versus Georgia*, § 46). The position of the Court is that one should strive to strike a balance between the interests of the parents and the best interests of the child. If this balance is undermined, then an important factor for the decision is the interest of the parents in having ongoing contact with the child (*Neulinger and Shuruk versus Switzerland*, § 134).

The preamble to The Hague Convention sets forth its goals: To protect children from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the state of their permanent residence as well as to secure protection of rights of access. This leads to the conclusion in cases of illegal international removal by one of the parents The Hague Convention starts from the assumption that the return of the child to the state of his/her permanent residence is in the best interests of the child.

However, this assumption is contestable. The return of the child is not always in the child’s best interest. Therefore, exceptions to the rule on the return of the child were defined. These relate to situations or reasons based precisely on the best interests of the child: If there is a grave risk that his or her return would expose the child to physical or psychological harm (Article 13, paragraph 1, subparagraph b), if the child objects to being returned (Article 13, paragraph 2), if the child is now settled in his or her new environment (Article 12, paragraph 2) or if the child’s return would not be permitted by the fundamental principles of the requested state relating to the protection of human rights and fundamental freedoms (Article 20).

In situations where the request for the return of a child might be refused, the competent authority should consider the following elements when assessing and determining the best interests of the child.

a) Existence of grave risk

The following should be considered in relation to the risk that the child could be exposed to physical danger or psychological trauma upon his/her return:

- the existence of danger due to armed conflict, civil war or the constant risk of violence;
- violent behaviour toward the child or the other parent by the parent seeking the return of the child;
- the quality of accommodation provided by the parent seeking the child’s return or with a third party;
- inability or incapacity of the parent seeking the return of the child to take care of the child in the country of the child’s habitual residence;



- the stability of social, cultural and family ties in the state of the child's habitual residence and the state to which the child was taken;
- the age and level of attachment of the child to the parent who removed the child and the possibility of trauma resulting from his/her separation from that parent and the potential detrimental effects on the further psychological and physical development of the child.

b) Opposition to return

When it is deemed that a child is of appropriate age and maturity to express his/her opinion, and the child expresses opposition to his/her return, the following should be considered:

- the reasons for the child opposing his/her return;
- the need to provide an opportunity for the child to express his/her opinion freely and without the significant influence of the parent who took the child;
- the need to consider other factors that can influence the assessment of the best interests of the child, such as the opinion of the parent seeking the return of the child and the need to strike the right balance between them;
- the social background of the child (Article 13, paragraph 3).

c) How settled is the child in the new environment

This is relevant in cases where the procedure to return the child is instigated a year on from his/her removal:

- Is the child settled and integrated into his/her new environment and has a physical relationship with the environment and community been established, acquaintances and friendships forged, the emotional security and stability of the child achieved and are they expected to be maintained in the future.
- Assess whether there is a need to secure a healthy environment for the child's development.
- Assess the state of the child's behaviour at school.
- Consider the extent of the child's knowledge of the language spoken in the country to which he/she was brought.
- Consider the need for the child to maintain a good relationship with the parent who removed and retained the child and the potential risk of harm to the child that would result from his/her separation from that parent if the child were returned.

Mandatory consideration is to be given to the child's social background in all of the foregoing situations (Article 13, paragraph 3).

In relation to the **right of access** of parents to the child, the competent authority must consider the following:

- There is a need to maintain the child's connection to his/her family through regular personal relationships and contact unless the family is proven extremely incapable and that such contact would prove harmful to the child's psychological, intellectual and emotional development. This consideration aims to facilitate the ease of and fastest possible reintegration of the child into his/her biological family.



5. Adoption

Adoption is the most desirable and adequate form of protection for children without parents or appropriate parental care. Adoption creates a child-parent or child-relative relationship between the child and his/her adoptive parents. The principle of the best interests of the child is therefore particularly relevant in matters of adoption, as emphasised in the Convention on the Rights of the Child.

Article 21 of the Convention provides that, "States parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration." This deviates from 'primary' consideration in the other articles of the Convention.

Similarly, the European Convention on the Adoption of Children (2008 revised version) underlines respect for the best interests of the child. This means that the best interests of the child is the most critical requirement and the main criterion considered in all decisions on adoption. The national laws accepted this position, and therefore, the guardianship authority cannot render any decision that is not in the best interests of the child/adopted child.

The following elements are to be considered during the assessment and determination of the best interests of the child.

5.1. Decision on adoption

a) In relation to the child

- Eligibility for adoption infers that adoption is the most suitable form of protection for the given child;
- age;
- health status;
- specific needs;
- attachment to parents or other persons with whom the child lives;
- the possibility for the child to be raised in the family of close relatives;
- the benefits of adoption for the child (not for the adoptive parents);
- liking and attachment to the adoptive parents expressed through the child's consent to adoption or in other ways in the case of children up to 10 years of age;
- the ability to accept adoptive parents as parents and establish stable emotional relationships within the new family and build family relationships;
- the reasons why the child could not be adopted in Bosnia and Herzegovina (if the adoptive parents are foreign nationals).

b) In relation to adoptive parents

The following aspects should be considered in relation to the adoptive parents:

- their ability to provide a stable and harmonious environment in a marital/common-law union;



- their ability and willingness
 - to provide the child with a stable and harmonious home,
 - establish and further develop the parental relationship that exists between the parents and their biological child or to accept the child as their own,
 - to respect and protect the rights and interests of the child and to successfully exercise parental care,
 - to satisfy the child's specific needs (in cases of children with health issues, developmental disability, etc.);
- there are special reasons for departing from the rule that the adoptive parents must not be older than 45 years of age (Family Law of the Federation of Bosnia and Herzegovina and the Family Law of Brčko District), including, among others, kinship or another close relationship between the child and the adoptive parents and the adoptive parents' ability to satisfy the child's special needs;
- their level of education;
- their health status;
- their financial standing;
- their motivation to be an adoptive parent;
- their willingness to inform the child about the adoption;
- their ability to ensure the continuity of the child's upbringing and ethnic, religious, cultural and linguistic background;
- when deciding on whether the adoption will be full or partial, the willingness to accept the possibility that the reasons for the lack of parental care/exercise of parental rights will cease or will be removed;
- the possibility to enable the biological parents to exercise their parental care/parental rights under appropriate supervision.

If the adoptive parent in a partial adoption **are not married** or are **common-law partners** (Family Law of the Federation of Bosnia and Herzegovina and the Family Law of Brčko District) the reasons that justify this form of adoption include, among others, kinship or another close connection between the child and the adoptive parents and the ability of the adoptive parents to satisfy the needs of the child.

If one or both of the adoptive parents are **foreign nationals**:

- The eligibility criteria and requirements for adoptive parents regulated by the laws of their own country are also to be considered (Frequently, guardianship authorities do not review the eligibility criteria and requirements for foreign adoptive parents in the national laws of their respective country or countries).
- Consider how settled the child is in the family of his/her adoptive parents with whom he/she already resides and who have cared and provided for the child's upbringing.
- Ascertain whether the adoptive parents have roots in Bosnia and Herzegovina.
- Ascertain whether one of the adoptive parents is a Bosnian and Herzegovinian national.
- Ascertain whether there is any kinship between an adoptive parent who is a foreign national and the adopted child (aunt or uncle/nephew or cousin).



c) In relation to the biological parents

- Consider the possibility to enable the parents to exercise their parental care/parental rights and to keep the child in the biological family through the provision of appropriate assistance.

5.2. The decision on granting the right for the child to inspect the case file

The following should be considered in relation to allowing access to the case file.

- Based on prior professional psychological and social counselling, the preparedness and willingness of the child to examine the case file and examine data on his/her biological parents.
- The possibility that examining data on his/her biological parents (person with antisocial behaviour) or circumstances surrounding the conception (a child conceived through rape or incest) might have a negative effect on the child. If this is a concern, then the parts containing such information should be extracted from the case file prior to inspection.

5.3. Termination/dissolution of partial adoption

- In order to protect the rights and interests of the adopted child, there is the possibility to resolve problems in the relationship between the adoptive child and the adoptive parents by taking action aimed at assisting the adoptive parents.
- Newly arisen circumstances can lead to adoptive parents being prevented from continuing to provide parental care/exercise parental rights entirely or to restrict them from fulfilling specific duties toward the child.

6. Guardianship

Guardianship is a primary form of care for minor children without parental care or without appropriate parental care. Its purpose is to replace parental care and provide care in terms of the person, health, education and training of the minor as well as future preparation of the child for independent life and work. The guardians are also responsible for representing the minor child and protecting his/her property and other interests.

The principle of the best interests of the child should be the most important criterion for the decision to order a guardianship and throughout the guardianship as well as for the decision on limiting the duty of guardianship or the termination of the guardianship. The assessment and determination of the best interests of the child in relation to the preceding decisions requires detailed consideration of the following elements.



6.1. The decision to place a child under guardianship and to appoint a guardian

a) Justification of the decision

The following factors should be considered when deciding on a guardianship:

- the reasons why parental care/rights are not exercised or are exercised inadequately;
- duration of the reasons referred to above;
- possibility to remove these reasons through the provision of appropriate assistance and to allow for the possibility to enable the parents to exercise their parental care/rights and retain the child in the family;
- positive and negative aspects of separating the child from the family or of keeping the child in the family, subject to assistance;
- need to ensure stability for the child and the continuity of the child's education;
- need for urgent action, but without prolonging the deadlines for the decision;
- need to secure the cultural, linguistic, ethnic and religious heritage of the child;
- possibility to appoint close relatives or a person familiar to and respected by the child as the child's guardian.

b) In relation to the child/future ward

The following factors should be considered in relation to the child:

- security;
- the level of intellectual, emotional and physical development of the child;
- intellectual, emotional, physical and educational needs of the child and the likelihood that they will be fulfilled through this form of protection;
- age;
- health status;
- specific needs;
- the opinion and wishes of a child who is capable of formulating and expressing them;
- existence of close emotional ties/kinship between a minor child and the guardian (which would guarantee the successful exercise of the duties of the guardian and compensate appropriately for the lack of parental care);
- the rights and interests of the child under the protection and the need to inform the child about the reasons for the award of guardianship;
- whether the minor child has a property that should be managed and protected.

c) In relation to the guardian

The following attributes should be considered in relation to the guardians:

- personal qualities and abilities;



- ability to care for the child's person, upbringing, education and training in preparation for independent life and work;
- ability to represent the child, protect and respect the child's rights and protect the child's property;
- in the case of a child with a disability or other health problems, the ability and willingness to protect the child's particular interests;
- stability and harmony in the family of the guardian or another person entrusted with the care and education of the child under guardianship and the ability to provide the child with a stable home;
- the guardian's ability to deal with a conflict of interest or unresolved dispute that exists between the child and his/her parents regarding a breach of right or pending litigation on the matter;
- in cooperation with the guardianship authority and other professionals, the willingness to enable and support the child's contact with his/her parents and other close relatives;
- if a professional is appointed as a guardian in cases of direct guardianship or cases with limited powers of guardianship, does the guardian have the necessary knowledge and abilities to exercise the responsibilities or specific activities of guardianship successfully (e.g. representation in more complex cases).

6.2. Exercising guardianship

The following must be considered when the guardianship body gives its approval for the guardian to enter into a legal transaction on behalf of the ward:

- the justification of the legal transaction in question,
- the need and benefit to the child of the transaction.

The following should be considered **when the guardianship authority gives its approval** to the guardian for activities outside of the scope of regular activities or regular management/disposal of property and the rights of the ward:

- the justification and necessity of the transaction;
- the benefit of the transaction to the ward, namely would it be better to carry out the transaction or not;
- opportunities to provide funds to cover the needs of the ward through other means rather than through the disposal of property;
- ensuring that the purpose of the guardianship is achieved in the best possible manner;
- opportunities for the most rational use of the acquired funds.

When the guardianship authority approves a ward older than 14 years of age to enter into legal transactions regarding the disposal of property or assuming certain obligations, the following should be considered:

- the justification of and need for the transaction;
- the benefits of the transaction to the ward, namely would it be better to carry out the transaction or not.



6.3. Decision to relieve the guardian of duty

The following should be taken into consideration when relieving a guardian of responsibility:

- the opportunity to appoint a person who will be more successful in exercising guardianship than the current guardian,
- the lack of other means for the protection of the rights and interests of the ward;
- the quality of the relationship between the guardian and the ward.

6.4. Decision on the termination of guardianship

The following should be taken into consideration:

- The ability and willingness of the parents to exercise their parental care/parental rights successfully and to take over the appropriate care and responsibilities once the reasons for the guardianship of the child have ceased.
- The interests of the child can be protected through adoption.

7. Placement of children in foster care/another family

Foster care is one of the types of alternative care for children and is regulated by the Law on Social Welfare and the Rulebook on foster care of Republika Srpska (placement in foster care), the Law on Foster care of the Federation of Bosnia and Herzegovina (placement in foster care) and the Law on Social Protection of Brčko District (placement in another family).

This type of care implies the placement of a child outside of his/her biological family in a foster family where the child receives protection, care and help. The relevant international documents in this area are the Convention on the Rights of the Child, the United Nations Guidelines for the Alternative Care of Children and the opinions of the Committee outlined in General Comment No. 14.

Similar to other forms of alternative care of children, this type of care is applied only when necessary and subject to the requirements of safeguarding the rights and best interests of the foster child. It is in the best interests of the child to stay in his/her biological family. If the child is placed in a foster family, then the conditions for the child's return to the biological family should be created while the child is in foster care. If this is not possible, then appropriate permanent arrangements, such as adoption, should be considered.

Therefore, the assessment and determination of the best interests of the child require that certain elements be considered in relation to several different situations: the decision on placement, during placement and the decision on the termination of placement.



7.1. Determining eligibility for placement in a foster family/another family

a) In relation to the child

- Age: Are there justifiable reasons to depart from the rule that a child under three years of age should be placed in a foster family, which include prevention of separation from siblings and the inability to arrange placement in the family within a short period after placement becomes necessary.
- Gender: A ten-year-old girl who was sexually abused by her fifteen-year-old brother will not be placed in a foster family with a male biological sibling or a male foster child of that or similar age.
- Level of a psychosocial maturity of the child: A more mature child has less difficulty in adapting to change and therefore placement in an institution is frequently the most appropriate form of protection for adolescents and children who did not adapt to life with a foster family.
- Health status: Does the child's health status affect placement.
- Opportunities to satisfy the child's needs: Does the foster family provide for the child's educational, cultural and other specific needs.
- Nurturing the child's interests and talents: Are there opportunities that allow the child to pursue hobbies?
- Quality of the child's relationships with the family: Does the child have the possibility to maintain his/her relationship with his/her parents, siblings and other family members.
- Closeness and attachment to the family: Does the child have an attachment to close relatives and other members of the child's family if the child is placed in kinship foster care.
- Upbringing: Is there continuity in the child's upbringing.
- Exposure to harmful situations within the family: Has the child witnessed verbal altercations between his/her parents and is the child a victim of physical abuse.
- Endangerment: Is the child at risk in the biological family.
- Awareness: Is the child aware of the situation and possible solutions.
- Freedom of expression: Has the child expressed his/her opinion on or wish to be placed in a foster family.
- Preparedness: Is the child willing to be removed from his/her biological family and prepared for placement in a foster family.
- Risk: If the child remains in the biological family, would this present a risk of potential harm to the child.
- Placement of the child outside of his/her place of residence: One of the reasons for placing a child outside of his/her place of residence is to protect the child from harm by removing him/her from an environment of domestic and recurrent violence.
- Adaptation: What is the likelihood that the child will be able to adapt to his/her new environment.

If the child is placed in a foster/another family whose place of residence is located outside of the municipality where the child resides, the following factors must be considered:

- How integrated is the child in school and peer groups, and how likely is it that the child will suffer harmful effects resulting from the change of residence?



- The child requires continuity while growing up.
- The new place of residence should provide the child with opportunities in terms of his/her needs, interests and talents.

b) In relation to the parents/family of the child

The following aspects should be considered:

- the family structure and the age of family members;
- stability of the relationship between the parents;
- the social representation and lifestyle of the parents (their relationship within the community, affinities, habits, previous marriages or relationships, divorces, mental health problems, unintended pregnancies and such like);
- the dynamics of all relationships within the family;
- the ability and willingness on the part of the parents to
 - provide basic care, security, emotional warmth, encouragement, guidance and control for the child throughout his/her upbringing and to provide consistency in upbringing;
 - remove problems that occur during the care of the child and overcome difficulties in the functioning of the family and achieve change in a child's behaviour and learning;
- the level of motivation to care for the child;
- financial standing and housing arrangements (secure sources of income, sufficient space and similar considerations);
- the level of awareness of the parents concerning the vulnerability of the child and possible solutions.

c) In relation to the foster parents, foster family/other family

- **Motivation:** The foster parents demonstrate a desire to help and protect the child as the main motive for foster care.
- **Preparedness, training and ability:** The foster parents receive the child, provide a safe environment, provide support to the child after his/her removal from the biological family and cooperate with the child's family, and identify and meet the needs of the child.
- **Nationality:** It is possible to depart from the rule that foster parents must be Bosnian and Herzegovinian nationals (Law on Foster Care of the Federation of Bosnia and Herzegovina) and to place a child in the care of a foster family of foreign nationals, provided that the child's language and culture, as well as other relevant aspects of the child's heritage, will be preserved.
- **Education of foster parents:** As a rule, foster parents must have at least secondary school qualifications (Law on Foster Care of the Federation of Bosnia and Herzegovina). Exceptions are possible when the child is placed in the care of relatives, persons with previous experience of caring for a child and similar instances.
- **Specialisation:** Is the foster family specialised in a particular type of support (standard, specialised, urgent foster care). As a rule, the family takes in one group of beneficiaries (Law on Foster Care of the Federation of Bosnia and Herzegovina). Exceptions are possible in cases involving siblings with disabilities who are different from the child and who are already in care, the prevention of



separation of siblings, the proximity to the institution from which the children were referred and similar instances.

- The number of children in the foster family: Exceptions to the rule on the number of children in a foster family or with foster parents include kinship foster care of siblings with strong emotional ties, better availability of resources for the care of the child in foster care, and similar instances.
- Stability: Relationships must be stable and harmonious.
- Acceptance: All members of the family are willing to help the foster parents meet all of their obligations toward the child.
- Continuity: The child must have continuity in upbringing and his/her ethnic, religious, cultural and linguistic background.
- Maintaining the family relationship: Awareness of the importance and necessity of maintaining the foster child's connection with his/her biological family and a willingness to allow, encourage and facilitate such contact must be present.
- Age difference and the age of foster parents: Exceptions to the rule (Article 19, paragraphs 2 and 3 of the Law on Foster Care of the Federation of Bosnia and Herzegovina) include factors such as persons who are particularly close to the child, the child's expressed desire to be placed with particular persons, proximity to school, healthcare facilities and similar considerations.
- Proximity to the biological family: The physical distance between the biological and foster family must be considered.
- Conditions: The conditions must be in place to facilitate comprehensive and harmonious development of the foster child.
- Availability of resources in the place of residence of the foster parents: The location of the house/apartment, available means of transportation, proximity to educational and other institutions essential to the child.

7.2. During a placement in a foster family/another family

- Adaptation: How settled is the child in the new family.
- The basic needs of the child: The basic needs of the child in terms of quality nutrition, clothing and footwear, hygiene, health protection and physical activity must be met. In terms of education, through regular education, extracurricular activities, regular cooperation with the school and/or other institutions of education and support provided by the foster parents in relation to career guidance. If the child has special needs, such as developmental disabilities or particular talents, these needs together with the child's cultural, religious and spiritual needs (respect for religious holidays and allowing visits to places of worship) must be met.
- Family contact: Regular contact between the child and his/her biological parents and other close family members or persons the child finds necessary must be ensured.
- Inclusion of the biological parents: The child's biological parents must be included in the child's life.
- Respect for the child's past: The child's memories, experiences and history must be respected.
- Discipline: The child's free time must be structured and spent appropriately.
- Property: The child's rights, property and interests must be protected.



- Independent life and work: Opportunities must be provided to prepare the child for independent life and work.

Conditions for the care of the child in the apartment/house of the foster parents: Foster care can be provided in the apartment/house of the foster child (Article 16 of the Law on Foster Care of the Federation of Bosnia and Herzegovina) or in another facility specifically built or adapted for this purpose (Article 46 of the Law on Social Welfare of Republika Srpska) if the child expressly wishes to remain in his/her own space because of its proximity to school, health institutions and such like.

7.3. Termination of foster care/placement in a foster family/another family

The following factors should be considered:

- foster care is inadequate for the needs of the child;
- preparedness of the child to return to the biological family (constant contact between them, support measures taking into account the age of the child, their needs and level of maturity as well as the reasons for the separation of the child from his/her parents);
- preparedness, willingness and ability of the biological family to receive the child (ensured in the same manner as in the previous item);
- the readiness of the child to make the change from the foster family;
- willingness and ability of the biological or foster family to receive the child (in the case of a change in the type of care);
- how settled the child is in the adoptive family (in the case of termination of the contract on foster care or foster care due to adoption);
- the attitude, opinion and wishes of the child regarding the termination of his/her placement and subsequent placement in another foster family;
- the child's ability to live independently (in the case of completion of his/her education and employment prior to reaching the age of majority);
- availability of resources within the community to receive the child (housing, employment and a support network).

8. Placement of children in an institution

In order to provide the best environment for the development of a child without parental care, he/she must have support in the form of permanent and stable family care. This requires resources to preserve or unite the family, foster care, adoption or other types of family-based care.

If the child cannot stay/be placed in a family, then he/she will be placed in an appropriate institution, which will provide accommodation, food, clothing, assistance, care, education and upbringing as well as training for work, occupational, cultural and rehabilitation activities and healthcare. Assigning a child to



residential care is an option that should be used temporarily and only for cases where it is deemed most suitable, provides the highest level of protection and is in the best interests of the child.

In order to prevent institutional care having a harmful effect on the proper development of the child, the best interests of the child are comprehensively assessed and determined at the time of the placement, during the stay of the child in the institution and if the placement is terminated. The following elements are considered in this respect.

8.1. Determination of the requirements for placement in an institution

a) In relation to the child

The following factors should be considered:

- the child's age and gender;
- the level of a psychosocial maturity of the child;
- health status (counter indications for placement in an institution);
- the prospect that the child's needs will be satisfied in the institution (educational, cultural and other specific requirements);
- the prospect of the child's interests, hobbies and talents being nurtured in an institution (especially if it is outside of the child's place of residence);
- quality of the relationship between the child and parents, siblings and other family members;
- how settled the child is in school, peer groups and the likelihood that harmful effects will result from a change in the place of residence (if the child is placed in an institution outside of his/her place of residence);
- the prospect of maintaining the continuity of the child's upbringing;
- exposure of the child to harmful situations within the family;
- level of vulnerability of the child in the biological family;
- child's awareness of the situation and possible solutions;
- child's expressed opinion and wish to be placed in an institution;
- the risk that remaining in the family will result in harm to the child;
- evaluation of the expected benefits and strengths of residential care in comparison to other types of support;
- preparedness and willingness of the child to be separated from his/her biological family/placed in an institution;
- the prospect of the child settling into the new environment.

b) In relation to the parents/family

The same elements apply as to the assessment and determination of the best interests of the child in paragraph 7.1.b.



c) Analysis of the available institutions

The following factors should be considered:

- the availability of an institution best suited to the child, given the child's needs (such as institutions specialised in specific types of support and the capacity to take in the child);
- qualifications of the employees of the institution (such as professional staff and specialised programmes to stimulate professional development);
- the proximity of the institution to the child's biological family/former place of residence;
- the possible influence of the child on the environment and the environment on the child;
- availability of the necessary conditions for the child's stay in a residential care institution (living conditions, hygienic conditions, house rules and such like);
- opportunities to ensure the continuity of the child's education, ethnic, religious, cultural and linguistic background when placed in residential care;
- the appropriate location of the institution, considering the child's interests (infrastructure and proximity to school, health and sports institutions).

8.2. During the child's stay in an institution

The following considerations apply:

- how the child settles into the institution (relationships with peers and staff, respect for authority and such like);
- meeting the basic needs of the child (quality nutrition, clothing and footwear, hygiene, health protection and physical activity), the educational needs of the child (regular education, extracurricular activities, regular cooperation with the school or other institutions of education, the overall grade average and the child's conduct in school), the child's special needs (developmental disabilities and talents), the cultural, religious and spiritual needs of the child (marking religious holidays and allowing visits to places of worship);
- regular contact between the child and his/her parents and other close relatives/persons (providing opportunities for contact);
- inclusion of the parents in the child's life (visitation and other forms of contact);
- respect for the child's memories, experiences and history;
- ensuring that the child spends his/her free time appropriately and in a structured manner;
- protection of and caring for the child's rights, property and interests;
- preparing the child for independent life and work;
- how prepared is the child to leave the institution (supporting contact with the child's biological family, teaching life skills and providing training on independent life and work)?

8.3. Termination of the child's stay at the institution

The same elements apply in the assessment and determination of the child's best interests, as in section 7.3.



9. Children with disability

The most important international documents in the field of the rights and protection of children with disabilities are the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). The CRC prohibits discrimination against children with developmental disabilities in the exercise of their rights. The CRPD obliges States parties to undertake all actions to ensure that children with disabilities have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children.

All issues relevant to these children are regulated and resolved at the level of the entities and/or cantons (in the Federation of Bosnia and Herzegovina). This lack of harmonisation of these laws results in discrimination in terms of rights and services within the social protection systems.

The following aspects are required for the efficient, complete and successful protection of the best interests of these children in all activities affecting them.

a) In relation to parents

The following are required:

- job security;
- absence of the risk of poverty;
- acceptance of the child's diagnosis on disabilities;
- inclusion of the child in all family activities;
- ability to remove overprotective and limiting behaviour;
- the flexibility of parents in changing attitudes that prevent such children from achieving their full potential;
- opportunities for and a willingness to participate in training that empowers and capacitates parents to better understand their child's specific needs, provide the necessary support to their child and teach their child the skills required for social development;
- support by relatives, friends and neighbours;
- parents empowered to work on developing the personal identity of their child.

b) In relation to the capacities of the social protection systems

The following are required:

- the possibility to identify a child with disabilities early on;
- providing early and comprehensive information, services and support to such children and their families;
- providing adequate information to parents on the rights and services to which their child is entitled (family and social protection and healthcare);
- instigation of proceedings on behalf of the child in order to allow the child to exercise his/her rights and to utilise the services of social and family protection and in other domains in order to achieve the best quality of protection and rehabilitation for the child;



- ensuring the commitment to prevent the separation of a child from his/her parents because of the child's disability (in relation to the child and one or both parents) and ensuring the commitment to the enforcement of Article 9, paragraph 1, of the Convention on the Rights of the Child;
- ensuring
 - equal rights in family life;
 - equality of rights and services in social protection;
 - enjoyment of the child's right to express his/her personal opinion on every issue affecting him/her and provision of assistance in line with the child's age and level of disability;
 - ensure alternative care for the child by the extended family if the immediate family cannot care for the child, and if this is not possible then the possibility of family-based care in the community should be examined;
 - respect for the developing abilities of the child;
 - the engagement of a personal assistant, in line with the age and level of disability of the child;
 - the provision of services for the child and ensuring his/her involvement;
 - inclusion of the child in vocational education programmes;
 - ensuring the employment of young people with disabilities;
- conditions should be in place to provide the child and his/her parents with the necessary support tailored to the child's condition and the living conditions of the parents;
- adopt a participatory approach when providing support to the child and his/her parents;
- ensure that the environment is accessible to the child and that social protection institutions, schools and other education and healthcare institutions have no architectural barriers and that public transport is accessible;
- the provision of mobility aids (orthopaedic aids, wheelchairs, and canes for the visually impaired), new technology (pencils for the blind, computers and such like), inscriptions in braille, sound signals at traffic lights and in lifts, and training in the use of these aids are available and provided;
- public acceptance of disability as a natural and common condition.

c) In relation to the capacities of the education system

See section 2 on Ensuring inclusion in education and in particular item C in relation to the institution of education and section 3 on Elements for the assessment and determination of the best interests of the child in the area of education.

d) In relation to the capacities of the healthcare system

The following are required:

- Multi-sector early identification of a child's condition and needs, adequate diagnosis, early warning and the timely informing of parents.
- Adequate diagnostic equipment should be available in health institutions.
- Training on the provision of adequate healthcare and a holistic approach to health service provision should be provided.



- Health institutions should be fully accessible with access ramps, lifts, the absence of doorsills and appropriate door width.
- Quality healthcare should be made available to children with disabilities on an equal basis and through informed consent.
- Access to health services should be made available to blind children (removal of barriers in hallways, such as mailboxes and rubbish bins) and to deaf children and children with impairment hearing (sound and light signals).
- Children with disabilities should be included in habilitation and rehabilitation programmes from an early age, given access to special medication that can slow down the development of their disability and provided with adequate orthopaedic, typhlotechnic and other aids for children free of charge.
- Training programmes on working with children with disabilities as well as programmes designed to assess the quality of technical aids in order to tailor them to the individual needs of each child should be made available to health professionals.
- Physical barriers and a lack of health professionals specialised in certain types of disability should not be limiting factors in the provision of healthcare to children with disabilities.

10. Child victims of violence

The key systems and entities that protect children in cases of violence (Law on Protection from Domestic Violence of Republika Srpska) and the bodies enforcing and applying the Law (Law on Protection from Domestic Violence in the Federation of Bosnia and Herzegovina) are the police, the prosecutorial service, the judiciary, social protection institutions, health institutions, preschools and schools. These institutions should strive to meet the principle of the best interests of the child in their activities.⁷

The obligation to act relative to the rights and protection of children is regulated by numerous documents and regulations, starting from international instruments⁸ ratified by Bosnia and Herzegovina to the national legislation in the field of criminal law, family law, social and child protection, education and healthcare.⁹ Special laws on protection from domestic violence in Republika Srpska and the Federation of Bosnia and Herzegovina, as a highly sensitive area, provide for actions by the entities providing protection in cases of domestic violence against children.

Any form of violence against a child is unacceptable and considered one of the gravest forms of undermining and breach of the rights of the child. The State is obliged to use its systems to protect the child from all forms of violence, provide support to the family and create an environment conducive to the child's unhindered development.

⁷ More detail on the activities of individual sectors in relation to cases of violence against children as well as the indicators of violence committed against children are available in "Guidelines for Action in case of Violence against Children in Bosnia and Herzegovina", Ministry of Human Rights and Refugees of BiH, 2013.

⁸ The Convention on the Rights of the Child, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2013.

⁹ The key documents regulating action in cases of violence against children in Bosnia and Herzegovina are the Family Law and the Criminal Code of the Federation of Bosnia and Herzegovina, the Family Law and the Criminal Code of Republika Srpska, the Family Law and the Criminal Code of Brčko District.



Elements relevant to the principle of the best interests of the child in proceedings of protection and support include the needs of the child, parental competency, enforcement of systemic measures and the support of the wider community in which the child lives.

a) Meeting the needs of a child victim of violence

- The child's need for security (to live in a safe environment free from the threat of repeated violence and free from threats to the child's life),
- existential needs of the child (housing and food),
- psychological and emotional needs of the child (emotional attachment and the absence of fear),
- social needs of the child (a developed sense of belonging and social contact).

b) Parental competencies

- The health status of family members (absence of disease),
- financial standing of the family (absence of the risk of poverty),
- level of family solidarity (willingness and efforts to uphold the best interests of the child),
- psychological stability of parents (reasonable behaviour and the absence of violent action),
- emotional support for the child (achieved level of understanding of the emotional state and psychosocial needs of the child and the creation of emotional attachment).

c) Enforcement of systemic measures of protection and support services

The following factors should be considered when applying such measures:

- the speed of the response of institutions in the system (urgent action on identifying, reporting and providing protection and services to the child);
- level of expertise of employees in the institutions within the system (application of contemporary working methods when dealing with a child, documenting and recording actions);
- level of implementation of protective measures and support services (degree of realisation, the efficiency of the measures in light of the needs of the child – achieved level of protection and support);
- secured resources in the systems of protection and support (availability of clear procedures, extent of development of support services and the availability of targeted funds in the budgets for the care of child victims of violence).

d) Level of support within the wider community in which the child lives

The following factors should be considered in relation to the wider community:

- the sensitivity of the community to the problem of violence against children (strong condemnation of violence against children by the community);
- visibility of topics related to violence against children in public spaces within the community (presence of texts and coverage in the media and at public gatherings and during official appearances);
- availability of resources for the protection and support of a child within the community (development of the non-governmental sector, developed cooperation between the institutions in the system and



non-governmental organisations, existence of targeted funds in local community budgets for work with the victims of violence and their families);

- level of immediate support provided by the community in specific cases of violence against a child (quantity and quality of services provided to child victims of violence).

In order to uphold the principle of the best interests of the child, the entities providing protection should conduct the following activities when working with child victims of violence:

- Work urgently and without delay in identifying the symptoms of a child suffering violence in order to be able to recognise them and assist the child as early as possible.
- Implement measures to ensure the removal of the perpetrator of the violence against the child as soon as possible.
- Achieve the highest possible level of mutual trust with the child victim of violence.
- Adapt communication to the age and psychophysical condition of the child.
- Make direct contact with the child's parents as soon as possible in order to establish contact and gather relevant data on the situation of the child.
- Thoroughly observe the child's psychophysical condition.
- Conduct a guided interview with the child.
- Select measures of protection and support services that reflect the specific circumstances of a given case.
- Develop a plan of measures tailored to the specific circumstances of a particular case of violence against a child.
- Engage the child in order to obtain his/her opinion during the process of planning and implementation of the selected measures.
- Establish cooperation with and engage family members in direct work with the child.
- Visit the family regularly and talk with the child and family members.
- Consult with other professionals who work directly with the child in order to gain a complete picture of the child's current condition and the effect of the measures and services provided.
- If necessary, adapt the measures of protection and support services in a given case so that they more accurately match the current condition and needs of the child.
- Work toward strengthening the family of the child victim of violence.
- Include the child's opinion in the procedure for evaluating the effect of the measures and services provided.
- Engage family members in the evaluation of the effect of the measures and services provided.
- Harmonise the current plan on measures of protection and support services with the actual needs of the child and develop recommendations for follow-up action.



11. Neglected children

Article 9 of the Convention on the Rights of the Child states that a child shall not be separated from his or her parents against their will, except when the competent authorities, subject to judicial review, determine, in accordance with the applicable law and procedures, that such a separation is necessary in the best interests of the child. One of the instances where such a determination may be necessary relates to cases where the parents neglect the child. Having ratified the Convention, Bosnia and Herzegovina undertook the obligation to protect children from all forms of neglect (Article 19) and to take measures to promote the physical and psychological recovery and social reintegration of a child victim of neglect (Article 39).

In order to uphold the best interests of a neglected child, it is necessary to have a system in place that will act preventively and at the same time have the capacity to respond to neglect through fast and coordinated procedures aimed at ending the neglect and providing appropriate interventions aimed at the recovery and safe development of the affected child. Adequate protection in the best interests of neglected children requires clearly defined elements used to identify child neglect. Ensuring and protecting the best interests of these children requires that the competent authorities have clearly defined tasks and procedures for protecting these children's interests, a sound understanding of their role and that of other systems, to be aware of the rules of procedure, limitations and modes of conduct, and to exchange information and consult with other systems. All of these activities must be appropriately documented and supported through relevant feedback.

Neglect can be defined as the failure to satisfy the needs of a child to such an extent that it significantly affects the child's physical or psychological development. Neglect includes the inability of parents/guardians to support the development and well-being of the child, even though they are able to, in one or several areas: health, education, emotional development, nutrition, safe environment and home.¹⁰

a) Indicators of ongoing physical neglect

The following factors should be considered when identifying potential cases of neglect:

- lack of supervision;
- poor health and overall condition of the child, due to physical neglect;
- proneness to injury and accident;
- malnutrition;
- lack of diversity in the diet;
- lack of parental protection, which can place the child in unpredictable and disturbing as well as dangerous situations;
- stealing and begging for food from other pupils;
- absence of one or both parents/caregivers from home;
- poor personal hygiene;
- dirty and torn clothes and footwear;
- clothing that is inappropriate for the weather conditions;
- inappropriate clothing for the age of the child;

¹⁰ White et al., 1987



- inadequate and/or insecure accommodation;
- inadequate living conditions (humidity, walls covered in mold), lack of electricity, water supply and/or a toilet;
- constant fatigue and listlessness;
- falling asleep in class;
- dropping out of school.

b) Indicators of emotional neglect

b.1. The child

The child displays the following characteristics:

- withdrawn,
- shy,
- low self-esteem,
- irritable,
- anxious,
- lacking concentration,
- defiant,
- constantly bad-tempered,
- prone to self-harm,
- demonstrates feelings of loneliness and abandonment,
- aggressive,
- prone to theft and other forms of delinquency,
- misconduct in class,
- running away from home and truancy,
- suicidal tendencies,
- drug abuse,
- alcohol abuse
- smoking,
- loitering,
- lies excessively,
- early start of sexual activity and a tendency to be in a relationship and have sexual relations with older persons.

b.2. Parents

Parents display the following characteristics:

- lack of care, attention and love of the child;
- failure to respond to the child's emotional needs and isolation of the child;



- prohibiting the child from socialising with peers or adults outside of home (adolescents);
- failure to prevent drug and/or alcohol abuse;
- failure to prevent other forms of antisocial behaviour, such as delinquency;
- domestic violence;
- underestimating and humiliating the child and other non-physical forms of open hostility and unsympathetic treatment of the child;
- shaming and/or laughing at the child when he/she exhibits normal emotions, such as attachment, sadness or fear;
- constant picking on one child who is then criticised and punished or made to do most of the chores and given the least reward;
- public humiliation of the child.

c) Indicators of educational neglect

The following are indications of the educational neglect of a child:

- lack of necessary help and support by parents/caregivers during education;
- lack of help by parents/caregivers in learning or their complete lack of involvement in the child's learning;
- lack of the necessary materials for education, because of the parents' lack of interest in their child's education;
- absence of parents/caregivers at parent-teacher meetings;
- frequent truancy from and/or dropping out of school because the child has to care for his/her younger siblings;
- parents lack of interest in their child's grades.

d) Indicators of the neglect of health

The following are indications of the neglect of the health of a child:

- the child does not have health insurance,
- lack of cooperation with health professionals,
- ignoring the advice of health professionals,
- failure to vaccinate the child,
- the failure to treat illness and disorders (chronic inflammation, fractures, infections, etc.),
- late seeking of medical assistance,
- failure to administer medication regularly.

The best interests of the child

Acting in the best interests of the child requires the following:

- the urgent identification of danger;
- appropriate informing of professionals working with and for children;



- comprehensive and accurate evaluation of the level and form of neglect, applying a multidisciplinary and team-based approach that engages experts from various backgrounds (physicians, psychologists, special educators and social workers);
- an evaluation covering the child, the parents, the entire family and the community in which they live and the type, duration and frequency of repeated neglect;
- fast and coordinated procedures aimed at protecting the child from further neglect;
- providing appropriate assistance to the child;
- in order to reduce the number of risk factors, urgent help and support provided for parents who lack knowledge on the child's needs and lack the ability to satisfy such needs (considering their level of literacy and education, physical or mental disease, and their knowledge and attitudes on parenthood).

12. Refugees and unaccompanied children

Refugees and unaccompanied children are a particularly vulnerable category, exposed to exploitation and abuse. Girls are at the highest risk of becoming victims of trafficking, including sex trafficking. The Convention on the Rights of the Child requires that the best interests of the child be the primary consideration when deciding whether to keep the child in the receiving country or to proceed with repatriation, as well as all other matters pertaining to this category of children.

It is paramount that all unaccompanied children are treated primarily as children. Their immigration status should be a secondary consideration.

The principle of the best interests of the child requires that the following activities be conducted as part of the assessment:

- Locate and reunite the child with his/her family.
- Find a permanent and long-term solution for each child separated from his/her family that will allow the child to develop in an environment suited to his/her needs and ensure that the child is able to exercise all of his/her rights, that satisfies the child's needs and provides adequate support and protection from the risk of persecution and violence.
- Ensure the urgent individualised processing of refugees and unaccompanied children.
- Create a friendly and safe atmosphere for the processing of the child using the language he/she understands.
- Qualified professionals trained in communicating with children should be engaged to work with the child.
- The child should be reunited with his/her family, and the unity of the family unit preserved or re-established.
- Ensure that siblings live together.
- Establish contact with parents, siblings and other relatives as well as other persons coming from the same geographic area.
- Make certain that the child's safety is not compromised during the process of determining his/her identity (including gender), citizenship, nationality and ethnic, cultural and linguistic background.
- Provide access to information and media (radio and television) to help satisfy the child's need for information.



- Uphold the child's right to express and practice his/her religion.
- Ensure that the data on the child is kept confidential and updated and that the data is stored and exchanged exclusively among the competent agencies.
- Provide the child with personal identification documents.
- Gather information on the child's place of origin, parents and family, including the whereabouts of his/her siblings and other relatives and the last time they had contact.
- Provide psychological, health, legal, educational and other forms of assistance.
- Provide access to education and healthcare.
- Determine if there are any specific forms of vulnerability (disease, disability, special needs) and the need for appropriate corresponding protection.
- Appoint a guardian for the child.

13. Procedures for receiving financial assistance in the systems of social and child protection

Financial assistance is a form of intervention within the system of social support for families and individuals exposed to a variety of social risks. This type of intervention is an aspect of the rights regulated by the laws in the area of social and child protection. By applying the principle of the best interests of the child to the procedure of awarding financial assistance to families at risk, the State builds a foundation that ensures that children are equal participants in the allocation and spending of budgetary funds. This principle should be applied to all phases of the procedure for the provision of financial support to families with children, including the development of policies and laws, budget planning, the procedure for granting the right to financial assistance and in monitoring.

Since financial assistance is conditional to predefined legal procedures and criteria, it is crucial to integrate the principle of the best interests of the child into policy, law and budget development processes.

Indicators of the best interests of the child in these activities are as follows:

- available policy and strategic solutions for the protection of children and families with children,
- available legal solutions in which the rights of children and their needs are a priority,
- available formal and legal mechanisms for granting funds to families with children,
- budgets with clearly defined lines of funding of financial assistance for children and families with children.

Parents have a decisive influence on the enforcement of the principle of the best interests of the child when using the funds received on the grounds of certain rights. Parents distribute these funds according to the needs of the family and decide on the priorities. Therefore, the level of parental responsibility concerning the child's needs is linked directly to ensuring the best interests of the child.

The responsibility of the social and child protection system derives from the fact that the institutions of the system are obliged to monitor and control how these funds are spent. All forms of financial assistance are allocated with the intention to meet the needs of the most socially vulnerable families and in particular children. Therefore, the institutions in the system should gather and use all relevant facts on the condition and needs of children during the procedure of granting the right to financial assistance.



This applies in particular to the following aspects:

- the existential needs of children (quality of nutrition, level of hygiene, quality of housing and health condition);
- developmental and health needs of children (talents, education, disability and chronic disease);
- priority needs of the child within the family;
- the immediate needs of the child;
- level of competency of the parents in relation to parenting.

The institutions in the system of social and child protection should continuously review the fulfilment of the child's needs through monitoring procedures. This requires frequent visits and face-to-face interviews with family members and the child.

In addition to the manner and purpose of spending financial assistance, special attention should be paid to indicators of the neglect of the child within the family. These indicators should be used in the report and proposal on interventions for the family in order to increase the level of support for the child.



3.

ELEMENTS FOR THE ASSESSMENT AND DETERMINATION OF THE BEST INTERESTS OF THE CHILD IN THE AREA OF EDUCATION

Lejla Kafedžić, Zorica Garača, Hašima, Ćurak, Ivana Zečević, Nada Uletilović



The right to education is a fundamental human right. Its four attributes that are formally recognised by the United Nations are availability, accessibility, acceptability and adaptability. The first mention of the right to education is in the United Nations Universal Declaration of Human Rights. The Declaration provides for the basis of the right to education by proclaiming that everyone has the right to education and upbringing and that primary education must be compulsory and free for all and that education should be available and of good quality.

The Convention on the Rights of the Child is the most important international document pertaining to children, and it defines the right to education in a highly comprehensive manner. It states under Article 28 of the Convention that the State parties have recognised the child right to education. With a view to achieving this right, the States parties are required to make primary education compulsory, available and free to all and to encourage the development of different forms of secondary education and make them available and accessible to each child. In terms of the quality of education, the Convention foresees that the education of a child must be directed at the development of the child's personality, talents and mental and physical abilities to their fullest potential, the development of respect for human rights and fundamental freedoms, development of the child's respect for his or her parents, own cultural identity, language and values and for civilisations different from his or her own and that school discipline is administered in a manner consistent with the child's human dignity.

The European Convention on Human Rights prescribes that no person shall be denied the right to education, thus acknowledging every individual's right to education. In Bosnia and Herzegovina, the Convention and its accompanying protocols apply directly and have priority over all other laws.

The United Nations Convention on the Rights of Persons with Disabilities defines the right of persons with disabilities to education. Accordingly, the States parties are obliged to ensure an inclusive system of education and equal opportunities for persons with disabilities at all levels and on a non-discriminatory basis.

The primary objective of education reform in Bosnia and Herzegovina is to ensure quality and modernisation. Yet regardless of the progress achieved thus far, the creation of an inclusive non-discriminatory unique and quality education systems remains a challenge for the education authorities in the country. In Bosnia and Herzegovina, competence in the field of education is divided between Republika Srpska, the cantons of the Federation of Bosnia and Herzegovina and Brčko District. The following authorities are also responsible for education: The Division for Education of the Ministry of Civil Affairs of Bosnia and Herzegovina, the Agency for Preschool, Primary and Secondary Education of Bosnia and Herzegovina, the Federal Ministry of Education and Science and the nine pedagogical institutes. All competent education authorities have passed regulations governing all levels of education. Unfortunately, there have been many instances of the violation of the right to education and limited access to education. This further highlights the importance of these Guidelines and the need for a proper understanding and implementation of the guiding principle of the best interests of the child.

1. Ensuring access to education

The competent authorities must ensure that everyone is able to implement their right to education and access all levels of education on an equal basis free from discrimination. In order to provide equal access to education, the competent authorities must adopt an approach based on universal design and remove



all physical and constructive barriers. Ensuring physical access is particularly important for persons with disabilities, while constructive barriers, such as the stereotypical portrayal of men and women in textbooks, proliferate exclusion and therefore require removal.

Implementation of the best interests of the child in the field of education requires:

- that education be accessible to each child at all levels of the education system;
- inclusion of all children, especially those from vulnerable groups (for example, children with developmental difficulties, children 'on the move' and children from families with a low social and economic standing);
- implementation of the measures necessary to increase coverage by all levels of education, especially preschool;
- removal of physical barriers;
- removal of barriers that prevent communication and information sharing;
- removal of psychosocial barriers (stigmatisation, stereotypes and prejudice);
- implementation of measures to ensure respect for cultural, religious and language differences;
- free primary education;
- availability of appropriate information technology;
- implementation of the relevant legal provisions when parents fail to enrol their child in school or when the child fails to attend school on a regular basis;
- freedom to express one's views and opinions;
- gender equality.

2. Ensuring inclusion within education

Inclusion is a concept derived from the human rights model according to which every person enjoys rights inherent to all human beings, whatever their characteristics. Inclusive education is, therefore, quality education that enables everyone to enjoy their rights and access the system of education without suffering discrimination and with appropriate support provided to all children. Each piece of legislation regulating education contains provisions on inclusive education. In Bosnia and Herzegovina, the following legal documents are relevant to the development of an inclusive education system: 'Education Reform in Bosnia and Herzegovina - Promise to citizens', the 'Framework Law on Preschool, Primary and Secondary Education'; the laws on preschool, primary and secondary education at the entity, cantonal and Brčko District level and the strategies, rulebooks and international documents dealing with inclusive education signed and ratified by Bosnia and Herzegovina, including, among others, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

The following elements should be taken into consideration in order to ensure that the principle of the best interests of the child is implemented within this context.



a) In relation to the child

The following factors should be considered:

- age, gender, maturity, independence, adaptability, intellectual, social and emotional capacities, health status, competencies and other characteristics of the child;
- the educational needs of the child;
- the child's views;
- the child's wishes and feelings;
- cultural and other characteristics of the community in which the child resides;
- the extent to which the child depends on the care of his/her parents or other persons close to the child and the child's ability to overcome separation in order to attend an institution of education (emotional dependence and dependence in terms of the performance of basic functions);
- the need to respect and preserve everything that is personal to the child and relates to the child's family as the basis for the development of the child's identity;
- the interdependence of all of the listed elements.

b) In relation to parents/guardians

The following attributes should be considered:

- the ability to ensure the realisation and protection of the child's rights,
- views of the parents/guardians,
- opinions of the parents/guardians concerning the child's inclusion in the education process,
- the quality of care provided to the child and the capacities of the parents/guardians to meet the needs of the child,
- creation of an enabling environment conducive to development and learning,
- the quality of the relationships between the persons involved in the child's life,
- the quality of the relationship between the parents/guardians and the child,
- willingness on the part of the parents/guardians and the institution of education to cooperate and support each other,
- the quality of the relationship between the parents/guardians and the institution of education,
- preservation of the child's evolving capacities,
- the ability and willingness on the part of the parents'/guardians' to
 - provide the necessary level of support to the child when entering the education process,
 - ensure the child's regular attendance at the institution of education,
 - keep track of their child's development and progress,
 - provide educational support to their child throughout the child's education,
- the family's social and economic status and the extent to which it affects the realisation of the child's right to education,
- the child's exposure to violence and/or abuse or the existence of the risk of domestic violence and/or abuse,
- the interdependence of all of the listed elements.



c) In relation to institutions of education

The following aspects should be considered:

- the inclusion of all children in formal and non-formal education of good quality;
- access ensured for all children through the removal of architectural and other barriers preventing information sharing and communication;
- support provided to children in the education system through the provision of necessary assistive technology and aids, teaching aids, textbooks and similar;
- the creation of a safe environment for the education for each child;
- proper maintenance of premises and spaces (classrooms, hallways, toilets, etc.);
- adoption and implementation of an annual development plan specifying the course of inclusive education;
- the existence of positive attitudes among all employees toward inclusive education and their broad understanding of the concept;
- all activities in the education system are directed toward ensuring the development of the personality and psychological and physical abilities of children;
- compliance with objective and subjective criteria when deciding on issues pertaining to the education system and the involvement of children in different processes;
- an overview of current and potential interests and needs of children determined by the development process;
- acceptance of all children, regardless of developmental disabilities and all other groups at risk of exclusion;
- the promotion of the policy of the inclusion of every child in school;
- demonstrated willingness and dedication to the development of an inclusive culture, policies and practices;
- invest additional effort to ensure that all children in the local community feel that they are members of that community;
- efficient transition from one level of education to the next, ensuring continuity at each level of the education system and the interconnectedness of different levels (transition from the family to the preschool environment, from preschool to school, from lower primary to upper primary classes and from primary to secondary school);
- implementation throughout the education process of the universal design for learning in a way that motivates and encourages children to express their views;
- creation of an enabling environment for each child (including children with developmental disabilities, children from minority groups, children from families with a low social and economic standing and talented children);
- education provided in a language and through means of communication best suited to the social environment in order to foster social development;
- existence of mechanisms for the provision of different types of support to children and their parents throughout the education process (specialist support, teaching assistants, peer support and additional activities);
- implementation of specific measures for the eradication of all forms of violence and/or abuse within institutions of education;



- measures and activities implemented to eliminate all forms of discrimination (including segregation);
- the existence of transparent mechanisms to tackle cases of discrimination, racism, violence, segregation, intolerance and harassment along ethnic lines;
- ensure the confidentiality of information about children and their parents;
- respect the opinions of parents and children;
- apply the child-centred, individualisation and differentiation methodologies within the education process;
- prepare individualised programmes for each child in need of such assistance;
- contextualise observations on a child by focusing on the child's 'strengths';
- educational content should be adjusted to the needs and capacities of children;
- enable the participation of parents/guardians in the development of an individualised programme;
- keep track of a child's progress and motivation through assessments;
- involve children in peer grading;
- availability of sufficient human, material and financial resources;
- promotion of a multicultural environment;
- ensure that the competencies of the education staff are aligned with the requirements for work in an inclusive environment and that investment is made in their continued professional advancement;
- plan activities for the professional advancement of teachers/educators and professional associates in the field of inclusive education;
- establish a professional body comprised of teaching staff in order to foster peer support among teachers/educators;
- the existence of a team for the development of the inclusive dimension of education that can provide professional support to parents/teachers and children;
- the existence of a local network of teachers/educators to provide professional support;
- ensure the availability of the teaching assistant for classes attended by children with developmental disabilities;
- liaison with local services providing child protection;
- demonstrated cooperation between the institution of education and community-based services on a partnership basis;
- plan and implement activities aimed at strengthening partnerships with parents/guardians;
- ensure the participation of the parents of children at risk of exclusion from the education system through their inclusion and representation on the parents' council (for example, the parents of children with developmental disabilities);
- children and parents/guardians are treated with respect by teachers, educators, professional associates, principals, teaching staff and other employees;
- mechanisms should be in place to help children adapt to their new environment when they enrol in an institution of education;
- ensure that every child knows where to ask for assistance in the institution of education when they encounter obstacles in learning and participation or if they experience or witness violence in the institution or elsewhere;
- enable children to work in pairs, groups or by themselves in the classroom and their extracurricular activities;



- include children in the process of adopting the school's code of behaviour;
- ensure the availability of space for the display of each child's work;
- ensure the participation of each child in different types of activities;
- ensure compatibility of home assignments with the capacities and abilities of children;
- ensure that membership of different school clubs is open to all children (such as sport, music, visual arts and school papers);
- implement activities that build stronger relationships among children;
- provide a good selection of books for all children in the school library;
- invite representatives of different institutions, such as the police department, healthcare centre, social work centre and humanitarian organisations, to participate in school activities;
- ensure fairness in the employment and professional advancement of teaching staff;
- employ teaching staff who can communicate in sign language and/or read braille and similar non-stand forms of communication;
- sensitise teachers and other staff in the education system to the needs and specific requirements of children with disabilities;
- promote the work of the children and the institution of education in the local community in order to foster the development of inclusive education;
- the interdependence of all of the listed elements.

d) In relation to the local community

The following aspects should be ensured:

- that in the year prior to starting school every child attends a preschool programme;
- that every child of school age in the community attends primary school;
- the existence of a strategy for the development of inclusive education at the local community level;
- availability of local community budget funds for the development of inclusive education;
- the existence of laws, strategies and action plans to promote inclusive education;
- availability of mechanisms in the local community for the continued improvement of inclusive education;
- preparation and implementation of annual development plans at the level of the institution of education that foresee the further development of inclusive education;
- preparation and implementation of a local community development plan to supplement the development plans of the institution of education;
- promote the inclusion of every pupil in the institution of education as a policy of the institution and the community;
- implement the universal design (including the universal design for learning) in all institutions within the community;
- incorporate the content on inclusive education in the university courses for future teachers, educators and professional associates and the training programmes for the employees of institutions of education;
- provide transportation to and from school for pupils who live far from the school and for pupils with limited mobility;



- ensure fairness in the employment and professional advancement of teaching staff;
- invite representatives of different institutions, such as the police department, healthcare centre, social work centre and humanitarian organisations, to join in school activities;
- take steps to ensure a positive perception of the institution of education within the community;
- implement the Index for Inclusion within the education system;
- determine the level of responsibility of the competent ministry of education in the event of a failure to ensure the incorporation of the above-mentioned elements/activities;
- the interdependence of all of the listed elements.

3. Ensuring the quality of education

The quality of education is a multidimensional and dynamic concept and as such this concept covers the quality of different aspects of education: the quality of the environment (the condition of school facilities and their equipment), the quality of learning content (curricula and textbooks), the quality of teaching staff (competencies), the quality of the teaching process (the usual teaching/learning methods applied).¹¹

The following requirements are necessary in order to ensure the implementation of the principle of the best interests of the child within this context.

a) School facilities and equipment

- School facilities should be constructed in line with the technical regulations governing construction (with duly obtained building permits and certificates of occupancy) and pedagogical standards and norms.
- Facilities should be adjusted to allow for the free movement of all children and adults.
- Facilities should be equipped with the necessary teaching materials and up-to-date IT technology.
- There should be a sufficient number of classrooms and labs to allow classes to be held in a maximum of two shifts.

b) Curricula

- The curricula should be based on the evolving competencies and learning outcomes of pupils.
- Children's interests, experiences and needs should be taken into account.
- Children should be perceived as social beings capable of constructing knowledge through interaction.
- Emphasis should be given to the process rather than the product.
- A child's creativity should be valued, and every aspect of the development of a child's personality overseen.
- Equal importance should be attributed to the acquisition of knowledge, skills and values.
- The educational content of different subjects is to be complimentary.

¹¹ Baucal, Pavlović Babić, 2009, Ivić, Pešikan, Antić, 2009



c) Textbooks should comply with specified standards

- The quality of the textbooks must ensure that structural and functional units are covered along with the basic content of the subject and that they provide guidance in achieving the learning outcomes.
- The quality of the pupils' textbook must ensure an easy to follow overview of the content, organised using a clear methodology (hierarchical, chronological, thematic, logical order and such like) and user-friendly visual and graphic content that is appropriate to the pupil's age and consistent with the contextual content throughout the textbook.
- The quality of lesson must ensure that the lesson is presented as a functional unit, the educational content is presented based on a clear and coherent structure and that the lesson is presented in a user-friendly manner.
- The quality of textbook content must ensure the
 - consistency with the objectives and outcomes of education,
 - content that comprises basic literacy in the given subject and the given grade as the basic knowledge system,
 - accurate and current knowledge presented adequately and in line with the pupil's age,
 - the gradual introduction of knowledge,
 - alignment with other textbooks on related subjects,
 - expansion of knowledge and skills and adoption of the values system,
 - non-discrimination (toward any group or different values system),
 - the promotion of artistic values.
- The quality of the didactic design of the textbook must ensure
 - an explanation of professional terms;
 - illustrations that offer explanations of professional terminology through the use of icons (in addition to verbal explanations);
 - that the textbook contains diverse examples in order to explain the terms that appear in the textbook;
 - that the textbook contains sections relevant for knowledge integration;
 - that the textbook does not contain questions, instructions and assignments that are nonsensical, vague or unrealistic;
 - that the textbook contains questions, instructions and assignments that
 - allow pupils to test their knowledge and skills in continuity,
 - encourage different learning methods through diverse forms,
 - encourage critical thought.
- The quality of language in the textbook must ensure
 - compliance with the norms of the language in which the textbook is written,
 - explanation of unfamiliar terms and words,
 - sentences are of appropriate length and in line with the pupil's ability to comprehend.
- **The quality of the teaching staff must ensure:**
 - a good initial education based on a multidimensional concept encompassing all functions and activities of higher education, teaching and curricula, research and scholarships, professors and



- assistants, pupils and students, universities, buildings, equipment, the academic environment, services and the community,
- The competencies of the teaching staff must ensure:
 - understanding pupils and the learning process,
 - planning, instruction and assessment,
 - creating a learning environment,
 - professional development and occupational responsibility,
 - the partnership between the school, the family and the community
 - development of the education system.
 - Understanding of pupils and the learning process:
 - the teacher has a proper understanding of the concept of lifelong learning and development,
 - is familiar with the theories that explain differences between individuals and groups and between pupils (which is highly relevant to the teaching and learning process).
 - It also implies the ability of the teacher to
 - impart knowledge within the teaching process,
 - the teacher's confidence in his/her abilities,
 - the teacher's belief that every child can learn and develop at his/her own pace.
 - The teacher must understand planning, instruction and assessment and
 - the logic of the curriculum,
 - the principles of intercultural bonding,
 - planning and programming of instruction,
 - the methods for efficient instruction,
 - the strategies of formative and summative assessment of progress and achievement.
 - The teacher must rely on his/her knowledge during instruction in order to meet the needs of pupils and the teaching process.
 - The teacher must create a learning environment, be familiar with the elements of the climate of the classroom and aware of its relevance to the quality of instruction and the teaching process.
 - The teacher must understand and accept
 - professional advancement and occupational responsibility,
 - be familiar with the models of lifelong learning and professional advancement,
 - constantly work to advance his/her knowledge,
 - apply new knowledge and skills in the classroom.
 - The teacher must understand the importance of partnerships between the school, the family and the community, the importance of cooperation with expert associates, and how these can contribute to the quality of education.
 - The teacher must understand the development of the education system, be aware of the impact of economic, political and social factors on the quality of the education system and the role that the school plays in the strategic development of education.



4. Safety and the protection of children from violence in institutions of education

In accordance with the Convention on the Rights of the Child, the States parties must undertake all appropriate legislative, administrative, social and educational measures to protect children from any type of physical or psychological violence, injury or abuse, neglect or careless treatment, including sexual abuse, while children are in the care of their parents, guardians or other persons as their caregivers.

The laws governing primary and secondary education in Bosnia and Herzegovina prescribe measures to ensure the safety and protection of children. Guidelines for Response to Violence against Children were adopted at the state level.¹² The guidelines and protocols in the entities and in Brčko District regulate the procedure in cases of violence, abuse or neglect of children. Republika Srpska has adopted the Protocol on the Procedure in Cases of Peer Violence among Children and Youth in Educational System of Republika Srpska.

The following requirements must be fulfilled in order to ensure the principle of the best interests of the child and protect children from violence within the education process.

a) Protection of children from violence

- Ensure efficient mechanisms for the protection of children from violence, abuse, neglect or any other form of harassment in the school building, schoolyard, at the entrance to the school or outside the school building during education activities or other activities organised by the school.
- The school must provide adult oversight in order to ensure the safety of pupils in the schoolyard prior to the beginning of classes, during breaks between classes and while pupils are leaving the school. The school should also assess the potential for hazards in the school facilities and during the education process.
- The school should undertake all measures to ensure the safety and protection of school pupils during the teaching process as well as when outside the school on field trips, excursions, school in nature studies, visits to different institutions in the town and through implementation of rulebooks, guidelines and/or instructions governing the organisation of such activities and the relevant risk assessment.

b) Protection of the child's privacy

- Through individual or collective surveys and the use of questionnaires, collect data on the family situation (marital status of parents, children without one parent, children without both parents and similar information).
- Develop and nurture a culture of understanding, respect and acceptance of differences. Adults must work toward preventing or reducing the risk of insulting, demeaning and mocking behaviour aimed at children who are different from the majority.
- When implementing charitable activities, particular attention should be given to the protection of children from poor families.

¹² Part of a Strategy for combating violence against children in Bosnia and Herzegovina (2012-2015) adopted by the Council of Ministers of Bosnia and Herzegovina, November 28, 2012.



- Ensure that photographic and video material produced by children that depicts children is not published without first obtaining the consent of the child and/or the child's parents/guardians.
- Implement measures to ensure that the media portrays children in a positive light and ensure full protection of the identity of a child when an adverse event or occurrence is the subject of a media report.

c) Protection of children from manipulation in political campaigns

- Children must be protected from any form of manipulation for the purposes of political campaigns.
- When politicians visit an institution of education, they should be warned that taking photographs of or filming children requires the child's consent or the consent of the child's parents/guardians.

5. Ensuring participation in education

Participation rights guaranteed under the Convention pertain to the right to express views, freedom of thought, conscience and religion, freedom of association, protection of privacy and the right to access appropriate information and material from different sources. The Council of Europe Strategy for the Rights of the Child (2016-2021) recognises the right to participation for all children as one of the five priority areas. Provisions should be made to ensure that the right to participation and freedom to express an opinion is implemented in the field of education taking into account the child's age, developmental characteristics, the context of the decision-making process, the content (topic, subject matter of the decision and activities), adequate preparation of the child, interests and rights of stakeholders and potential resistance. The quality participation of children in education requires that adults and children make decisions together and that children's suggestions are considered. Adults are expected to explain the broader context to children and provide them with comprehensive information adjusted to their developmental level and to advise them about the potential outcomes of the decision.

The following should be ensured in order to implement the principle of the best interests of the child within the context of freedom of expression and the child's view:

- respect for the child's views and personality;
- information adjusted to the developmental level and characteristics of the child,
- feedback provided on whether the child's views were taken into consideration and what is expected of the child (if the child's views were not considered then the reasons should be provided to the child);
- the child can refuse to participate or voice his/her opinion without any consequences;
- the child can opt out of participation at any time without being sanctioned, mocked or harmed in any way;
- provide clear information on why the child should participate in the making of a specific decision;
- explain to the child the broader context of the situation in which his/her participation is expected;
- provide information on what is expected from the decision involving the child's participation and how it will reflect on others;



- adults involved in the participatory process have the experience and knowledge to encourage the child to participate and should not undermine the child's willingness to do so;
- the participation of the child in the decision-making process is limited to that which the child is familiar with and capable of understanding, and this also applies to the consequences of the decision;
- prevent situations in which the child is responsible for making difficult decisions because of an oversight on the part of adults;
- advise the child about all issues affecting them;
- ensure the child's participation in the work of the students' council;
- ensure the child's participation in the preparation and implementation of the house rules of the institution of education;
- ensure that the child is free to propose improvements in the education process.

6. Pronouncement of disciplinary measures

Discipline is a concept based on learning, shared values, respect for rights and the development of self-discipline. Yet within the national education system, discipline is still interpreted in the narrowest sense and almost exclusively as a form of punishment imposed through disciplinary measures. Legislation governing education provides for disciplinary measures such as reprimands issued by the head teacher, by the class teaching staff council, by the school principal and by the school faculty council as well as transfer to another class in the same school, transfer to the nearest school in the municipality or suspension and expulsion from the secondary school, and are usually prescribed separately from stimulating measures.

If a child skips classes, dresses inappropriately, behaves disruptively during class, is neglectful of his/her work, tampers with official school records, steals, gets into fights, carries a weapon, incites ethnic or other forms of intolerance then one of the afore-listed measures can be imposed against the child. Pronouncement of a disciplinary measure also implies that the pupil's conduct grade will be lowered (conduct is graded as very good, good, satisfactory or bad) to reflect the harshness of the disciplinary measure. Institutions of education need to adopt a more positive approach to discipline that is non-violent and focuses on finding solutions, in line with the principles of child development and child rights as expressed in the Convention.

The following elements should be taken into account in order to ensure implementation of the principle of the child's best interests within this context.

a) In relation to the child

The following factors should be considered:

- age, maturity, abilities and other individual characteristics of the child;
- needs, including educational needs, because children usually violate rules when they feel that some of their needs are not being met (for example, the need for attention);
- the child's opinion;
- the child's family situation;



- cultural and other characteristics of the child's community;
- the need to preserve the child's identity, integrity, confidence and self-respect;
- the interdependence of all of the listed elements.

b) In relation to parents/guardians

The following elements should be considered in relation to parents and guardians:

- the ability to ensure the realisation and protection of the child's rights,
- social and financial standing of the family,
- quality of care afforded to the child and the ability of the parents/guardians to meet the child's needs,
- quality of relationships between persons in the child's life,
- quality of the relationship between the parents/guardians and the child,
- quality of the network supporting the family,
- the opinion of the parents/guardians concerning the pronouncement of a disciplinary measure against the child,
- the willingness of the parents/guardians and the institution of education to cooperate and support each other,
- the quality of relations between the parents/guardians and the institution of education,
- the child's exposure to violence and/or abuse or the existence of the risk of domestic violence and/or abuse,
- the interdependence of all of the listed elements.

c) In relation to the institution of education

The following requirements should be considered in relation to education:

- to ensure a safe environment for the education of each child;
- ensure equal acceptance for every child;
- create an enabling environment for every child;
- implement a programme for monitoring the behaviour of every child considered to be at risk, both inside and outside of the institution, and provide a timely response through the creation of a support network for the child;
- consider the child's opinion during the procedure for the pronouncement of a disciplinary measure;
- consider the opinion of the parents/guardians during the procedure for the announcement of a disciplinary measure;
- establish the causes for the child's behaviour and work to resolve them through an appropriate pedagogical approach;
- promote an approach to disciplinary measures that rather than labelling the child presents the child and others with an opportunity to draw lessons in a positive sense;
- include children in the process of adoption of school rules of behaviour and advise children about the potential consequences of violating these rules;



- work to preserve the child's identity, integrity, self-confidence and self-respect in every situation;
- ensure that mechanisms for the provision of different forms of support to children and their families are accessible during the education process;
- ensure the existence of specific measures for the prevention of unacceptable behaviour;
- provide active cooperation between child protection services in the community and other services in order to prevent unacceptable behaviour;
- plan and implement activities aimed at preventing unacceptable behaviour and strengthen the development of partnerships with parents/guardians in this respect;
- enhance the ability of teachers, educators and expert associates to ensure efficient class/group management;
- embrace a broader view of the concept of discipline by finding new ways to strengthen a child's sense of self-discipline and respect for others (The purpose of disciplinary measures is not merely to punish but also to motivate and encourage the development of positive personality traits and behaviour in a child);
- develop the concept of positive discipline in the institution of education;
- the interdependence of all of the listed elements.

d) In relation to the community

The following aspects should be considered in relation to the community:

- the availability of funds in the budget of the competent (local) community to support quality education;
- issuance of the rulebook on disciplinary measures and mandatory adoption of a broader understanding of disciplinary measures;
- the proposal to delete the disciplinary measure of expulsion from secondary school from the Law on secondary education;
- developing a system of support for those children against whom one of the harsh disciplinary measures, such as suspension, was pronounced so that they can organise their time more productively;
- the introduction of mechanisms to ensure that a child who has been expelled (temporarily or permanently) from secondary school can continue his/her education through other models of schooling;
- ensure the engagement of representatives of different institutions, such as the police department, healthcare centre, social work centre, NGOs and humanitarian organisations, in the activities of the institution of education;
- the interdependence of all of the mentioned elements.



4.

ELEMENTS FOR THE ASSESSMENT AND DETERMINATION OF THE BEST INTERESTS OF THE CHILD IN THE AREA OF HEALTH

Mirsada Bajramović, Draženka Malićbegović, Marin Kvaternik, Erna Topuz



Article 24 of the Convention on the Rights of the Child recognises the right to health and healthcare, stating that the States parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties are obliged to strive to ensure that no child is deprived of his or her right of access to such health care services (paragraph 1). States parties are further obliged to pursue full implementation of this right and, in particular, to take appropriate measures, some of which are defined in detail (paragraph 2). Pursuant to paragraph 2, national lawmakers, therefore, have the obligation to prescribe, and health institutions have the obligation to implement these measures and thus ensure that the best interests of the child are duly considered in this area.

The right of a child to health is regulated in the national legislation by the laws on the healthcare of the entities and Brčko District. As part of the social health insurance system, healthcare encompasses appropriate care for children from birth up until the end of their education. Article 12 of the Law on Healthcare of the Federation of Bosnia and Herzegovina defines education as regular education in primary and secondary schools, college and university up to the age of 26, while Article 8, paragraph 2, of the laws on healthcare of Republika Srpska and Brčko District, define education as children up to the age of 15 and school and university students up to the end of their education but not later than the age of 26 or 27 respectively.

1. Health promotion and the prevention of disease

1.1. Immunisation

The immunisation programme has experienced significant changes over the past thirty years, both globally and in Bosnia and Herzegovina. The most recent study conducted by the World Health Organization in 73 countries estimates that immunisation in the period 2001–2020 will prevent 20 million lethal outcomes and save 350 billion US dollars in treatment costs.

The main priority of the immunisation programme is for health workers, the media, social networks and other means of informed communication to provide as much quality information on immunisation as possible. In the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District there is a long tradition of support for the structure, management and implementation of the immunisation programme through laws, guidelines and action plans. Compulsory immunisation programmes provide free vaccinations for all children in Bosnia and Herzegovina.

Parallel to the development of the strategic and legislative frameworks, a system of improved immunisation coverage for children was implemented through the following:

- routine immunisation and service provision,
- introduction of new vaccines,
- surveillance of vaccine-preventable diseases,
- ensuring the quality of and control over vaccines,
- vaccine supply and procurement,



- monitoring adverse reactions after immunisation,
- reporting on immunisation coverage.

In order to ensure the best interests of the child, the following activities should be conducted in every case when monitoring and implementing the immunisation programme.

a) In relation to the child

- Introduce new vaccines, such as PCV and HPV.
- Increase vaccination coverage.
- Eliminate measles and rubella.
- Maintain the current polio-free status.

b) In relation to parents

- Educate parents in order to reduce opposition to vaccination and overall scepticism among some healthcare professionals and parents regarding the safety of vaccines and the benefits of immunisation.
- Provide the appropriate level of reliable information on the manufacturer of the vaccine and any known side effects.
- Attempt to influence the perception of risk in relation to vaccination.
- Deliver regular training on the surveillance of vaccine-preventable diseases.

c) In relation to healthcare institutions

- Continue to provide the quality and universal approach to immunisation services to the population.
- Improve the capacities of health professionals in terms of vaccine management at all levels.
- Review/update and implement standard operative procedures.
- Strengthen the system of reporting and monitoring on immunisation coverage.
- Ensure regular analysis of data on immunisation coverage and performance indicators on immunisation at all levels.
- Ensure monitoring and regular analysis of data on possible reactions following vaccination.
- Provide appropriate help and care for children who experience an adverse reaction to a vaccine.

1.2. Early childhood development

The Council of Ministers of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of Republika Srpska have developed and adopted policies and strategies on early childhood development. All relevant institutions in Bosnia and Herzegovina are committed to their implementation. In order to increase commitment on the part of decision-makers at the highest level to improve the health of women and children, the Council of Ministers also adopted the pledge 'Committing to Child Survival'.

Early childhood development is mentioned explicitly in the Sustainable Development Goal for education and indirectly in other goals, including nutrition, health, protection and peace. Early childhood is the most



important stage of development in life. As an important entry point for children and their families, the health sector plays an important role in the application of an effective approach to early childhood development and in bringing about positive change in the lives of children. The Integrated Early Childhood Development Programme is inclusive and adapted to young children with developmental disabilities and delays. It uses a two-fold approach by providing universal care to all children and targeted services to those with confirmed developmental delays. After the age of three years, the best platform from which to approach children and parents is through preschools. Yet the early identification of developmental disabilities still represents the best opportunity for providing the services that these children need early on in order to enjoy healthy and happy development.

Inter-sector activities target the following population groups: youth, future parents, pregnant women and mothers, families with children and children in the age groups 0–3, 3–6 and 6–10 years respectively. Each of these groups needs special and appropriate attention and support.

A **system of early childhood development services** was established in parallel to the development of the strategic and legislative frameworks. The former encompasses the following elements:

- maternal healthcare and the improvement of maternal health (which cannot be seen in isolation from the protection of the health of children) through the development of appropriate services in institutions of health and education;
- ensuring appropriate healthcare both before and after delivery;
- enhancing the multi-sectoral approach to improving the situation of children by establishing integrated healthcare centres that ensure timely identification, diagnosis and intervention;
- a multi-sectoral approach to the introduction of standards for monitoring a child's development;
- timely intervention for children with developmental disabilities and delays aimed at avoiding or mitigating problems in their future development;
- providing support to parents/guardians, given the special role they play in this part of the child's life.

Health professionals assessing and determining the best interests of a child will consider the following elements when **identifying and monitoring the proper development of the child**.

a) In relation to the child

The following elements will be considered:

- the child's physical and psychological development, health condition and/or disability;
- the family, housing, economic and social situation in which the child lives;
- consistency of vaccination (immunisation schedule);
- proper nutrition (undernourishment or obesity).

b) In relation to the parents

The following elements will be considered in relation to the parents:

- their ability to exercise parental care/parental rights (age, education, health and family status – complete family or single parent);
- motivation to care for the life and health of the child;
- their dedication to a child with special needs;



- level of involvement in the child's life;
- any potential diseases or addictions and the effect on the child;
- awareness of the child's needs, development and abilities;
- the economic and housing situation;
- stability and harmony in the family and instances of domestic violence;
- ability and willingness to
 - satisfy the child's needs and ensure the exercise of his/her rights,
 - protect the child from all types of abuse and/or neglect,
 - protect a child with disabilities or specific health problems.

A healthcare professional or institution should ensure the following in order to safeguard **proper childhood development**:

- equal access to public services is provided to the child, including healthcare and education, free from discrimination, both in terms of the relevant laws and in practice;
- a multi-sector approach to services;
- the parents are respected and viewed as partners in the process of caring for their child's health;
- that all information describing the procedures for the provision of health services to children are made available to the child and his/her parents;
- compliance with the regulations requiring consent for a health procedure or informing of the competent authority in order to protect the best interests of the child;
- the development of guidelines aimed at creating the conditions for the healthy and safe development of a child;
- performance of a physical examination of the child at least once a year;
- adaptation of health services and institutions of education to meet the needs of the child in terms of accessibility, including accessibility to community-based rehabilitation;
- a reduction in stigma and the provision of treatment based on the informed consent of the child, except in cases where this poses a direct threat to child's life and health and/or that of others;
- early identification, diagnosis and intervention of children with developmental disabilities;
- that the abilities and capacities of children with developmental disabilities are assessed and their inclusion in the education system ensured;
- the development of the abilities of the parents of a child with disabilities to work with the child;
- incidences of secondary disability are prevented or minimised.

1.3. Healthy lifestyles

1.3.1. Nutrition

Nutrition and physical activity are the main external factors for the proper development of children. Eating habits are acquired at an early age, with parents being the model of behaviour. Joint activities of the family and the community influenced these habits.



“Child nutrition remains one of the leading issues in public health globally, as well as in our country. The nutritional status of children is an indicator of their overall health. Proper nutrition and care are necessary for the optimum physical and mental development of the child. It is not surprising then, that child nutrition has become a challenge for parents and health professionals.”¹³

All institutions of education have the duty and responsibility to provide and promote healthy eating. Food served in preschools should fulfil the nutritional needs of the child and avoid unwanted intake. It should also correct any qualitative and quantitative deficits or surpluses in the food the child eats at home and those caused by extraordinary social circumstances.

Priority activities

- Support a healthy start in life by promoting prenatal nutrition, optimal nutrition of pregnant women, protection and promotion of breastfeeding, the timely introduction of foods, etc.
- Ensure the availability and quality of services, advice and information for pregnant women, mothers and children and implement integrated programmes and activities aimed at improving child nutrition.
- Educate and inform professionals in the health and education sectors as well as industries dealing with the production and sale of food, the media and consumers.
- Develop dietary recommendations.
- Implement campaigns to raise awareness on the importance of eating healthy and quality food.
- Protect families and their children from the effects of advertising in relation to foods that are high in salt, sugar and fat, and support initiatives aimed at redefining practices in order to improve the nutritional composition of processed foods for children.
- Develop guides for specific vulnerable groups within the population, e.g. diabetics.
- Apply standards for the evaluation of whether a child is well fed or malnourished.
- Regulate and standardise food served in preschools and schools.
- Improve the system of prevention and suppression of diseases caused by inadequate diet.
- Create conditions to conduct periodic population surveys.

In order to **ensure proper child nutrition**, a health professional or a health institution should conduct the following activities:

- Establish a ‘culture of breastfeeding’, oppose the ‘culture of formula feeding’ and advocate for the engagement of and action on the part of all social structures.
- Help remove the negative influence and pressure on women regarding breastfeeding by removing all obstacles to breastfeeding in the healthcare system, at the workplace and in the immediate environment.
- Inform parents about the benefits of breastfeeding and proper nutrition and the need to ensure quality food adapted to the age of the child.
- Provide access to foods rich in nutrients as a prerequisite for optimum development and for achieving the highest possible standards in health.

¹³ Government of the Federation of Bosnia and Herzegovina, *Nutrition Guidelines for Children up to the Age of Three years*, Government of the FBiH, Sarajevo, 2013, p. 11.



- Develop a 'pro breastfeeding policy' and supervise the achievement of the goals and mandatory training of health workers in order to enable them to provide support for breastfeeding and work directly with mothers.
- Introduce the 'baby-friendly hospital' model into all maternity hospitals.
- Introduce mandatory and regular visits by patronage nurses.
- Develop preventive and promotional material.
- Control the food served in preschools.
- Ban the sale of unhealthy food and beverages in school and in their immediate vicinity. -

1.3.2. Prevention of addiction

The Convention on the Rights of the Child obliges the States parties to implement all measures to develop preventive healthcare for children. General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (2013) underlines the obligation of the States parties in this respect:

- Protect children from alcohol, tobacco and illicit substances.
- Make an increased effort to collect relevant evidence and take appropriate measures to reduce the use of such substances among children.
- Regulate the advertising and sale of substances harmful to the health of children and the promotion of such items in places where children congregate as well as on media channels and publications accessed by children.

The proper and responsible exercise of parental care is the most important protective measure in relation to high-risk behaviour of adolescents, such as the use of psychoactive substances and unprotected sex. The State is also obliged to implement appropriate measures to protect children from addiction. The competent authorities have the duty to provide all adolescents with adequate access to information, both in and outside of school, on the use of tobacco, alcohol and other potentially addictive substances as well as on nutrition, sexual and reproductive behaviour and the risk of teenage pregnancy, prevention of HIV/AIDS and sexually transmitted diseases in order to enable them to make responsible and informed choices.

Respect for the principle of the best interests of the child in these activities requires that the following elements be considered.

a) In relation to the child

- Healthy development
- Adequate surroundings
- Developed healthy habits

b) In relation to parents

- The ability and willingness to
 - provide their child with relevant information on healthy lifestyles;



- provide relevant information on the harmful effects of alcohol, tobacco, drug abuse and other forms of addiction;
- set a positive example for their child;
- request the help of counselling services and/or health, social, education or other professional organisations when needed.

The following elements will help the State and the competent authorities to fulfil the above-listed duties and responsibilities:

- Introduce the subject of Health Education into schools that have yet to cover this subject within the curriculum. This subject should include the topics of health and healthy lifestyles (healthy eating and physical activity), teenage pregnancy, sexually transmitted diseases, identification of all forms of violence and their effect on physical and mental health, and the prevention of addiction.
- Train professionals from various sectors as well as children and youths to become peer educators and implement prevention programmes using contemporary methods.
- Create the prerequisites for a prevention programme (e.g. establish centres for professional support and the prevention of addiction and violence against children).
- Establish specialised counselling services for children and adolescents in each local community (e.g. an adolescent gynaecology counselling service and a counselling service for youths).
- Provide full and efficient enforcement of the laws preventing access of minors to tobacco and tobacco products and alcohol.
- Provide children with access to information written in child-friendly language.

Elements to be considered in the planning and implementation of preventive health programmes for children and adolescents, in line with the legal requirements, are age, gender, the physical, mental, moral, spiritual and social dimension of the child's development, the child's social and cultural background, language and the right of the child to express his/her opinion and wishes.

2. Primary healthcare for children

Certain principles provide the basis for child healthcare.

- **Completeness:** The provision of health services through family medicine teams, regardless of the child's gender, age and disease.
- **Continuity:** The healthcare structure facilitates the continuous monitoring of the child's health.
- **Availability:** The distribution of health institutions should ensure fair conditions for healthcare for every child, regardless of their place of residence, health status, physical and economic situation.
- **A comprehensive approach to primary healthcare:** This requires the availability and implementation of consolidated measures on disease prevention and health promotion as well as treatment and rehabilitation.



Primary healthcare in the best interests of the child requires that health professionals and support staff consider the following elements:

- The child's right to enjoy the highest attainable standard of health in terms of bodily integrity.
- The child's right to free access to and appropriate medical care through primary healthcare.
- The child has the right to free access to medical institutions in order to receive treatment and medical rehabilitation.
- The duty of the health institution to provide information to the child on his/her health in language that the child can understand (A child with disabilities is entitled to receive information adapted to his/her level of education, physical condition and economic situation and in a form in which he/she can understand).
- The right of the child to be included in any decision involving a medical intervention.
- The right of the child to preserve his/her bodily integrity applies except when his/her life is at risk if the medical intervention is not performed.
- Mandatory consent by the parents or by the child or compulsory notification of the guardianship authority if the parents refuse to consent to a medical procedure is required, in case there is a conflicting interest between the parents and the child in relation to the medical procedure or if the parents or guardians do not act in the best interests of the child.
- The child has the right to protection of privacy during a medical examination or medical intervention.
- Parents should receive training on health, disease and the care of their child.
- The consent and extent of the ability, willingness and readiness as well as desire of the parents to work together with the health institution on all matters pertinent to administering of a medical measure for their child.
- Parents should be informed about the health condition of their child carefully, calmly, realistically and without pity.
- In line with binding international standards, parents must be informed of their entitlement to stay with their child in hospital (if applicable) and the opportunities for education during the child's stay in hospital.

3. Healthcare for children with developmental disabilities

As the most vulnerable group of children, children with developmental disabilities are often subject to discrimination and the neglect of their rights in terms of accessing and using health services.

Under the Convention on the Rights of the Child (Article 24, paragraph 1) and the Convention on the Rights of Persons with Disability (Article 25, subparagraphs c and d) children with developmental disabilities are guaranteed the enjoyment of the highest attainable standards in the protection of their mental and physical health. Health services must be available in the communities in which children with disabilities live, and health workers in public and private health institutions must be trained to provide the same quality of care to children with disabilities as to other children.



According to the laws on healthcare in Bosnia and Herzegovina, equal requirements apply to the receipt of healthcare provided through the social health insurance system in the form of healthcare to the population and nosologic groups of particular social and medical importance. Children and persons with disability are included in two separate groups, and therefore, children with disabilities are covered by healthcare on two grounds.

In line with the best interests of the child, the provision of medical care to children with disabilities requires the following considerations.

a) In relation to the child

The following should be considered in relation to the child:

- age;
- gender;
- physical, mental, emotional and social development;
- the child's ability to receive and understand information on his/her health status and the medical interventions that he/she should undergo;
- the child's ability to express his/her opinion concerning his/her health status and the medical interventions he/she should undergo.

b) In relation to parents

The following should be considered:

- the parents' ability and willingness to
 - take care of the child's health;
 - satisfy the child's needs;
 - make certain that the child exercises his/her rights;
 - provide the best conditions for learning, acquiring life skills and for developing other abilities of the child;
- economic and financial standing;
- stability of the family and incidence of domestic violence;
- awareness of the child's level of development, needs and abilities;
- any health condition or addiction of the parents and its influence on the child.

c) In relation to the health institution

See section 2 (Elements for assessment and determination of the best interests of the child in the area of family and social protection) and section 5 (Children with disabilities) subparagraph d (Capacities of the healthcare system).



d) In relation to the community

The following should be considered in relation to the community:

- availability of community-based rehabilitation and habilitation programmes;
- availability of financial support and services within the social protection system for children with developmental disabilities, enabling them to satisfy their needs and develop specific skills;
- secured sources of sustainable funding for rehabilitation and habilitation programmes.

Ensuring the best interests of children with disabilities in terms of **communication** within a health institution requires the following:

- Introductions should be made at the beginning of a conversation.
- Avoid phrases such as 'see you later' or 'look' in conversations with blind and partially sighted children and never leave the room in which you are talking without first telling them.
- Describe the environment to the child. For example, 'The chair is one metre to your right' or 'There is a barrier in front of you to your left'.
- Prepare alternative forms of information sharing adapted to children and their abilities (e.g. Braille, large print, audio or digital formats).
- When communicating with deaf children and children with hearing impairment, look them in the eye and use short and clear sentences; make sure a sign language interpreter is present.
- If the child is able to lip-read, face the child when speaking and speak normally keeping your hands and other objects away from your lips.
- Do not presume that the child knows sign language or can lip-read. Instead, ask the child about it.
- When communicating with children with intellectual disabilities, speak slowly, observe whether the child understands what is being said and, if necessary, engage the parent/caregiver in the conversation.
- Do not raise the tone of your voice, do not shout and speak calmly.
- Choose quiet surroundings in order to facilitate communication.
- Move the furniture and other items in order to make sufficient room for a wheelchair, scooter or other mobility aids.
- Do not lean on the child's aids.
- Push a child in a wheelchair only if the child asks you to.



4. The ability to assess and classify children with developmental disabilities

The Convention on the Rights of the Child recognises the right of children with developmental disabilities to equal participation in society, in which they should enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and facilitate their active involvement in the community (Article 23). The early identification of these children and the detection of signs of difficulties combined with the capacity of the system to provide appropriate interventions are prerequisites for these children to be able to reach their full potential. This requires a multidisciplinary approach, both in the identification of the disability and the intervention.

The assessment and classification of children with developmental disabilities is performed by a multi-sector committee for the classification of children, comprised of a social worker, psychologist, paediatrician or general practitioner, neuropsychiatrist and a special educator. The assessment of the abilities of a child with developmental disabilities is performed up to the age of seven years. It includes an examination, observation and final findings and opinions on the extent of the child's disability. Based on the results and opinion of its members, the committee proposes measures for the child regarding his/her treatment, protection, upbringing, education and training for life and work.

It should be noted that every child with disability should be provided with education in a regular school, which upholds the principle of the child's best interests and the principle of full inclusion. This premise is supported by the Convention on the Rights of Persons with Disabilities and by policy on disability in Bosnia and Herzegovina.

Ensuring the best interests of the child within the procedure of assessment of the child's disability requires the consideration of some aspects in relation to children with developmental disabilities:

- in terms of age, young children have a higher chance of recovery or empowerment and development of their remaining abilities;
- in terms of psychomotoric and intellectual abilities, the assessment must focus on what the child can do or, in other words, on the child's abilities rather than his/her disability;
- social skills;
- the child's willingness to communicate (considering the child's existing speech difficulties);
- the child's ability to sustain attention.

A community working in the best interests of a child should ensure the following:

- sustainable sources of funding for assessment programmes,
- the performance of the assessment of the child's intellectual abilities includes more extended observation of the child in an environment familiar to the child,
- the introduction of periodic evaluations of the child's progress and monitor the development of the child's abilities,
- define the level of liability if the competent institutions fail to observe these elements/obligations.



5.

IMPLEMENTING THE BEST INTERESTS OF THE CHILD IN CIVIL COURT PROCEEDINGS

Nikola Sladoje, Božana Vulić, Katica Artuković, Aleksandra Marin Diklić



Guidelines related to civil proceedings are intended to harmonise respect for the principle of the best interests of the child with measures of jurisprudence in order to ensure compliance with the procedural and substantive legislation in relation to specific cases.

“Every child has a right to be treated with care and respect in all proceedings before the court affecting the child or requiring the child’s participation. Honouring this right is the only approach to implementing the best interest of the child in court proceedings. The court has a discretionary right to assess whether a particular decision would be in the best interest of the child. In order to determine what represents the best interest of the child, the court has to evaluate professionally and accurately the circumstances of each case employing a multidisciplinary method, without neglecting any of the rights enjoyed by the child. It follows that the best interest of the child in court proceedings is most closely related to the child’s right to express views and opinions on matters affecting them.” (Article 12 of the Criminal Procedure Code).

The right of the child to express his/her views and to be heard, in line with their age and level of maturity, is recognised in the national legislation. The realisation of this right plays a crucial role in the child’s development into a healthy, responsible and independent person, because children’s views reflect their needs and wishes. This means that children should be interviewed as opposed to questioned during civil proceedings. The child should be able to express his/her opinion during the interview (conversation) and know that their opinion will be taken under advisement.

Children can appear in court proceedings in various procedural roles; however, their involvement requires special attention and caution in order to ensure their maximum protection. The child should understand the importance of his/her position before the court, which means that this role has to be explained to the child in language appropriate to his/her age and abilities. In this way, the child will feel empowered and protected in this role. The court proceedings should be conducted in a manner that guarantees the best interests of the child and ensures the protection of the child’s integrity and implementation of his/her rights throughout the proceedings.

Many civil proceedings in Bosnia and Herzegovina contain an international element involving children; this is common because of the high percentage of the population that is displaced. These proceedings are finalised before national courts that in their decision-making, give priority to the relevant conventions. Research has shown that the jurisprudence of these courts in these cases is not harmonised in relation to the protection of the integrity and realisation of child rights.

In addition to regulation under the national procedural legislation, the participation of children in court proceedings is also regulated by the Council of Europe’s Guidelines on Child-Friendly Justice (2010) and General Comment No. 12 of the Committee on the Rights of the Child concerning the child’s right to express his or her views (2009). These documents provided the basis for the preparation of the guidelines related to civil proceedings.

The status and rights of children in court proceedings are defined in the national legislation, which means that children are formally enabled to express their views. However, in disputes under the Family Law, a child’s interests usually are in conflict with the interests of the child’s parents, who have the obligation to represent the interests of the child.

Determining the best interests of the child in court proceedings is a demanding task because the rights and interests of the child have to be weighed against the rights and interests of other parties to the proceedings. Therefore, it is necessary to encourage the development of a multidisciplinary method for a professional and efficient assessment of the best interests of the child on a case-by-case basis. The best interests of the child in court proceedings must be determined in unison with other rights, such as the right to be heard,



the right to be protected from violence and the right not to be separated from parents. This means that a comprehensive approach should be mandatory.

Respect for the child's dignity is one of the basic requirements of human rights standards, and specific categories of particularly vulnerable children may require special protection. Regardless of their age, children are always the holders of their own rights.

1. The participation of children in court proceedings

Children can appear in different procedural roles (as a party to the proceedings, participant or witness) in civil proceedings before the court (litigation, non-contentious and enforcement proceedings). However, many legislative, social, cultural and financial obstacles restrict a child's access to the court, most notably the absence of legal competence. Yet regardless of the nature of the proceedings before the court, the child must be allowed to participate fully, in line with his/her developmental abilities, and to exercise his/her procedural rights. The child must be included in the proceedings before making any decisions that could affect his/her current or future status.

The opinion of the child must be obtained in each court proceeding unless an expert (whose opinion, among other things, must be based on the views of the child) determines that it would be against the best interests of the child to do so.

Relevant experts should oversee persons working with children within the context of court proceedings. These persons should also receive interdisciplinary training on the rights and needs of children of different ages and on child-friendly proceedings.

An alternative/peaceful settlement of the dispute in line with the child's best interests should be encouraged whenever possible. The child should be provided with detailed information about this procedure and should be invited to present his/her opinion.

Proceedings involving decisions on the child's rights must have priority in relation to other proceedings. According to the national legislation, the court must be particularly mindful in cases under the Family Law of the need for urgent resolution of disputes in order to protect the interests of the child and must schedule hearings and deadlines accordingly. Compliance with the **principle of expediency** ensures that the decision is rendered in the shortest possible time, thus preventing delays and the possibility of permanent and irreversible consequences for the child and his/her relationship with his/her parent(s). This is particularly important because children and adults do not perceive the passing of time in the same way. Divorce proceedings may last for a year, but to a ten-year-old child, it can seem much longer.

1.1. The child's right to express his/her views freely

The Convention on the Rights of the Child recognises the right of a child who is capable of forming his/her own views to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and level of maturity of the child.



The child shall, in particular, be provided with the opportunity to be heard in any judicial or administrative proceeding affecting the child, either directly or through a representative or an appropriate body and in a manner consistent with the procedural rules of the national law (Article 12).

This right is one of the leading principles of the Convention, but it is not absolute and only granted to a child capable of forming his or her own views. Under the national family laws, children have the right to express their opinions freely and have their views considered in accordance with their age and level of maturity.

The child's **ability to express his/her own views**, more specifically their age, level of maturity and ability to understand the court proceedings ahead, **needs to be assessed** before the court holds the hearing. All other participants in the court proceedings should be prepared in accordance with this professional assessment and as much as possible adapt their behaviour to suit the child.

The following should be considered in order to implement the best interests of the child in the mentioned professional assessment:

- The presumption that the child is capable of forming his/her own views. The burden of proving this ability is not on the child but on the party who claims that the child is not capable of forming his/her own views.
- In each case, the assessment is performed individually and focuses on the specific child, specific issues and circumstances.
- The child's ability should be assessed regardless of the way in which the child expresses his/her views (through playing, body language, facial expressions, drawing or painting) because these forms of expression enable even the smallest child to demonstrate understanding, personal choice and affinities.
- The views of the child are taken under advisement in court proceedings, regardless of the form in which they are expressed. The child should be perceived and treated as a person and approached with compassion, trust and understanding for their needs, feelings, beliefs and individuality.

1.2. Preparing the child to participate in court proceedings

The principle of the best interests of the child requires that the child's participation in the court proceedings has as little impact on the child's emotional wellbeing as possible and that the level of stress experienced by the child is kept to a minimum.

In order to achieve this in cases that require the child's direct participation, the child needs to be encouraged and prepared for the experience.

In order to implement the principle of the best interests of the child, when preparing the child for participation in the court proceedings in each individual case, the child must be advised, in line with his/her age and maturity, of the following:

- the subject matter of the court proceedings and his/her role in the proceedings;
- the right to express his/her views and the right not to express views (expressing the child's views is a right, not an obligation);



- the right of the child to present his/her views directly or through other persons or body and to be informed of the consequences of their choice;
- the fact that the child's views can have an impact on the final decision and therefore that his/her views are important to the court, but also that the child's views alone will not determine the outcome of the proceedings and that the decision will be rendered by the court based on all of the presented facts and evidence;
- the right to express views, emotions, concerns and the right to ask questions and have them answered;
- the rules of behaviour that must be upheld when expressing views;
- the location of the court, the layout of the courtroom, the seating arrangements and everyone's role inside the courtroom, the place where the child will sit, the persons who will talk to the child, the way court hearings are conducted, the behaviour of other persons in the courtroom, depending on their specific roles, the duration of the hearing in general and when the child will be summoned;
- because uniformed security personnel often with a sidearm can be intimidating for the child, especially if they do not expect to find themselves in such a setting, explain to the child the need for security checks at the entrance to the court building, the obligation to empty pockets and leave metal objects at home and the need to walk through the metal detector;
- the likelihood of spending several hours in the court and the fact that the child can bring something to play with while they are waiting, such as a favourite toy, which can be a source of comfort and encouragement;
- the fact that the child did not cause the court proceedings, that being afraid and feeling uncomfortable is natural and understandable and that these feelings can be expressed freely.

The court decides on who will prepare the child for participation in the court proceedings. Once these preparations are completed, the following must be ensured in order to protect the best interests of the child in each individual case:

- By rule, parents/guardians/adoptive parents are best suited to prepare the child for the conversation (expressing his/her views before the court). This is because the child trusts them the most, they know their child best, especially the child's reactions and habits, and they are able to choose the approach that is in the best interests of the child. Regardless of this, parents must be instructed on how to prepare their child for the conversation. They must also be advised against asking the child to reveal the content of their discussion with the judge, psychologist or representative, especially in relation to the views they have expressed. Parents should abstain from making any comments should the child volunteer information about the views they have expressed. The parents must not subject their child to inappropriate treatment for expressing his/her views during the court proceedings.
- If the court learns that the parents are, knowingly or unknowingly, projecting their internal conflict onto the child and therefore neglecting the best interests of the child in order to protect their own, the court shall order the guardianship authority to prepare the child for participation in the court proceedings. If the guardianship authority is the instigator of the court proceedings, then the court shall entrust the preparation of the child to an independent psychologist or school psychologist, family counselling service, mental health centre or another institution specialised in providing this form of assistance to children.
- If the court establishes, based on the information from the case file or another direct source of information, that the child has undergone or is undergoing therapy, then the preparation of the child shall be entrusted to the child's therapist.



- If the court has appointed a special representative for the child, then the child's preparation shall be entrusted to the temporary representative.

1.3. The conversation with the child about the court proceedings

The judge, upon obtaining the opinion of the guardianship authority or a psychologist in respect to the child's individuality, skin colour, gender, age, ethnicity, culture, disability, illness or any other characteristic and/or affiliation, will conduct the conversation with the child.

Even if already skilled and knowledgeable in establishing a rapport and communicating efficiently with children, it is essential that the judge be fully prepared for this conversation. This preparation implies gathering information about the child and the specifics of the case (such as age, education, personal characteristics, relations with others and the history of the case) that will be the subject of the conversation and/or decision-making. The judge needs to plan the structure of the conversation and clearly define the topics that need to be covered.

The judge should be mindful of the following during the conversation with the child:

- The judge's position in relation to the child should not have a discouraging effect on the child (the judge maintains a distance or speaks in a patronising tone). The child should feel relaxed during the conversation. This may require that the judge avoid certain formalities. The judge can decide not to wear his or her robe or not to have a discussion with the child in the courtroom. The judge can choose to have the discussion at the premises of the guardianship authority or another suitable facility such as a school, kindergarten, library or the child's home. If the judge decides to have the conversation in the courtroom, then the courtroom setting should be adjusted to the highest possible extent in order to suit the needs of the child. For example, by placing an item in the courtroom that is appropriate to the child's age and will be visible to the child most of the time.
- The demeanour, body language and attitude of the judge should send a message to the child that says 'Don't be afraid, I am listening to you. I want to hear what you have to say'.
- The conversation should be limited to the shortest possible time because children have a relatively short attention and concentration span. The judge should, therefore, prepare questions in advance.
- The judge should make it clear to the child that everything the child says is essential and motivate the child to speak about whatever comes to his/her mind, even if the child thinks it that it is not important.
- The child should be addressed on a first name basis.
- The judge should speak at a slower pace and in short, clear sentences.
- The judge should be mindful of the child's age, special needs and level of maturity as well as the child's ability to understand, taking into account any difficulties that the child may be experiencing in terms of communication.
- The child's age must not be the sole reason for the child not being heard.
- The child should be allowed to express his/her own views and opinions in a manner of the child's choosing, provided it is suitable to the child's ability to understand and communicate and that the circumstances of the case permit.
- The questions should be adjusted to the child's age and maturity, while direct questions, such as 'which parent you want to live with', should be avoided.
- The conversation with the child should commence with simple yet specific and non-leading



questions (such as 'Tell me something about your visits with your dad.' or 'What is it like living with your mom?') and continue in the same spirit (e.g. 'Tell me more about that.').

- The judge should avoid repeating questions and tell the child, 'If I ask you about something again, it does not mean that I want you to change your answer. What is important is that you tell me everything you remember in the best way you can.'
- The language must be adjusted to the child's age, avoiding words that the child might not understand (such as a foster parent, legal counsel, entrusted, mediation).
- It should be made clear to the child that they are allowed to correct themselves if they feel that they have misunderstood or misstated something and that the answers 'I don't know' and 'I don't understand' are entirely acceptable.
- The child should know that he/she can use any words he/she wants in order to express himself/herself and that it will in no way agitate outrage or anger the judge.
- The judge should not rush the child when the child is talking or answering questions. The judge should not allow anyone to disturb or interfere with the conversation by walking through the room or by addressing the child or the person talking to the child.
- The judge should not ask questions that can invoke feelings of guilt toward one of the parents (for example, 'Which parent do you want to live with?').
- The judge should assess whether the child is genuinely expressing his/her own views or if the child has been manipulated. Similarly, the judge must determine whether the child is protecting the parent who he/she perceives as weaker or whom they pity, whether the child wants to appease one of the parents and whether the views expressed by the child are in the best interests of the child's wellbeing; for example, whether the child is choosing the parent who is least authoritative and more accommodating and such like.
- The judge should not insist on the child's opinion. If the child is reluctant to speak, then he/she needs to be encouraged and motivated to express his/her views through a different approach better suited to the child.
- The judge should finish the conversation with the child in a positive spirit by thanking the child for his/her participation before the court, encouraging the child and commending the child for his/her efforts and by advising the child that the court will issue its decision in his/her best interests.

The guardianship authority mediates the conversation with the child. The child should be given an opportunity to express his/her own views without the presence of the parents or other persons whose interests might conflict with the interests of the child. However, the wishes of the child are paramount and therefore if the child wishes to have someone that he/she trusts present when expressing his/her views, then this should be permitted.

If the judge is not sure in his or her ability to communicate appropriately with the child, then he or she should request the assistance of a specialised expert during the conversation.

The judge must be particularly attentive when compiling the record of the conversation with the child.



1.3.1. Informing the child

The child should be provided with all relevant and necessary information about the rules as well as the mechanisms and instruments at their disposal should he/she wish to exercise them and/or if needed to protect the rights of the child throughout the court proceedings.¹⁴

The judge will advise the child about the following during the court proceedings:

- the judge wants to hear the child's opinion;
- the child can ask questions freely and receive answers about his/her interests and status in the proceedings so that the child can form and express his/her own views based on the available and accurate information (biased parents can misinform the child);
- expressing an opinion is the child's right and not an obligation;
- the child's opinion in the course of the court proceedings is essential and will be given due attention;
- the child's opinion can influence the decision of the court, but the court will render its final decision only after evaluating all other evidence (The child should not dwell under the impression that the final decision of the court depends solely on his/her opinion nor that he/she will 'win' in the court proceedings because the judge has listened to him/her);
- the child can change his/her opinion and inform the court about it in a manner befitting the child's age.

Upon completion of the court proceedings in which the child has expressed his/her opinion, the court is obliged to provide the following feedback to the child in accordance with the principle of the child's best interests:

- information about the decision the court reached,
- information on the extent to which the child's views influenced the court's decision.

The United Nations Committee on the Rights of the Child notes that this information might be useful to the child when deciding whether to invoke legal remedies (paragraph 45 of the General Comment No. 10 – Children's rights in juvenile justice). The Committee does not specify how the person who issues the decision should inform the child about the decision. Given the characteristics of court proceedings in the country, it would be unrealistic to expect that the judge would personally notify the child but that the said requirement would be fulfilled through another person (i.e. the person who represented the child). If the judge heard the child directly, then the judge can authorise the representative of the guardianship authority and/or another person to convey appropriate information to the child.

¹⁴ Article 3 of the European Convention on the Exercise of Children's Rights foresees the child's right to receive all relevant information (Article 3a) and the court's obligation to provide the child with relevant information in the proceedings affecting the child, before taking a decision (Article 6 b). "Relevant information means information which is appropriate to the age and understanding of the child, and which will be given to enable the child to exercise his or her rights fully unless the provision of such information were contrary to the welfare of the child." (Article 2).



2. Court decisions in proceedings affecting the child

Court decisions affecting the child must be prepared in writing and contain clear reasoning in language that the child can understand and from which the child can comprehend that the court was mindful of his/her best interests.

In demonstrating that the court was mindful of the child's best interests in the decisions affecting the child (or children), the court must include the following in its **reasoning**:

- In terms of motivation, all factual circumstances concerning the child and all elements found relevant for the assessment of the best interests of the child as well as the content of the aspects of the individual case and how each part was weighted in order to determine the best interests of the child must be explained.
- In terms of justification, if the decision differs from the views expressed by the child then the reason for this should be stated clearly. If the solution chosen is not in the best interests of the child then the grounds for this must be set out in order to show that the child's best interests were the primary consideration, despite the result. It is not sufficient to state merely in general terms that other considerations outweighed the best interests of the child. All considerations in a particular case must be specified explicitly in relation to the case at hand and the reasons why they carried greater weight explained.
- Provide a credible explanation as to why the best interests of the child were not strong enough to outweigh other considerations (Comment No. 14, paragraph 97).

A well-written explanation of a court decision detailing the reasons that led the court to render its decision in the best interests of the child demonstrates that the court respected the right of the child and his/her parents to fair proceedings.

The Constitutional Court of Bosnia and Herzegovina has issued the following ruling concerning the child's best interests within this context:

"The best interest of the child is always a primary consideration. The European Court acknowledges the discretionary right of competent authorities to decide what is in the interest of the child and does not find it necessary to amend decisions of national courts, mindful of the prevailing social and cultural circumstances. The duty of the Constitutional Court in this case, under the terms of Article 6, paragraph 1 of the European Convention, is to ascertain whether the regular courts in the disputed decisions ... provided clear reasoning and referred to the interests of minor M.K. who has been entrusted to the plaintiff's parental care. ... The Constitutional Court has found in this case that the regular courts of both instances clearly explained their decisions regarding the established facts and the application of the substantive law and that these explanations were not arbitrary." (Decision No. Ap 425/16 of 7 June 2016).

The motion to entrust the child to the care of one parent, which the court must request and receive from the guardianship authority, is essential and necessary, but it cannot be the sole reason for the decision. The motion is only one piece of evidence, and the court must establish facts in the best interest of the child based on all presented evidence.

According to the jurisprudence of civil courts in child custody litigations:

"The court should take into account the opinion of the guardianship authority, but that opinion may not be the basis of the court's ruling nor replace the mandatory presentation of evidence. The truthfulness



of facts shall be established by the court based on the presented evidence and the results of the overall proceedings, and not solely on the opinion of the guardianship authority.” (Decision of the Supreme Court of Republika Srpska No. 71 0 P 150699 14 Rev. 11 February 2016).

The court’s decision does not automatically imply that the conflict between the partners (parents) has been resolved. The court may instruct the parents, in the best interests of the child, to seek support from the social work centre (family counselling, if available) or the mental health centre in order to ensure monitoring of the situation after the completion of the proceedings and to protect the best interests of the child.

3. Special proceedings for the protection of the best interests of the child

3.1. Proceedings on child maintenance disputes

A court decision on child maintenance must contain an explanation of the awarded amount of support (especially if the court has awarded the same support to children of preschool and school age).

In the reasoning section of the decision, the court must provide a clear explanation to the effect that the awarded amount is primarily in the best interests of the child and commensurate with the child’s needs. This is because the amount of child maintenance should meet the child’s needs, secure the child’s existence and provide the child with a standard of living similar to that formerly enjoyed by the child’s parents. When deciding on child maintenance, the court should be mindful of the standard of living in the area in which the child lives. Accordingly, the amount of contribution for child maintenance should be determined based primarily on the child’s needs and regardless of the potentially low monthly income, unemployment or absence of income of the maintenance debtor.

It is possible, in the best interest of the child, to award a fixed amount of contribution instead of an amount calculated as a percentage of the lowest paid salary. (Decision of the Supreme Court of Republika Srpska No. Rev 157918 16 of 15 February 2017).

The parent to provide child maintenance is obliged to use all of his/her capacities and to invest additional effort to secure a decent existence for his/her child. When assessing these capacities, the court must take into account that the parent with whom the child does not live has more options for increasing his/her income because he/she does not have to ensure daily care, upbringing and safekeeping for the child.

3.2. Proceedings on child maintenance disputes with an international element

The international element in child maintenance disputes refers to cases in which a child’s parents live in different countries. Every sovereign state exercises its authority within its territory; however, the court decisions or decisions of other authorities of equal legal force in one country cannot be enforced in the territory of another state without an appropriate procedure of recognition in place or an international agreement that would allow for such enforcement.



The principle of the best interests of the child was recognised in international instruments governing the enforcement of orders of foreign courts even before the Convention on the Rights of the Child came into existence. The United Nations Convention on the Recovery Abroad of Maintenance, from 1956, (otherwise known as the New York Convention) enabled the enforcement of decisions of foreign courts through simplified expedient and cost-effective proceedings.

The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, from 2007, enhanced this cooperation between the States parties and allowed for the more efficient recovery of child maintenance, the purpose of which is to ensure the best interests of the child.

As one of the State parties to both conventions, Bosnia and Herzegovina has pledged to ensure implementation of the principles from these conventions as enumerated in the preamble to The Hague Convention. These principles refer to cooperation between states on the international recovery of child support and implementation of effective procedures that are accessible, fast, efficient and cost-effective.

Child maintenance claims with an international element are settled in accordance with international agreements, namely conventions that regulate this procedure between the State parties.

The national laws of the States parties regulate the procedure for filing a child maintenance claim abroad and enforcement of the child maintenance claim from abroad. Bosnia and Herzegovina does not have a separate law regulating international legal assistance in civil matters (including family law matters), and therefore the relevant entity laws govern the procedure related to child maintenance with an international element.

In the absence of appropriate procedures in Bosnia and Herzegovina (which should be introduced through the adoption of the Law on International Legal Assistance in Civil Matters, currently in the preparation phase) it is necessary to rely on best practice derived from the existing legal solutions for the mentioned proceedings. However, the provisions of the Convention invoked by the State, as the international agreement with priority over national legislation, should always apply.

3.2.1. Filing a maintenance claim abroad and the related procedures

None of the existing laws in Bosnia and Herzegovina regulates the procedure for filing a maintenance claim abroad. Until the appropriate legislation has been adopted and can formally regulate this procedure, the practice adopted in these proceedings acts as a guide to the competent authorities.

Maintenance claims from Bosnia and Herzegovina in relation to the order of the national court whose enforcement is sought abroad are dealt with by the courts or other authorities in the debtor's domicile country. This means that the maintenance claim is enforced in accordance with the laws of the debtor's domicile country. The domicile country of the debtor will only take the claim from Bosnia and Herzegovina into consideration if it is prepared in line with the provisions of the invoked convention. This implies that the child or the child's representative as a maintenance creditor (hereinafter, maintenance creditor) must be afforded all necessary support.

Considering that maintenance disputes fall within the jurisdiction of the entities, maintenance creditors from Bosnia and Herzegovina have to file their maintenance claims abroad. This is done via the competent entity authority within the field of social protection and is based on the creditor's registered place of residence: The Ministry of Labour and Social Policy of the Federation of Bosnia and Herzegovina, the Ministry of Health and Social Protection of Republika Srpska or the Judicial Commission of Brčko District.



These authorities are obliged to make available all information that could facilitate the filing of a maintenance claim by the maintenance creditor and all attachments requested by the domicile country of the debtor and to ensure proper filing of the maintenance claim and implementation in the best interests of the maintenance creditor.

Should they determine that the maintenance creditor is not able to undertake all actions in relation to the filing of the claim, supplementation of the claim or translation of the claim into the language of the debtor's domicile country, the authorities that receive the mentioned claim are obliged to refer the maintenance creditor to the office responsible for free legal aid and ensure that the procedure is treated as urgent.

After receipt of the maintenance claim with the necessary documentation, the claim is then forwarded to the Ministry of Justice of Bosnia and Herzegovina, as the facilitating authority in cross border proceedings. In each specific case, the Ministry of Justice of Bosnia and Herzegovina must verify if the claim is compiled in accordance with the invoked convention and, if so requested, whether the claim is complete and available in the language of the debtor's domicile country.

The claim will not be returned to the applicant if it is incomplete. The authority receiving the claim will request urgent delivery of the missing attachments in order to complete the claim in the shortest time possible and forward it to the debtor's domicile country.

The Ministry of Justice of Bosnia and Herzegovina will file a maintenance claim, as described above, and forward it instantly to the competent central facilitating authority of the debtor's domicile country. The Ministry will oversee the procedure until final enforcement of the claim.

The Ministry of Justice of Bosnia and Herzegovina shall convey all information related to the maintenance claim to the maintenance creditor through the competent entity authority and can request additional information and documentation from the maintenance creditor if so requested by the debtor's domicile country.

In the case of delays or expiry of the deadline for delivery of information from the debtor's domicile country, the Ministry of Justice of Bosnia and Herzegovina, on its own initiative, will request feedback and an explanation of the reasons preventing the enforcement of the claim from the debtor's domicile country and notify the maintenance creditor accordingly.

Considering that the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, from 2007, obliges Bosnia and Herzegovina and all of its authorities to act, within their respective mandates, in line with the provisions and objectives of the Convention, the authorities receiving the claim are obliged to inform the maintenance creditor about the specific manner of filing such a claim in line with the Convention and their obligation to complete the appropriate forms that must be submitted as attachments.

The United Nations Convention on the Recovery Abroad of Maintenance, from 1956, does not list the specific documents that must accompany the maintenance claim. However, based on the practice in the countries where this legal requirement is rendered exclusively based on this Convention, the following documents must be attached to the maintenance claim:

1. the original or a certified copy of the court verdict ordering the debtor to pay maintenance to the maintenance creditor;
2. power of attorney in favour of the Ministry of Justice of Bosnia and Herzegovina;



3. power of attorney in support of the competent foreign facilitating authority, namely the authority of the country receiving the claim;
4. the original or a certified copy of the marriage certificate of the parents and the birth certificates of the parents and the child, if the child was born during the marriage and prior to the dissolution of the marriage;
5. the mentioned certificates should be issued using the so-called international form; otherwise, they will have to be translated into the language of the requested party by a certified court interpreter;
6. a certified copy of the court ruling, if the marriage has been dissolved;
7. the document containing data on the child's father, if the claim is filed on behalf of a child born out of wedlock;
8. proof provided by the competent authority that the applicant is the legal representative or guardian of the child, if the claim is submitted by the legal representative or guardian;
9. joint or individual photographs of the parents and children, if available;
10. the so-called indigence certificate issued by the competent authority, if there is a need for the provision of free legal aid;
11. the name of the applicant's bank in Bosnia and Herzegovina (a bank that has business cooperation with foreign banks) and the applicant's account number, in order to enable the transfer of funds from abroad to Bosnia and Herzegovina in the case of a positive outcome of the maintenance claim abroad.

Certain State parties to the Convention may request additional information (such as accurate description of the child's situation or the financial standing of the child's family), which must be provided. The requested legal assistance will not be rendered, and consequently, the child's best interests will not be served if the requested information is not provided.

3.2.2. Proceedings before national courts in relation to maintenance claims from abroad

The practice that will reflect the true objectives of the conventions governing this field and formally regulate these proceedings shall apply pending the adoption of the relevant law at the level of Bosnia and Herzegovina.

Municipal and basic courts that decide on maintenance claims from abroad are obliged to implement the provisions of the relevant conventions alongside those of the national legislation. The provisions from the conventions are procedural in nature and therefore have priority in relation to national laws. As stated above, the law reflecting the true objectives of the conventions governing this field is pending in Bosnia and Herzegovina.

A maintenance claim filed by a maintenance creditor from another country has the same legal force as the motion for enforcement. However, it is unacceptable for the national courts to forward such a claim to the Ministry of Justice of Bosnia and Herzegovina and request that the Ministry supplement the motion within eight days or the claim will be rejected. The Ministry of Justice of Bosnia and Herzegovina forwards the request to supplement the claim to the facilitating authority in the relevant country. The facilitating authority thereafter informs the maintenance creditor about the request. These steps must be treated as urgent. It, therefore, follows that in the event of an incomplete claim the court (via the Ministry of Justice of Bosnia and Herzegovina) should request that the foreign authority supplement the claim without the imposition of deadlines.



Due to the complexity of the procedures associated with international legal assistance in such matters, the imposition of the deadline on another country is not in line with the principles of the conventions that govern this field. However, each stage of the procedure must be treated as urgent. If the claim does not contain the requested data on the income and property of the maintenance debtor and the maintenance creditor is not in a position to obtain this information, then the court will obtain the information ex officio and proceed with the enforcement in accordance with the claim.

Given that the enforcement of maintenance claims abroad requires a simplified procedure, the jurisprudence suggests that the parties in the court ruling should not be subject to the procedure of recognition and that the maintenance claim should be treated as a motion for enforcement.¹⁵ The court should consider the maintenance claim in light of the convention invoked by the maintenance creditor and decide accordingly.

3.3. Proceedings for claims filed under The Hague Convention on Civil Aspects of International Child Abduction¹⁶

Bosnia and Herzegovina very often receives, through the Ministry of Justice, harsh protest notes about the work of the courts on claims based on the Hague Convention on Civil Aspects of International Child Abduction. These protest centre on the courts not rendering decisions in accordance with the objectives of the Convention or within the deadlines prescribed therein.

As one of the parties to the Convention, Bosnia and Herzegovina is obliged to advance its objectives and implement urgent and efficient proceedings upon claims filed in accordance with the Convention. The main objective of the Convention is the return of children unlawfully taken from one country to another and illegally kept by one of the parents. However, this objective does not have to be achieved in every case. The Convention foresees exceptions to the return of the abducted child in situations where it is not advisable or possible to bring a decision on the return of the child (Article 13 of the Convention).

Since Bosnia and Herzegovina does not have a separate law to regulate the procedure for claims filed under this Convention, the relevant entity laws govern these proceedings. This complies with the obligation of the State to apply the most efficient available procedures (Article 2) in order to ensure implementation of the Convention within its territory. The best interests of the child must be respected and implemented in all proceedings.

The central executive authority in Bosnia and Herzegovina for the implementation of the Convention is the Ministry of Justice of Bosnia and Herzegovina. Therefore, all correspondence between the authorities

¹⁵ Ruling of the Supreme Court of Republika Srpska, Decision No. 118-0-GŽ-09000 013 of 08 October 2009: "Rather than examining the content of the claim and attachments thereto and deciding that the subject matter of the proceedings was the maintenance claim under the Convention, the first instance court has inaccurately reviewed the documents and erroneously established the facts and the subject matter of the proceedings as a motion for recognition of a decision of a foreign court. The basic court shall examine the claim under the terms of the Convention, in particular Article 6 (representation of the creditor) and verify if all necessary documents have been attached."

¹⁶ Please see item 4 of the section titled 'Elements for the assessment and determination of the best interest of the child in the area of family and social protection' for further information on the elements for the assessment and determination of the best interests of the child when deciding to refuse a claim for the return of a child.



in Bosnia and Herzegovina and authorities of other countries must be conducted through the Ministry of Justice of Bosnia and Herzegovina.

The Constitutional Court of Bosnia and Herzegovina (Decision Ap 2784/15 of 14 October 2015) has ruled that the proceedings in cases of international child abduction are sui generis proceedings and that the State is obliged to apply the Convention on Civil Aspects of International Child Abduction (Hague, 25 October 1980).



6.

UPHOLDING THE BEST INTERESTS OF THE CHILD IN CRIMINAL PROCEEDINGS

Olga Lola Ninković, Elmedin Muratbegović, Jasna Pečanac



1. Conversation with the child in judicial criminal proceedings

From a legal, psychological, social, pedagogical and generally human point of view, the active participation of a child in criminal proceedings, be it in the capacity of victim, witness or perpetrator, is certainly in the best interests of the child. The concept of the child as a passive subject of legal matters, which equalised the child's best interests with the best knowledge of adults ('I know what is best for you'), gave way to a new paradigm in which adults responsible for bringing decisions on children take their needs, interests, attitudes and opinions into account.

The responsibility of adults, in particular, those taking decisions on behalf of and affecting children, is multidimensional and requires respect for certain principles.

- **The principle of individuality** requires that decisions in relation to a child be made individually for each child.
- **The principle of satisfying the current needs of the child** requires that the new situation and set of circumstances surrounding the child be determined and taken into consideration when bringing decisions on the child.
- **The principle of satisfying the long-term needs of a child** requires that a comprehensive analysis of the conditions and circumstances in which the child lives, his/her language, culture, upbringing and similar factors be considered in line with the age and development of the child.
- **The principle of respect for the child's point of view** requires that the child's opinion be taken into consideration, regardless of his/her age.

It is essential that all procedures and decisions affecting a child or taken on behalf of a child consider the long-term best interests of the child. This means that the future perspectives for and potential of the child are taken into account. It may be difficult at times to uphold the best interests of the child because the current view on what constitutes the best interests of the child might not necessarily reflect what is best for the child in the long term. One should plan for the possibility of a later review of such decisions because the child will develop over time.

In criminal proceedings, whether the child is a victim or a perpetrator, the right of the child to be heard represents the mandatory course of action for obtaining his/her opinion.

Interviews and statements taken conducted during the investigative and pre-trial proceedings require particular attention. Unprofessional statement taking from the child may cause harm or suffering to the child. The education and training of persons who interview a child at this stage should, therefore, be sufficient to guarantee efficiency and generate more information and facts without causing any harmful effects to the child.

When children testify before the court, the focus should be on protecting the child from secondary traumatisation and secondary victimisation. This protection is foreseen in the provisions of the laws on the treatment of children and minors in criminal proceedings.

The skill of the judge in communicating with the child and the judge's knowledge of and respect for the child's personality will undoubtedly contribute to improving the child's ability to provide the most accurate, complete and honest answer to questions.



To conclude, all persons that come into contact with the child (police officers, inspectors, prosecutors, judges, expert advisors in the courts and prosecutor's offices, professionals from guardianship authorities, lawyers/defence attorneys, experts and others) should possess a specific set of skills for working with children. This is the main prerequisite to ensure that activities and decisions involving children will be in their best interests.

1.1. Communicating with children

The majority of adults wrongfully believe that communicating with children is easy, because 'they are just children'. Misunderstandings and confusion in communication with children is often a result of adults forgetting that communication is a two-way process. It requires that the adult understands the child and vice versa. Sometimes this is not easy, especially in situations where the goal of the communication is strictly defined, the content is guided, and the form limited; this is precisely what happens in interviews and hearings involving children in contact with the law. The success of the conversation with the child will depend on the skills of the adult involved in the conversation rather than the child, regardless of the child's psychological and physical condition.

The following elements should be observed in practice in order to ensure a **successful interview with a child**:

- The interview should be adapted to the child's level of understanding and needs and approached with realistic expectations.
- The interviewer should be flexible and adjust his or her skills to the child's rhythm and needs.
- The interviewer should be objective or neutral and avoid the tendency to lead answers or be judgmental of children in conflict with the law.
- Patience, sensitivity and empathy on the part of the interviewer and the need to understand the child are essential.
- The child should be asked questions in an appropriate manner because an inappropriate approach leads to false, misleading and insecure answers or a general reluctance on the part of the child to answer at all because they do not understand the question. This requires knowledge of the child's social development and ability to express himself/herself verbally as well as due consideration of the age and cognitive abilities of the child. Although there are individual variations in the abilities of children of different ages, experience shows that children of primary school age and adolescent children share some specific characteristics that may be of help to the interviewer during the interview (see Table 1).
- Expectations of the child should be reasonable and realistic. This is why it is important to acknowledge the needs of the child and to be familiar with the cognitive development of children. Children under ten years of age should not be expected to have a full understanding or appreciation of time and calendar or height, length and weight measurements. Individual differences between children should be taken into consideration, because some children master these skills earlier than others do.
- It is important and necessary to be familiar with the child's social profile (such as what are the child's living circumstances like and with whom the child lives). The practice of interviewing children in contact with the law during the investigation or before the court shows that there are some specific characteristics in the speech of children. Children coming from rural and urban areas display differences in terms of their vocabulary and in the use of unconventional names in relation to certain phenomena, objects and especially parts of the human body. When working with children growing



up in isolated communities, communities where two or more languages are in use, families with different cultural influences or children with mental illness or similar circumstances the meaning of specific terms may require verification.

- During the interview, it is necessary to give due consideration to the fact that the hearing of a criminal proceeding is an extremely stressful situation for a child and can lead to psychologically induced speech problems, such as mumbling or stuttering. These problems are often caused by 'stage fright' due to the child having to appear in front of several persons of authority in the courtroom (such as the judge, prosecutor and defence counsel). The Law acknowledges this situation and allows children to give their testimony from a separate room using audio and visual equipment. Even then, the child is aware that everything he/she says will be reviewed by the court and evaluated by several adults in positions of authority and this in itself can cause the child to suffer from nerves.

Table 1. Children's characteristics that can be of help to the interviewer during the interview

Primary school children	Adolescents
Like rules	Like to have a sense of control over their story
Difficult to open up, afraid that they may make a mistake	Find it difficult to talk about things they do not understand
Look for confirmation of a 'correct' answer	Have an aversion toward adults
Use concrete terms	Use abstract terms
Attention span up to 45 minutes	Attention span up to 60 minutes
Understand the need to establish facts	Understand the basics of investigative and judicial proceedings
Able to give a structured report	Can provide details on the context

1.2. Communicating with children in conflict with the law

1.2.1. Building trust

In general, adults can quickly gain a child's trust but can also very quickly lose it. It must be kept in mind that a child who has suffered trauma or an adolescent demonstrating problematic behaviour has lost trust in the people around them. This is why it is difficult to earn and even more challenging to keep the trust of children and adolescents in contact with the law. The things they have experienced have undermined their system of beliefs and the perception that the world will be kind to them. These children are cautious and sometimes highly distrustful.

The following steps will help build trust with a child:

- Do not make promises you cannot keep, because the child will remember the promise and the failure to keep it will reinforce his/her belief that the world is not a safe place. This can have severe and long-term consequences for the child's development and formative years.
- Ensure respect for the right of the child to be informed in a timely manner. During the very first meeting, the child should be informed of his/her rights in relation to the course of the proceedings, potential outcome, options and solutions. Providing information to parents/guardians is not enough.



Information should also be provided to children in an appropriate manner. This is the way to build a child's trust in justice and the fairness of the proceedings. Psychologically speaking, being informed reduces stress; a child facing the unknown will be fearful, suspicious and distrustful.

- Information for the child on the proceedings in which he/she participates should be adapted to the child's level of understanding. This is where the witness support sections in courts and prosecutor's offices and their expert advisors/associates (psychologists and social workers) play an important role. They educate children on all aspects important to the proceedings, starting with the notion of justice and fairness, the roles of the parties involved in the proceedings, what the child can expect to happen and what his/her rights and duties are. In this manner, the child is psychologically prepared to participate in various stages of the proceedings.
- Explain the purpose and goals of the interview to the child at the beginning, using clear and concise terms. Children in contact with the law will meet and talk to several different professionals (such as the prosecutor, judge, attorney, experts and the expert associate/advisor) each of whom should explain to the child the reason for and purpose of their conversation.
- The role and tasks of the person talking to the child should be explained to the child. The child should also be informed about what that person can or cannot do.

1.2.2. Respecting personal space

Personal space is defined as a zone of 45–120 cm. These borders should be recognized during the interview and general conversations with the child. Proximity to the child during the interview can be perceived as a threat, while the child could perceive too greater distance as a lack of care on the part of the interviewer. A rebellious and/or aggressive child will take up more space and establish his/her own personal space, whereas a frightened child will have a need for less distance.

1.2.3. Addressing the child

- The child should be addressed by his/her first name. Avoid using the child's last name, nickname or endearments such as 'honey', 'sweetheart' or such like.
- Do not address the child formally (use the T form).
- The name and place of residence of the child should be pronounced correctly because the name is part of the child's identity and its correct pronunciation is a sign of respect. The interviewer should memorise the first and last name and some basic details about the child (e.g. the school the child attends, family members and such like) in order to show respect to the child, which is crucial for building trust.
- The child should not be told that he/she 'must' talk because the child will perceive this as pressure. The importance of facts and the truth should first be explained to the child.
- The child should not be 'asked' to give his/her version of events because this also provides the child with the option not to talk. The use of the imperative avoids the possibility of different outcomes. Therefore, short instructions such as 'tell me', 'explain to me' and similar phrases are recommended.



1.2.4. Duration of the interview

- Allow ample time for the first meeting with the child. This will allow for an informal conversation during which the child can relax.
- The conversation should start with neutral topics, but the informal conversation should not last too long because the child may grow anxious in expectation of the actual topic to come.
- One should always plan to have sufficient time to provide all of the vital information to the child and to allow the child to ask what they want to know.

1.2.5. Types of questions and the course of the conversation

- The conversation with the child should start with open questions in order to allow the child to say as much as possible about himself/herself and to give their version of the events later on in the conversation.
- It is counterproductive to ask the child multiple questions because the child will usually answer the last part of the question or choose to answer only the most straightforward question or provide the answer they feel they know the most about. During the conversation, the child could provide (on purpose or inadvertently) irrelevant, unimportant data when discussing the offence. To avoid this, the conversation can easily be guided by a short intervention such as 'let's talk about that later, let us now focus on'. This will bring the conversation back on track without hurting the child's feelings by giving the impression that what they are saying is not important.
- One should carefully formulate the question when clarifying important facts. A question beginning with 'why' sounds judgmental and therefore one should instead start with less direct words such as 'how' or 'what for'.
- Questions should be formulated using simple language, free from specialised or legal terms. If legal terms and notions are presented, then they should be explained to the child. However, if you ask a child whether they know what an educational recommendation is the likely answer the child will give is 'yes'. This is because they do not want to be embarrassed by having to admit that they do not understand its meaning. Therefore, such questions asked of the child should be verified and clarified to the child's satisfaction.
- Avoid euphemisms when explaining the procedure and providing information to the child.
- During the conversation, one should regularly check one's own understanding of what the child has said. Occasional summarising is recommended. Use phrases like 'Let me see if I understood you well'.
- Only concrete terms should be used in conversations with children under the age of 12. Abstract terms can be used only with children over 12 years of age, but their usage should be limited.

1.2.6. Setting the rules for the conversation

- The rules of the conversation should be set right at the beginning with the child. This will give the child a sense of control and helps reduce fear and anxiety. Primary school children like rules.
- The child should be advised that he/she can interrupt the conversation at any point if he/she becomes tired, has to use the bathroom, the conversation becomes too difficult or needs clarification at some point in the conversation.



- The child should be advised that there is nothing wrong in not knowing or not remembering something.
- The child should be informed that questions might be repeated, but that this does not mean that they made a mistake or that the interviewer was not paying attention. Instead, it shows the desire of the interviewer to clarify and establish facts as much as possible.
- Rules about the scheduling and duration of meetings, appearances at hearings and participation in other activities related to the proceedings should be defined and agreed with the child. The procedures should be adapted to the needs and obligations of the child, and the child should respect the schedule. The child should inform the court on a timely basis if, for any justifiable reason, he/she is unable to attend. Fearing the outcome of the proceedings, the child may resort to various excuses in order to postpone arranged meetings and activities (often with the support of the parents).

1.2.7. Concluding the conversation

The conversation with the child should be concluded by thanking the child for his/her cooperation and efforts, but never for the content of the conversation.

- The child should receive feedback and instructions on what follows.
- The conversation should be summarised in order to make certain that the interviewer and the child understood everything correctly.
- The interviewer should always ask the child if he/she has any questions or wants to add something that he/she believes is important but was not mentioned in the conversation.

1.3. Some important rights of children integrated into local criminal legislation

1.3.1. The right of the child to be treated with dignity

This right requires that a child be seen and treated as an equal human being with rights and, as with all other rights, it guides the treatment of the child during the proceedings:

- the proceedings should be adapted to the individual and developmental abilities of the child;
- the child must be treated compassionately;
- the child must feel trusted;
- the child's needs, feelings, beliefs and overall individuality must be understood and taken into consideration;
- the fact that at the given time the child is not able to understand events fully, testify or understand the scope of the criminal offence and its consequences must be taken into account;
- all persons coming into contact with the child must be trained to work with children.



1.3.2. The right to be free from and not to suffer discrimination

Children need special protection because they are more vulnerable and sensitive than adult witnesses. This is a case of affirmative action. Children must be approached with particular care, especially in cases involving specific categories of children such as children with special needs, ill children or children with disabilities.

The following grounds for discrimination against children are prohibited:

- Discrimination based on gender, preferences, sexual orientation, skin colour, religion, cultural and ethnic background, economic status, language, parentage, etc.
- In relation to age, children are treated as competent witnesses and considered equal to adults. Therefore, their testimony must not be regarded as invalid or unreliable solely on the grounds of age.

1.3.3. The right to information in criminal proceedings

The right to information includes the right of a child's parents/guardians to be informed. This right requires that the child also be informed, regardless of whether the child participated in the proceedings. This right comes into effect and includes the following when a criminal offence is reported:

- information on the role of the witness, the importance of testifying and the manner of testifying both during the investigative and judicial proceedings;
- availability of protective measures;
- availability of health, social, psychological and other services, compensation for any costs incurred and the right to free legal aid;
- information on the mechanisms for review of decisions affecting the child and witnesses;
- information on the course of the proceedings, including the arrest, pre-trial detention and supervision of defendants;
- information on compensation for damage;
- information on the progress made in the case, the schedule of proceedings, decisions and the status of the defendant;
- the rights of child victims and witnesses stemming from the Convention.

1.3.4. The right of the child to be heard and to express his or her opinion

The right of a child to be heard has a broader scope than just the giving of testimony or participation in court proceedings as a witness. This right allows the child to express an opinion and concern regarding the consequences of the criminal offence and the right to be informed about how the proceedings are conducted.

1.3.5. Right to privacy

The laws in Bosnia and Herzegovina protect the right to privacy of children and foresee punishment for the publication of information that discloses the identity of a child. All proceedings before institutions of



the judiciary involving children are closed, and information on the child remains a professional and official secret. Most media outlets in Bosnia and Herzegovina respect the rule of keeping the identity of a child secret when the child is a victim or eyewitnesses of a criminal offence. However, the child's identity is often disclosed indirectly when the names of the perpetrators and some of their personal information, such as age, place of residence or the crime scene location, are published.

It is therefore important to make certain that the following elements of confidentiality are respected and upheld:

- The relationship between the perpetrator and the victim is kept confidential.
- The interests of the child have priority over the interests of the public and the public right to information on the defendant/convicted person. This means that the court and prosecutor's office should not provide all details of the case to the media.
- Juvenile offenders also have the right to privacy, and therefore, their name and any other information that could disclose their identity must not be disclosed to the media or published.

1.3.6. The right to protection from suffering during criminal proceedings

The laws on the protection and treatment of children and minors involved in criminal proceedings regulate this right extensively:

- the number of interviews/testimonies involving the child are limited;
- continuous professional psychological support is provided throughout the proceedings by expert advisors/associates (mainly psychologists) working in the courts and prosecutor's offices;
- emphasis is given to the urgency of the proceedings;
- instruction is given on how to conduct the hearing in the presence of the minimum number of persons or from a separate room, etc.;
- There is the provision for closed proceedings;
- confrontation with the defendant is prohibited.

Although not explicitly regulated by the law, the following elements should be considered in relation to the child:

- A large number of expert analyses (their number is not limited) can be particularly traumatic for children and contribute to secondary traumatising and victimisation.
- The role of expert advisors/associates from the prosecutor's office/court who can actively participate in preparing a child to testify and can notify the prosecutor/judge about any potentially limiting factors in relation to the child in such situations, including the child's resistance to and the potentially harmful effects of expert analysis on the child.



2. The principle of the Best interests of the child and the principle of material truth¹⁷

Juvenile justice in the narrower sense of the word means the treatment of children (boys and girls under eighteen years of age) in conflict with the law. The broader meaning also includes the treatment of children from the moment when they come in conflict with the law, the root causes of the offending behaviour and the prevention of such behaviour.

The system of juvenile justice engages various stakeholders, both inside and outside of the justice sector. Both of these areas strive to achieve the well-being of the child. The use of special rules makes this system different from the one for adults. Participants in this system abide by different procedures and methods and apply different approaches to the arrest and interviewing of children in conflict with the law, various means of imposing measures and sanctions and measures of enforcement for treatment in institutions and through rehabilitation and reintegration programmes.

The term 'children in conflict with the law' encompasses children who are in contact with the criminal justice system, either as suspects, defendants or after being convicted of a crime. Since this system can also include young adults, under certain circumstances, the term 'youth in conflict with the law' is used to refer to this group, but without the age qualifier. It bears mentioning that a juvenile (a child or a young adult) who has the status of suspect, defendant or convicted person is referred to as a 'juvenile perpetrator of the criminal offence', 'juvenile in conflict with the law' or 'juvenile offender'. The Beijing Rules define an offence as any behaviour (act or omission) that is punishable by law under the respective legal system. Legally speaking, this behaviour can be defined as either a criminal offence or a minor offence.

Work in the juvenile justice system encompasses two directions of activity: prevention and protection.¹⁸ Prevention aims to ensure that children do not come into conflict with the law and thus the formal criminal justice system. This is the duty of non-judicial bodies within the system of juvenile justice. Several non-judicial activities (such as social, economic, educational, labour and family) should prevent or resolve the various causes of violations of the law. Protection of children who have already committed a criminal offence is necessary in order to deter them from reoffending. These measures fall under the jurisdiction of judicial and non-judicial bodies within the system of juvenile justice. These measures are intended to achieve the rehabilitation and reintegration of former juvenile offenders back into society.

Pursuant to Article 1 of the Convention on the Rights of the Child, a 'child' means every human being below the age of 18 years unless, under the applicable law, the child attains maturity earlier.¹⁹ The Convention makes no difference between the terms 'child' and 'juvenile' or between 'adult' and 'person of the age of maturity'.

The Beijing Rules define a juvenile as, "a child or young person who, under the respective legal system, may be dealt with for an offence in a manner which is different from an adult." This allows the possibility to try

¹⁷ The current chapter differs from the established methodology of the Guidelines, due to the position of the authors that the current laws on the protection and treatment of children and juveniles in the criminal procedure align with the best interests of the child. This chapter was not included in the review and therefore it does not reflect the opinions of the consultant or the reviewer.

¹⁸ Nikhil, Roj and Mabel Wong, *Juvenile Justice: Modern Concepts of Working with Children in Conflict with the Law*, Save the Children UK, 2004.

¹⁹ See Article 1 of the United Nations Convention on the Rights of the Child.



persons of 18 years of age or more before courts not intended for adults. Depending on how the national legislation defines the criminal liability of juveniles, the Beijing Rules use the term 'juvenile' to mean minors aged 7–18 years or more, which sets a higher standard, because they also include the category of younger adults. In terms of the definition of the term 'juvenile', the most precise definition of 'juvenile' is provided in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. These rules define a juvenile as every person under the age of 18.

Following-up on the principles of juvenile justice,²⁰ the national legislation was harmonised with these international principles and standards. Thus, the term 'child' means every person under the age of 18. Therefore, a child who did not reach the age of 14 years by the time of committing a criminal offence is not subject to criminal sanction or other measures provided for under the law. A juvenile is a person who is older than 14 but younger than 18 at the time of committing a crime and is subject to criminal sanction and other measures provided for under the law. The term 'young adult' is used for persons aged 18–21. They can be subject to the same sanctions imposed on juveniles. The main reason why statutory provisions on minors can be applied to persons aged 18–21 is that their development may not be at the level of an adult. The expert analysis determines their level of development. Jurisprudence shows that the majority of persons in such cases are only a couple of months older than 18 when they commit a crime.

The Beijing Rules prescribe that the proceedings shall be conducive to the best interests of the juvenile and that the juvenile will be allowed to participate in the proceedings and to express himself/herself freely. The Convention on the Rights of the Child also guarantees this right and sets forth that, "in all actions concerning children ... the best interests of the child shall be a primary consideration" and that the States parties will ensure that "the child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child ... in accordance with the age and maturity of the child." The Convention further stipulates, "The child shall, in particular, be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of the national law."

It is important to note that the national legislation in Bosnia and Herzegovina contains several provisions that allow juveniles to express their opinions on some issues affecting them before different procedural bodies. Such statutory arrangements allow for the direct implementation of international standards. The child is therefore not a passive subject of but rather an active participant in the proceedings. The national legislation obliges that the bodies in charge of the proceedings take care of the special status of juveniles. The bodies interviewing a juvenile as a perpetrator of a criminal offence are to act with caution and consider the maturity and other personal characteristics and protect the privacy of the juvenile, so that criminal proceedings are not detrimental to his/her physical, mental or cognitive development.

A similar provision applies to hearings involving the child or juvenile victim of the criminal offence. The age, personal traits, education and circumstances in which the child lives are taken into consideration in order to prevent potentially harmful effects on his/her future life, education and development. This interview or hearing can be conducted with the help of a professional.

²⁰ The juvenile justice system rests on the following principles: the best interests of the child, the right to life, the right to survival and development, non-discrimination, separation from parents, protection from abuse and neglect, the rights of children with developmental disabilities, education, leisure, recreation and cultural activities and respect for the opinion of the child.



This all shows that the law clearly defines the need for cooperation among all stakeholders within the system of juvenile justice from the beginning until the end of the proceedings. This is the only way to achieve the purpose of the system, which is the well-being of the child in a child-centred juvenile justice system. The ultimate goal of the law can be achieved by creating the best possible conditions for its enforcement. Practice will show how far the enforcement has come in terms of achieving this goal, and this will determine its further course.

The relevant laws²¹ in Bosnia and Herzegovina are the result of the situational analysis of juvenile justice and the legal situation of juveniles involved in the criminal justice system²² and the identified need to have a separate law to regulate the issue of juvenile criminal offenders. This not only applies in terms of their sanctioning but also their protection from the detrimental effects of criminal proceedings as well as deterring them from reoffending. The law relies on the reformed criminal legislation in Bosnia and Herzegovina (2003), long-term experience of national experts in this field, international standards and the recommendations issued by relevant international organisations dealing with human rights protection. The latter include, among others, the OSCE Mission to Bosnia and Herzegovina, UNICEF, Save the Children UK, Save the Children Norway, the United Nations Committee on the Rights of the Child, and the Council of Europe.²³

Primarily, these laws regulate juveniles in conflict with the law for the first time. They provide for the principles of procedure and combine substantive, procedural and enforcement provisions. The laws also provide for the protection of children and minors who are victims of criminal offences perpetrated by adults.

The rules outlined in these laws are defined as special or modified rules of general (regular) criminal procedure. The rules of general criminal procedure are considered as *lex generalis*, while these laws are considered as *lex specialis* and applied directly. If the special rules do not specifically regulate a procedural situation, then the rules of the general criminal procedure apply.

In general, the proceedings against juveniles combine the judicial (criminal) and predominantly protective model. This provides for a better procedural position and a more prominent role and greater protection for juveniles, compared to adult perpetrators of criminal offences under the regular criminal procedure.

This system operates in accordance with the model of minimum intervention, which means that the criminal justice system does not formally process the juvenile offender. This involves the application of diversion programmes and the principle of opportunity, which allow for the suspension of criminal prosecution or proceedings against a juvenile conditional to the juvenile adhering to certain obligations.

²¹ The laws on the Protection and Treatment of Children and Juveniles in Criminal Proceedings of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District.

²² Mladi u sukobu sa zakonom u svjetlu aktuelnih problema maloljetničkog krivičnog pravosuđa u BiH (2002); Izvještaj nevladinih organizacija o stanju prava djece u Bosni i Hercegovini (2004); Analiza sektora pravde- Bosna i Hercegovina (2007); Analiza realizacije Strategije protiv maloljetničkog prestupništva za Bosnu i Hercegovinu 2006-2010 „Gdje smo sada?“ (2009)

²³ Recommendation of the Committee of Ministers to Member States on social reaction to juvenile delinquency R (87)20 from 1987; European Prison Rules – Recommendation Rec (2006)2 from 2006; Recommendation (97)13 of the Council of Europe (Committee of Ministers of Member States on intimidation of witnesses and the right to defence – Appendix to Recommendation (97)13 II. General Principles); Concluding observations of the United Nations Committee on the Rights of the Child for Bosnia and Herzegovina CRC/C/ 15/Add.260, 21 September 2005, etc.



The reconciliation of the victim and the perpetrator of the criminal offence (mediation) indicate that the system incorporates elements of restorative justice. The principle of opportunity allows for the application of mechanisms to process the cases of juvenile criminal offenders in a simple and efficient manner at a reduced cost. The main principle of specific deterrence requires the strengthening of the juvenile's personal responsibility, provision of vocational training and the help and supervision necessary to ensure the juvenile's proper education, development and reintegration into the community. The intention is to rehabilitate offenders and discourage them from reoffending.

According to the established rules for the treatment of juveniles in conflict with the law, young adults, children and minors who are victims or witnesses of a criminal offence are to receive the help of the courts and the prosecutor's offices. The latter includes authorised officials, guardianship authorities, families, schools, institutions at all levels of the community and other participants in the criminal procedure. They are to do so without discrimination and to improve the sense of dignity and personal value of the child, taking into account the child's age, **best interests**, his/her right to life, survival and development and the need to allow the child to express his/her opinion on all matters affecting him/her in accordance with his/her age and maturity. Every effort should be made to aid the rehabilitation of the child and help the child to assume a constructive role in society.

Regardless of the stage of the proceedings, the rule on the mandatory specialisation of the official actors involved in criminal proceedings against juveniles in conflict with the law applies. This also includes proceedings in which children and juveniles are the victims of criminal offences perpetrated by adults. Specialisation implies acquiring and using specific (specialised) knowledge in the area of the rights of the child and the protection of children and juveniles in criminal proceedings. A special certificate proves this knowledge. The training of judges, prosecutors, authorised officials, law enforcement bodies, professionals in guardianship authorities, attorneys, persons in charge of the enforcement of criminal sanctions should be a continuous permanent process aimed at imparting additional specialised knowledge and skills in working with children and juveniles involved in criminal proceedings, be they in conflict with the law or victims or witnesses of a criminal offence.

It is important to note that in the new model for the treatment of children in a criminal proceeding the principle of the best interests of the child outweighs the principle of 'material truth'. This is the most significant advancement in the promotion of the rights of children in conflict with the law.

Only trained and specialised professionals aware of the position of the child in the criminal proceedings can exert the appropriate educational influence prior to and during the instigation of the course of the criminal proceedings and during the enforcement of sanctions and other measures. Such professional treatment contributes to a consolidated and integrated educational process, developing the personality and strengthening the personal responsibility of juveniles.



3. Alternative models of treatment for juveniles in conflict with the law

Specialised juvenile prosecutors and judges, authorised officials, officials in the guardianship authorities, lawyers/defence attorneys and other participants in proceedings involving a juvenile in conflict with the law must assess in each individual case whether avoiding formal criminal proceedings or the application of alternative models is in the best interests of the given juvenile. In doing so, they must ensure that every response aimed at the juvenile is proportionate to the offence.

Alternative models of treatment primarily include the application of a police caution, the principle of opportunity and educational recommendations, pursuant to the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings.

3.1. All bodies/participants

In proceedings involving a juvenile in conflict with the law, all institutions/participants should ensure that the following apply:

- cooperation and the application of a multidisciplinary approach;
- the matter is handled with urgency/with utmost urgency;
- consideration of the possibility to apply/have an obligation to apply alternative models of treatment (prior to and during preparatory proceedings and during judicial proceedings and after the completion of the proceedings);
- in addition to observing civic and human rights, uphold the principles of
 - volunteerism,
 - impartiality,
 - immediate proceedings,
 - proportionality.

3.2. Immediate individual actions to be taken by the participants upon learning of a committed offence

a) Prosecutor and other authorised officials

The prosecutor and other authorised officials should undertake the following actions:

- inform the juvenile about the possibility of alternative measures
 - directly during the interview/examination,
 - in writing (information/fliers);



- seek information
 - from the guardianship authority (on social anamnesis) – mandatory,
 - from parents/adoptive parents, guardian, school – optional.

b) Prosecutor, judge for juveniles and authorised officials

The prosecutor, judge for juveniles and authorised officials are obliged to enter the following into the record of the juvenile's examination/hearing:

- circumstances of a **subjective** nature and the social anamnesis of the juvenile in relation to the juvenile's history and personal characteristics (age, maturity and educational and health status), environment and living conditions and circumstances;
- **objective** circumstances in terms of the nature and circumstances of the criminal offence (mode of perpetration and motive).

c) Expert advisors in the court and prosecutor's office

The social pedagogue, special educator, social worker, psychologist and pedagogist should participate in and help ensure the following:

- expert opinion on the recommended course of action in a given case,
- participation in the juvenile's hearing,
- the gathering of relevant data,
- participation in other activities during the preparatory and judicial proceedings.

d) Professionals in the guardianship authorities

- Immediately upon receipt of the initial information on the committing of an offence, they should take an active role in the proceedings involving the juvenile in conflict with the law.
- If the victim is a juvenile, compile relevant information on the social anamnesis to include information on the identity and personality of the juvenile, analysis of the gathered data, information on the family, social diagnosis and forecast, proposed measures to be taken and an assessment of the extent of anamnesis of the victim.

e) Lawyers/defence attorneys

- Participate actively in the proceedings involving the juvenile as soon as they receive information on the committed criminal offence/are appointed ex officio defence counsel.
- As early as at the first interview, they must advise and explain to the juvenile that if they have indeed committed the criminal offence and are willing to accept personal responsibility and rectify the negative consequences that they should confess to the offense.
- Propose further courses of action and/or the application of alternative models to authorised officials/prosecutors and the judge.



f) Schools

Professionals, in particular, pedagogics, must take an active part in the proceedings.

g) Health professionals/a team of forensic specialists

Health professionals/a team of forensic specialists should provide a relevant opinion, especially in relation to the health of the juvenile and his/her psychological and physical abilities.

3.3. Individual actions of authorised officials, prosecutors and judges following receipt of the relevant information on a juvenile in conflict with the law

3.3.1. Prior to the commencement of formal criminal/preparatory proceedings

a) Authorised officials

The authorised officials will assess the possibility to apply/issue a **police caution**, based on the facts and circumstances as entered into the record of the examination of the juvenile (audio-video record), witness (victim) examination record, social anamnesis assessment conducted by a professional; all subject to the approval/consent of the prosecutor.

b) Prosecutor for juveniles

The prosecutor must consider the following factors, subject to meeting the statutory requirements and applying the principle of proportionality.²⁴

- b1) The possibility to apply the principle of opportunity, based on the grounds of purposefulness and taking into account the objective and subjective circumstances. If the enforcement of a sanction for another separate criminal offence is ongoing, the prosecutor must take into account the type and severity as well as the gravity of the current criminal offence.
- b2) **Application of educational recommendations** (of an educational and rehabilitative nature or the so-called conditioned opportunity).
 - First, consider the **possibility** to order recommendations based on the record of the interview of the juvenile (an audio-video record made by the authorised official or prosecutor), the witness (victim) examination record, the assessment of the social anamnesis of the juvenile and of the victim (if the victim is a juvenile).
 - Then consider the **justification** of the recommendations. Take into account the opinion and best interests of the juvenile (Are they aware of the gravity and consequences of the offence and are

²⁴ Article 9 of the Law states, "Emphasizing the well-being of the juvenile in conflict with the law, there shall be a possibility to choose and apply a statutory sanction and measure adapted to the personal characteristics, environment and circumstances in which the juvenile lives and proportionate to the circumstances and gravity of the criminal offence, with due regard to the rights of the victim of the crime."



they willing to make restitution for the negative impacts and effects of the offence) and give due consideration to the opinion and best interests of the victim. The abilities, proclivities and needs of the juvenile should be taken into account and particular care given to avoiding any unnecessary disruption to regular education. Due regard should be given to the juvenile's freedom of choice in relation to his/her future profession and the need for treatment.

- Determine the motives, reasons and causes of the offence.

b3) The prosecutor must enter a written explanation into the case file of the decision not to apply the principle of opportunity (during the enforcement of the criminal sanction) or educational recommendations:

- prior to the commencement of preparatory proceedings,
- following the completion of the preliminary proceedings and in the motion for criminal penalty submitted to the relevant court.

3.3.2. During the preparatory proceedings

The prosecutor is obliged to ensure the following during the preparatory proceedings:

- Endeavour to enact all actions with utmost urgency.
- Move the judge to
 - order prohibiting measures in lieu of pre-trial detention;
 - the order that the juvenile be placed temporarily in a reception centre or similar institution (in order to remove the risk of repeat offending and as an alternative to pre-trial detention) or, if deemed necessary, order the removal of the juvenile from his/her community.
- If it is necessary to move for a criminal sanction following the completion of the proceedings, then the prosecutor is obliged to employ the principle of incremental sentencing, starting from guidance and warning measures and then increased supervision up to custodial measures and ultimately the measure of juvenile imprisonment.

3.3.3. Obligations of the judge for juveniles during proceedings before the court

a) Before granting the motion of the prosecutor to impose the measure/sentence

The judge for juveniles must consider the following elements:

- To disagree with the motion of the prosecutor if no grounds are provided for deviation from the principle of opportunity (in the course of the enforcement of the sanction) or justifiable reasons given as to why educational recommendations should not be applied.
- Consider the possibility and justification of issuing educational recommendations.
- In cases where the finding is that educational recommendations cannot be applied, the judge should enter a written explanation into the case file.



b) After the prosecutor's motion to impose a measure/sentence is granted

Having granted the prosecutor's motion to impose a measure/sentence and closed the proceedings, the judge has to consider the nature of the measure/sentence:

- Observe the principle of incremental sentencing in the pronouncement of criminal sanctions.
- Emphasise one or several special obligations to accompany the measure/sentence.
- Consider the possibility of suspending the sentence of juvenile imprisonment.

3.3.4. When the prosecutor/judge for juveniles orders educational recommendations or the judge orders special obligations

In either case, it is possible to change the so ordered measure:

- Replace the educational measure/special obligation with another.
- Abandon the educational recommendation/cancel the special obligation.

3.4. Special obligation for prosecutors and judges for juveniles

In addition to the obligation to advise the juvenile of his/her minimum rights under Article **5 of the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings**,²⁵ in each decision they render, both in the course of alternative actions and during formal criminal proceedings involving a juvenile in conflict with the law, **prosecutors and judges for juveniles** have the special obligation to **specify the decisive facts and provide precise and clear reasons** why their decision **in a given case is in the best interests of the juvenile in question**.

²⁵ "Minimum rights of the juvenile shall be respected in all stages of the criminal procedure as follows: The juvenile shall have the right to be clearly informed about the charges against him or her, that he or she is considered innocent until proven otherwise, that he or she has the right to remain silent, that his or her confession will not be forced, that he or she has the right to an attorney, the right to have a parent or guardian present, the right to due process, the right to cross examine witnesses of the adverse party, the right to summon and hear own witnesses under the same conditions, the right to an effective legal remedy."



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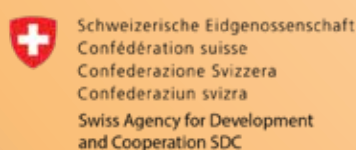
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