Children's Rights Protection in the EU: The Need for a Contextual Perspective

Aida Kišūnaitė

Research Articles*

*All research articles published in PHRG undergo a rigorous double-blind review process by at least two independent, anonymous expert reviewers

PADOVA UP

Children's Rights Protection in the EU: The Need for a Contextual Perspective

Aida Kišūnaitė*

Abstract

Despite the fact that global and European debates about children's rights protection have evolved over time, children's rights protection still remains one of the 'soft' issues more related to a promise than a reality. The research highlights the gap between political ambitions and local realities and forces to identify hindrances to children's rights implementation. The variety of factors that influence norms implementation can be best captured by using a context-based approach to children's rights protection. According to this approach, governance structures, legal and policy instruments are the elements that embody transformative potential. This means that they influence the decrease or increase of children's vulnerability. In this article, I analyse the potential of the EU's governance and policy framework which is one of the most favourable settings to protect children's rights. By using the context-based perspective, the findings suggest that despite favourable legal conditions the EU's policies remain fragmental and do not guarantee the UNCRC implementation as a whole document. However, the multilevel mode of governance, despite being a complicated setting for children s' rights implementation, has a potential to produce significant results in children's rights protection through the mainstreaming mechanism, which embodies a great power to create a unique integral context for ensuring children's rights.

Keywords: *children's rights protection, EU, vulnerability, mainstreaming*

*   Department of Political Science, Law and International Studies, University of Padova; e-mail: aida.kisunaite@unipd.it

Introduction

The UN Convention on the Rights of the Child (UNCRC) has achieved the widest ratification among all human rights treaties in the UN system (Schapper 2017, 105). Nearing its 30th anniversary the question to ask is if this document has brought real changes to the lives of children. One of the most important preconditions for changes is to have children's rights considered among the most serious political issues at the global stage, however the history of the ratification of the UNCRC and the debates that it has created in comparison to other international documents show that children's rights are seen as 'soft' issues with children politically invisible and discussion of their interest confined to sector-specific and welfare-oriented debates (Overseas Development institute 2009).

The priority of children's rights protection in the political agenda is a necessary but not sufficient condition for the implementation of children's rights. The studies note that in protecting children's rights there is an empirical gap between global ambitions and local realities; therefore human rights ratification in international research context is called a "paradox of empty promises" (Schapper 2017, 110-111). This suggests that an effective approach of children's rights protection requires an in-depth analysis on particular factors that may influence the norm implementation.

The literature on children's rights implementation consists of various perspectives. Some of them such as the studies by B. Guy Peters (2012), A. Shapper (2017), A. D'Addato (2016), Marx, Hachez, Meuwissen et al. (2014) aim to explain children's rights implementation through the lenses of governance approach aiming to find the answers in relation to the structures of governance. The studies by I. Iusmen and H. Stalford (2016), Dootalieve and Lembrechts (2017) reflect the policy perspectives and look for the solutions to the effective implementation of children's rights within the legal or policy framework.

This paper aims to include both approaches and to go beyond them by using a contextual approach to children's rights protection. The contextual approach comes from the literature strand that focuses on vulnerability issues. Usually, the context-based approach is distinguished from the group-based approach to vulnerability. According to the latter, children belong to a vulnerable group of individuals whose rights are perceived to be at a particular risk of being violated and due to this their rights has additional and specific human rights guarantees (special protection). According to the context-based approach, vulnerability is related to institutional and societal context where it is produced. This means that laws, policies, and societal practices may be another source of vulnerability for the vulnerable groups

such as children. In this paper, I support the idea that while a group-based approach to vulnerabilities is in many regards justified, it is essential to recognise that solely focusing on group-based vulnerability risks veiling parallel (...) context-based vulnerabilities (Mustaniemi-Laakso et al. 2016, 6).

The central research question of this article is whether European governance and policies create a favourable framework for protecting children's rights. I use the contextual approach as an analytical tool and base the analysis on the idea of the transformative potential of governance structures and policies.

For the analysis, I choose to examine the framework of the European Union. As the literature claims, the EU is one of the most potential actors in protecting children's rights due to its unique potential (Iusmen and Stalford 2016, 13) although it does not have a long-lasting tradition in protecting children's rights. Children's rights protection arrived at the forefront of EU policies just ten years ago. The first step was legal - the Treaty of Lisbon introduced an objective to promote children's rights (Article 3(3) TEU). Children's rights have also become part of the EU Charter of Fundamental Rights (EUCFR) (Article 24 EUCFR), which means that the EU institutions as well as Member States have to promote, protect and fulfil the rights of the child in all relevant EU policies and actions. Although the EU is not party to the UNCRC, it has to embrace the UNCRC by interpreting its norms in the light of the UNCRC. This duty derives from the EU's constitutional obligation to follow the principles and provisions set in international human rights law in relation to those matters that follow within the scope of EU competence (Iusmen and Stalford 2016, 61). Moreover, the EU's intervention in the field of children's rights is related to the principle of subsidiarity enshrined in Article 5 of the EC, which establishes a constitutional mechanism '(...) for demarcating the boundaries of EU intervention in matters that do not fall within the exclusive realm of EU competence' (Stalford and Drywood 2009, 146).

In the first and second part of the paper, I present the concept of vulnerability that is followed by the overview of the main challenges that are met in protection of children's rights. The third section of this paper is dedicated to the case study of the European Union. It starts with the overview of children's perception of their rights in the EU. This section is followed by the EU's legal and policy framework that deal with children's rights. The last part of the paper is dedicated to the question of mainstreaming mechanism of children's rights, which is considered to be one of the two most powerful tools in creating child-rights friendly environment in terms of policies and their implementation. After that part, general conclusions will follow.

1. The Concept of Vulnerability

The universal use of the word '*vulnerability*' is associated with harm or suffering. The literature identifies two different sources from which the harm may come. The first understanding of vulnerability is that vulnerability is universal and particular at the same time, because each individual is exposed to hurts of various kinds (Peroni and Timmer 2013, 1058). The universal and particular characteristics of vulnerability are both related to suffering and thus the concept is used to identify some negative aspects. M. Fineman and other scholars try to go beyond such understanding of vulnerability and attempt to give a positive light to this concept. According to M. Fineman, the concept of vulnerability can be deployed as an analytical tool for 'diagnostical' purpose. This idea is supported by other scholars from different disciplines agreeing that using vulnerability as a critical tool involves exploring how societal or institutional arrangements originate, sustain, and reinforce vulnerabilities (Peroni and Timmer 2013, 1059). The possibility to use vulnerability for 'diagnostical' purpose derives from its 'relational' nature that is dependent on the social context.

The legal understanding of vulnerability, particularly in the human rights setting is typically portrayed in collective terms using the group-based approach. The group-based approach refers to the belonging to a group of persons who 'require special attention to ensure that they enjoy their human rights, because their perspectives are not automatically included in the actions and thoughts of dominant groups and whose rights are most at risk of being violated (Mustaniemi-Laakso et al. 2016, 4). In the EU's law and the case law of the European Court of Human Rights (ECHR), there is no established definition of vulnerability, however, the ECHR has acknowledged the vulnerability of persons belonging to certain groups such as the Roma (*Chapman v. the United Kingdom, 2001)*, persons with disabilities (*Alajos Kiss v. Hungary, 2010*), minors (*D.H. and Others v. the Czech Republic, 2007; Sampanis and others v. Greece, 2008; Oršuš and others v. Croatia, 2010),* and sexual minorities (Peroni, Timmer 2013, 1057). In addition to that, the ECHR has drawn specific attention to harm experienced by certain groups of persons through, for example, prejudice and stigmatisation, as well as social disadvantages and material deprivation (Peroni, Timmer 2013, 1057).

Despite the fact that the collective approach to vulnerability might be disempowering because it may mask the capabilities of individuals to resist and to affect the course of their lives, in the case of children, it is suitable. The scholars argue that children by default require special protection due to their relative immaturity and developing character (Mustaniemi-Laakso et al.

2016, 4). The legal attitude also supports this approach because the UNCRC is perceived as a document that establishes a special protective regime.

The contextual approach to vulnerability sees vulnerability as a non-static state of affairs which is not only attached to particular groups, but as a dynamic phenomenon that changes with situations and contexts. In this sense, vulnerability is relational to the institutional and societal contexts where it is produced. An important element of the context-based approach to vulnerability is the degree of resilience that an individual has at the disposal to protect himself or herself. In this sense, the resilience should be understood in a broader sense and include not only personal characteristics such as age, disability but also different contexts, situations, institutional, and other relationships (Mustaniemi-Laakso et al. 2016, 7). The advantage of the contextual approach to vulnerability is that it helps to detect societal practices and structures that maintain disadvantages.

2. Context-based Approach to Children's Rights Protection – General Challenges

From the political science perspective, ensuring children's rights may be much more difficult than other sets of rights. The basic reason for this is that children as a group are relatively powerless in the political process due to their inability to vote and 'given the relative *political invisibility of children,* their rights may be immensely traded off against those of other groups' (Guy Peters 2012, 8).

Apart from the electoral interest, other elements that may impede the implementation of children's rights lie within *the policy process.* The basic notion of public governance from policy perspectives requires the government to undergo four stages in the policy making process: to establish policy goals, to create coherence among these goals, to implement policies, and to evaluate programmes and revise them. Taking into account the fact that 197 countries have ratified the UNCRC, the main problem for the governments is not the goal setting and goal coherence in protection of children's rights since these questions were to the biggest extent resolved with the ratification of the UNCRC. The main concern, however, is how these goals are to be implemented i.e. what are the priorities and how to interpret these goals within national frameworks of law and government. Moreover, the studies frequently observe that there is huge divergence between policy implementation and intention of the policy (Guy Peters 2012, 7).

The risk of incoherence between policy intention and the outcomes of implementation is even higher in a *multilevel setting of governance,* such as

European governance, because the policy process involves a high number of actors and more procedural elements. In addition, 'interactions among a range of actors (...) make tracing accountability for outcomes in a policy area more difficult' (Guy Peters 2012, 11).

In the literature, there is a view that a multilevel governance framework is best suited to comprehensively grasping rights implementation. In his article, A. Shapper (2017, 106), using the example of children's rights, argues that norm localisation processes are influenced by agendas of international organisations. Schapper suggests distinguishing between national and local implementation processes, as they differ with respect to what actors they are directed at, the applicable social mechanisms and the political level at which they become effective. This approach comes from different disciplines that analyse international norms implementation. From the international relations perspective, in particular, compliance scholars base their analysis on the assumption that norms have been already adapted and they analyse only social mechanisms that influence compliance with the adopted legislation. The compliance scholarship distinguishes several factors that advance the level of compliance: monitoring and sanctioning, legal and civil internalisation, discourse and persuasion, and compliance management. Other disciplines such as anthropology, sociology, and development studies analyse local societal processes towards compliance. In particular, childhood studies suggest that a comprehensive understanding of the local context is an essential prerequisite for implementing global rights (Schapper 2017, 112-113). The studies on children's rights implementation in a multilevel governance process have attempted to include both perspectives i.e. compliance focusing on norm implementation by state actors and the norm adaption by societal units such as family. The research findings by Schapper suggest that both processes are necessary to achieve compliance among the norm addresses, i.e. actors of the state governments and among norm targets – the state's population. In the national implementation process, three factors are found to be significant in ensuring effective compliance: the existence of compliance mechanisms, monitoring procedures, and continuous norms-consistent discursive practices. Meanwhile, the progress of the local implementation requires the establishment of an appropriate infrastructure and social services. It is important to mention that the use of offered services should function with awareness-raising and income-generating mechanisms that support the process.

The other challenge in the protection of children's rights is related *to coordination*. The implementation of the UNCRC requires a wide range of policy areas to be integrated and coordinated. This requires the effective coordination within the multilevel governance setting and within national

governments to a higher degree than in other fields - "all public programmes raise coordination questions (...) but they appear extreme in the case of the UNCRC" (Guy Peters 2012, 9). It is also important to mention that effective coordination is required also at the later stages such as day-to-day management of domestic programs.

3. Children's' Rights Protection in the EU

The EU is founded on the principles of respect for human rights, fundamental freedoms, and the rule of law (Consolidated version of the Treaty on the EU (2008) Article 6). Rights of the child are part of the human rights. The Consolidated Version of the Treaty on European Union, which entered into force on 1 December 2009, states for the first time that the European Union shall promote the protection of the rights of the child (Article 3(3)). In the period 2011-2014, the main EU policy document on children's rights was the European Commission's Communication of 2011 "An EU Agenda for the Rights of the Child" (European Commission 2011), which aimed to reaffirm the strong commitment of all EU institutions and Member States to the rights of the child, as part of the UNCRC enforcement obligation. Today, the EU's Commission Recommendation of 20 February 2013 "Investing in Children: Breaking the Cycle of disadvantage" can be considered as one of the main policy documents in the field of children's rights protection. The important aspect of the protection of children's rights is that it requires the implementation of the UNCRC as a whole document to be successful. Due to this, it places obligations on supranational and national actors to ensure the protection of rights common to all children and also guarantee the protection for children specific to their situations. Such tasks require great legislative, institutional, and financial potentials that the EU gradually strengthens.

3.1 Children as a Vulnerable Group

As a social group, children are vulnerable to violations of their fundamental rights. Moreover, children can also be made more vulnerable than other people because of their young age, dependency, or life circumstances. In the EU policy documents, children are recognized as a group that has the characteristic of vulnerability (European Commission 2011).

While the notion of children's vulnerability figures in many of the EU policy instruments, its usage within the EU appears to be somewhat inconsistent. There are a variety of definitions: 'children in particularly vulnerable situations' (European Council 2009, 15), 'children in vulnerable situations' (EuroHealthNet 2018), 'most vulnerable children' (European Social Network

2019), 'vulnerable children' (European Commission 2019). Many of these definitions refer not to all children as a vulnerable group, but to certain groups of children who experience situations of particular vulnerability such as refugee children, children without parents, children from minorities, abused children, children in detention, children with disabilities, children from social risk families, children suspected or accused of crime. It is important to keep in mind that children as a group are considered to be vulnerable and, due to this, the protection of their rights requires the development of a particular resilience mechanism in comparison to other societal groups. Moreover, the protection of the rights of the child is required to take into account various contextual frameworks (such as migration, violence etc.) and to be ready to respond to them.

The research regards children as a vulnerable group who face several types of problems in relation to the protection of their rights. The good example of this is the study by Brunnberg and Visser-Schuurman (2015), identifying three key gaps regarding the protection of children's rights in Europe. One of the gaps is that children mainly aged 12–15 still faced discrimination, not only due to their disabilities, ethnic backgrounds, or social disadvantages but also due to their being under 18. The second identified characteristic of children as a vulnerable group is that members of this group are insufficiently aware of their rights. Children in vulnerable situations, in many cases, cannot link children's rights to their own personal situation and even if children know about their rights, they will not know how to solve problems when their rights are violated. The third highlighted gap is that children are hardly asked for their opinion on matters that may affect them. Children living in vulnerable circumstances, in particular, have very little experience of being listened to.

3.2 Background of Children's Rights Protection in the EU

The framework of the EU is considered to be one of the most favourable settings to protect children's rights. Iusmen and Stalford (2016, 13) argue that the EU exercises the greatest potential to generate dramatic changes in the way that children's rights are perceived and disposed – above and beyond other international or national actors. The EU's distinctive power comes from its unique legal, political, and financial authority over the member states on which the states rely. Moreover, the EU has resources to support monitoring, data collection, cross national policy exchange, and collaboration. All in all, it has the unique potential in creating the context of 'normalisation' of children's rights.

The understanding of children's rights protection in the EU is inseparable from the understanding of children as a vulnerable group. The Europe 2020 Strategy was one of the first attempts to highlight the need of protection of vulnerable groups. One of its flag initiatives, namely European Platform against poverty (2010), was established as a consequence of the economic crisis to ensure economic, social and territorial cohesion", working at the EU level "to design and implement programmes to promote social innovation for the most vulnerable. It states that helping children out of poverty demands a multi-dimensional approach touching upon employment policies (to support parents finding jobs); the design of tax-benefit systems; the provision of key services such as the child care of high quality; education and protection of children's rights (European Commission 2010). The protection of children as a vulnerable group was also mentioned in the European Citizenship reports (2013-2017) claiming that vulnerable groups should not be 'lesser' citizens (Villazón 2015). European Parliament Resolution of 16 January 2019 (European Parliament 2019) on the situation of fundamental rights in the European Union in 2017 distinguishes several groups of children that currently are in need of particular attention by the EU and its member states. They include migrant and refugee children, Roma children, children belonging to minorities, and children with disabilities. All these children are considered to be vulnerable children and the current regulations of their rights protection needs significant improvements. As regards migrant and refugee children, the European Parliament expresses its particular concern about how the principle of the best interest of the child and their right to be heard are implemented in practice (European Parliament 2019, 8). The other aspects that require particular attention are strengthening child protection systems, in line with the commitments set out in the Valletta Action Plan, as well as the Resolution of Parliament of 3 May 2018 on the protection of children in migration, to prevent and respond to violence, abuse, neglect and the exploitation of children. Moreover, the European Parliament stresses the need to ensure migrant and refugee children's access to formal and informal education and effective linguistic, social, and psychological support based on individual needs assessment. As to Roma children and children belonging to minorities, the European Parliament calls for measures to combat effectively the phenomenon of discriminatory and violent incidents affecting the schooling of these children. According to the European Parliament, children with disabilities are still disadvantaged and discriminated against regarding their education and social inclusion and this situation requires specific actions to be taken in line with the objectives of the European Disability Strategy.

The nature of these documents is of the 'soft' laws which do not establish rights and obligations that are enforceable before tribunals. Thus, EU measures that address children as a vulnerable group are based on the policy coordination.

However, it is important to note that children's rights protection has a particular place in the EU law because it is also enshrined in the EU primary hard law. The Treaty of Lisbon introduced an objective to promote children's rights and the EU is guided by the UNCRC, meaning that all policies and actions with an impact on children must be in line with the best interests of the child. Children's rights have also become part of the EUCFR, which means that the EU institutions as well as Member States have to promote, protect, and fulfil the rights of the child in all relevant EU policies and actions. These norms create an ideologically persuasive context for the protection of children's rights.

It must be mentioned that at the EU level decision making in relation to children's rights is linked to the substantive field in which measures are taken, such as asylum and migration policies or education policies. There are only two exceptions when the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, are competent to adopt measures for combating trafficking in persons, in particular children and women, and to establish minimum rules concerning the definition of criminal offences and sanctions in trafficking in human beings and sexual exploitation of women and children (the Directive 2011/36/EU of the European Parliament and of the Council of 5th April 2011 on preventing and combating trafficking in human being and protecting its victims OJ L 101, 1574/2011; the Directive 2011/93/EU of the European Parliament and of the Council of 13 of December 2011on combating the sexual abuse and sexual exploitation of children and child pornography, OJ L 2011, 335/1, Articles 18-20). In general, as children's rights is a cross-sectorial field, it must be noted that EU competence to legislate on children's rights needs to be determined on a case-by-case basis, depending on whether the issue to be addressed belongs to the areas that EU has been given competence to legislate under the treaties (Articles 2 to 4 of the TFEU). For example, one of the areas is the respect and promotion of children's rights in judicial proceedings, in which the EU has elaborated a number of measures to ensure the promotion and protection of children's rights. Article 24 (1) EUCFR specifies in particular 'age and maturity' as criteria for balancing protection of children's rights and child participation (European Union Agency for Fundamental Rights 2018, 5). Moreover, Article 47 of the EUCFR guarantees the right to an effective remedy and to a fair trial. A number of EU legal instruments have been built, guaranteeing children's right to be heard and participate effectively in

legal proceedings. This takes the central role in the promotion of children's involvement in judicial proceedings, ranging from the area of civil justice with the Brussels IIa Regulation (Council Regulation (EC) No. 1347/2000) to the area of criminal justice with the Victims' Directive (Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards of the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.). Respectively, these instruments emphasise the child's right to be heard as a ground for the recognition of judgements and sets general minimum standards especially for children when participating in criminal proceedings, enhancing their rights to information, support, and protection as well as their procedural rights. To facilitate and ensure children's participation as well as their protection and safety, special assistance measures are also provided to children before, during and after criminal proceedings, by such instruments as the Human Trafficking Directive (the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing the Council Framework Decision 2002/629/JHA.) and the Directive on combating sexual abuse, sexual exploitation of children and child pornography, (Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating sexual abuse, sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.) (European Union Agency for Fundamental Rights 2015, 7).

The European Union has adopted an approach that seeks to integrate the UNCRC into its policy, programmes and action. It is important to note that the EU is not a party to the UNCRC but it is bound by virtue of the general principles of the EU law to comply with all of the UNCRC's principles in relation to all matters that fall within the EU competence (Stalford 2012, 34). According to legal research, the most important question is whether or not the UNCRC can be an effective force at the EU level, even if at the level of the member states there are no sanctions imposed on states who fail to comply with the obligations they have ratified. H. Stalford (2012, 34) suggests that the best instrument to integrate the UNCRC into the EU legal order is to make it a "child-proofing" tool which means that the principles of the UNCRC have to be integrated in the EU laws and policies at the early stage and thus become obligatory. This method has already been put in practice because the EU policy texts embody such norms e.g. the best interest principle (Article 24(2) of the EUCFR; Article 13 of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing the Council Framework Decision 2002/629/JHA;

Article 23 of the Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection), children's right to participate in the decision making that affect them (Article 24 (1) of the EUCFR; Article 16 of the Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings; the Commission Recommendation C(2013)778 final of 20 February 2013 Investing in children: breaking the cycle of disadvantage; the Commission Recommendation C(2017)2600 final of 26 April 2017 on the European Pillar of social rights). However, the eventual impact of this process is constrained by the fact that the EU has very limited legal capacity to create substantive changes in domestic child protection systems.

The Communication identified three main ways to achieve the progress in children's rights protection by the EU action. These consist of: (1) children's rights have to be made an integral part of the EU's fundamental rights, (2) the basis for evidence-policy making has to be created, and (3) cooperation with stakeholders.

Currently, the EU in its external as well as internal policies has adopted a three-track approach on children's well-being and address: (1) specific issues like violence against children, (2) children's rights and needs through specific themes like education, social welfare and health, as well as (3) increasing mainstreaming of children's rights as one of the cross-cutting issues (EU Guidelines 2017).

The Integrated Child Protection Systems (ICPS) approach, aiming to protect children from all forms of violence, has been on the EU agenda since 2012 and has received significant institutional attention over the last few years, combined with various EU funding programs (European Commission 2014). The protection of children's rights when children are more vulnerable due to economic, social, political factors or health conditions is another field of EU's attention and has been approached by various policy documents (European Commission 2015). The more comprehensive approach to the promotion and protection of children's rights and the recent shift in governance from a state-centred model to a collaborative one, in which governance is co-produced by a wide range of actors at the state and supranational levels (Kickbusch and Gleicher 2012, 107), have called for the application of a mainstreaming mechanism to the promotion and protection of children's rights. As Eurochild (2014, 35) notes, mainstreaming of children's rights means a mechanism of ensuring that all actors involved in EU legislative and policy processes as well as programme design and implementation

comply with children's rights, including those that do not explicitly work on children's rights.

Despite all the actions at the European level, there is a statement that the EU legal framework remains limited in scope comparing to international standards (Canetta, Meurens, McDonough et al.2012, 6). Moreover, it is important to be aware that political actions, legal norms, and policies have to go together with their achievements of meaningful positive impact (Iusmen and Stalford 2016, 14), however, there are studies that demonstrate the mismatch between them. The next paragraph overviews the latest developments in this field.

4. Mainstreaming Children's Rights in European Political Agenda

Mainstreaming of children's rights is considered the most powerful mechanism of the EU to create a favourable contextual environment for children's rights protection. As scholars note, if the EU can succeed in 'mainstreaming children's rights in the textual spirit of all EU legal and policy making – then it is creating a context which regards respect for children's rights not just as the chance outcome of a niche set of legal or policy initiatives, but as absolutely integral to the broader success and sustainability of the EU' (Iusmen and Stalford 2016, 13). This is particularly important because there is an ambitious plan for advocating children's rights to be at the heart of EU's policy and decision-making. Moreover, children's rights ought to be retained as a requisite factor in the choices that shape Europe's future (D'Addato 2018, 183).

The concept of mainstreaming is the concept that has been already known at the EU level from legal (Treaty on the Function of the European Union) and policy perspectives (gender equality, fundamental rights, disability, health care, environmental protection, consumer protection, and culture). The main advantage of the mainstreaming process is that it has a potential of enabling children's rights to be firmly embodied in all EU level processes. Moreover, there are already proposed guidelines for effective mainstreaming that consist of the relevant institutional setting and the presence of all necessary elements of the process: political will, data, impact assessment, human resources, financial resources, and trainings (Schuurman 2015, 49-51).

Mainstreaming was considered to be one of two key pillars that should succeed the EU Agenda on children's rights (Schuurman 2015, 50). The EU Agenda for the Rights of the Child of 2011 was an important step forward towards mainstreaming children's rights in all EU policy spheres. It set the

main objective to promote the children's rights perspective in all relevant policies for children; it distinguished four areas as top thematic priorities where the EU should focus its attention. These areas were: (1) child-friendly justice, (2) protection of children when they are vulnerable, (3) children in the EU's external action, and (4) child participation and awareness raising. It also identified three main ways to achieve the progress in children's rights protection by the EU action. These consisted of: (1) children's rights have to be made an integral part of the EU's fundamental rights, (2) the basis for evidence-policy making has to be created and (3) cooperation with stakeholders. However, it did not offer an overarching vision of how the UNCRC could be effectively and consistently implemented across EU's and member states' policies (Eurohealthnet 2018). The UNCRC guarantees to all children the right to such conditions necessary for their health, well-being, and education, so they can develop to their full potential. One of the mostly analysed policy fields in relation to children's rights mainstreaming is European migration and asylum policy (Schuurman 2015, 53; Mustaniemi-Laakso et al. 2016). The findings of the research point to the fact that children's rights are weakly mainstreamed in this policy area and thus conclude that this EU's policy context is still not favourable for the reduction of children's vulnerability. This observation also points to the general tendency that the EU currently gives inadequate attention to children's rights in its legislation process.

The European Commission's Recommendation 2013 *Investing in Children: Breaking the Cycle of Disadvantage* (European Commission's Recommendation 2013) (European Commission 2013) is considered to be the main policy document, which provides a wide range of angles to address children's rights protection and their well-being. It places the goal of combatting child poverty and promoting equal opportunities for all children and the member states are encouraged to ensure that children grow up in families with adequate resources to meet their essential needs. This is the example of the EU's 'soft' law, which is also part of the mainstreaming process as has to be a subject of child-rights impact assessment (Schuurman 2015, 63). The intention of this document is to implement the principles listed above, through integrated strategies based on three pillars: *access to adequate resources; access to affordable quality social and health services, with an emphasis on early childhood education and care* (ECEC); and children's rights to participation. As a follow-up, in April 2017, after an extensive consultation process, the European Commission launched the European Pillar of Social Rights, which is aimed at strengthening European social dimension and pays significant attention to children's well-being. An accompanying document of the European Pillar of Social Rights is the evaluation of European

Commission's Recommendation 2013 (European Commission 2017). In addition, the deep analysis of the implementation of European Commission's recommendations of 2013 was conducted in 2017. The overall finding of the analysis is that the modest progress made in the direction outlined in the European Commission's Recommendation 2013 is insufficient to the scale of the problem in many countries (Frazer and Marlier 2017, 9). The study shows that the European Commission's Recommendation 2013 has not had real impact because the countries that have already had strong policies and programmes and low levels of child poverty or social exclusion have largely maintained these. However, it is clear that very limited progress has been made in most areas in a large number of countries with high or very high levels of child poverty or social exclusion" (Frazer and Marlier 2017, 9). However, the positive aspect is that there have been more improvements in the European member states in strengthening integrated multidimensional approaches and in mainstreaming children's rights in policy making.

Regarding each of the three pillars (access to resources, services and children's participation), the progress picture is uneven. The greatest progress has been achieved in access to resources because nearly a third of countries encouraged parents' participation in the labour market since 2013. Meanwhile, access to qualified services remains problematic, with the weakest position given to health services: nine countries have improved their social policies, eight in the area of education, and only three in health services. The results also show that only one fourth of the member states have strengthened their policies in relation to children's participation (Frazer and Marlier 2017, 10).

Children's right to health means that every child has the right of the highest attainable standard of health (Article 24 of the UNCRC) and thus health is another important area that is strongly connected to social policy outcomes. Health is a priority area of concern especially in the policy agenda of the UN, and to a somewhat lesser extent within the Council of Europe. Within the Council of Europe, health is selected as one of the policy areas in which a child rights perspective should be integrated as a matter of priority, under the first strategic objective of "mainstreaming and co-ordination". Meanwhile, the EU has less attention to children's health issues on its policy agendas than the Council of Europe. The second pillar of the EU agenda contained proposals to improve health systems and to provide access to affordable quality health services. However, the research shows that there have been very few changes to access to quality health services in most countries since 2013 (Frazer and Marlier 2017, 23).

The latest study on the changes to child and family policies with reference to the European Commission's Recommendation 2013 and guided by recent

developments related to the European Pillar of Social Rights was published in July 2018 (Janta, Iakovidou and Butkute 2018). The study analyses selected themes related to the situations of vulnerable children (e.g. migrant children, children residing in institutions, etc.) and the key aspects related to socio-economic disadvantage, which outline current policy objectives, legislation, programmes, and initiatives. The findings of the study suggest that the member states have taken many actions in the respective policy fields, however, the significant intensification of efforts will be required for achieving the progress in dealing with remaining challenges, such as the distribution and persistence of child poverty, access to affordable childcare provision of a high standard, social inclusion and support for migrant children, equal sharing of work and family responsibilities between parents, and the transition from institutional to community-based child care services.

The mainstreaming approach is strongly supported by the European civil society organizations. This is an understandable position because the EU institutions lack competence to adopt binding legislation for the protection of children's rights, and thus the mainstreaming approach is one of the few ways to achieve progress in policy development. It is important to note that the Treaty on European Union lacks the specificity to be recognised as imposing a constitutional duty to mainstream children's rights across the EU's areas of activities (Eurochild 2014) and thus mainstreaming concept is based more on policy documents rather than hard law.

The EU Alliance for investing in children, which consists of over 20 European biggest networks, welcomed the European Pillar of Social Rights and supported the idea that the Pillar of Social Rights should reinforce and build on the existing principles outlined in the European Commission's Recommendation 2013 and thus emphasised the view that one of the main priorities is to mainstream children's rights across social and educational policies.

According to the EU Alliance for investing in children, mainstreaming children's rights in *education policies* means the creation of inclusive education systems across the lifecycle and at all levels, including after-school care, home schooling and formal education (EU Alliance for Investing in Children 2016). As regards, social policies that target children directly should be supported by employment policies and community-based parenting and family support services.

The nature of mainstreaming process requires that the application of the mainstreaming approach happens across all levels to start from the draft policy proposals. Due to this, the European networks stress the importance for the European Commission to take an active role and perform regular assessments of policies and if necessary, policy and programme

developments. However, the scholars note that in recent years the European Commission is narrowly interpreting its mandate and the children's rights are being overshadowed by the dominant discourses on the employment and economic growth (D'Addato 2016, 117). Other challenges such as migrant crisis of 2016, the Brexit might have influenced the lack of due consideration of children's rights protection by the European Commission. More forward-looking approaches are required to be taken by the European Commission, in particular by providing governments with recommendations on how to address the gaps during the course of implementation as well as developing a roadmap to enhance governments' accountability and monitoring capacity. What requires special attention is the lack of child specific indicators to do assessment on the impact of policies on children's lives to provide evidence for policy development (Eurochild 2017). Although the worsening situation of child poverty is acknowledged in the 2017 European Semester Country Reports, this issue is not explicitly addressed by the 2017 Country Specific Recommendations (CSRs) which also show a step backwards in terms of addressing children's needs and rights, as compared to the 2016 CSRs (D'Addato 2018, 185).

In summary, the process of mainstreaming requires a multidimensional context. Children's rights mainstreaming has to happen at all levels of governance and covers not only hard legislation but also soft law and policy measures. The current situation reflects European and national deficit in mainstreaming children's rights. Moreover, the studies have urged the strengthening of synergies with relevant EU policies.

Conclusions

In order to address children's rights protection, it is necessary to understand various sources of children's vulnerability. On one hand, children belong to the group, which is relatively powerless and thus are at the disadvantaged position in the political process. On the other hand, the concept of children's vulnerability is related to the context of governance in which children-rights-related legislation is produced. Both, the group-based approach and the context-based approach to children's vulnerability identify the fragility of the implementation of their rights. The framework of the EU is one of the most favourable settings to protect children's rights due to its unique legal, institutional, and financial potential. However, the setting of the multilevel mode appears to be a difficult one to ensure children's rights protection. This process requires not only clear standards of adequacy on policies and measurable indicators, but also coherence among different levels of

governance. From the legal and policies perspective, the EU has all necessary conditions to develop a children's rights friendly contextual environment, however, it is not possible to state that this process has been already accomplished. The protection of children's rights requires the UNCRC as a whole document to be successful; meanwhile, the EU policies still reflect the fragmental approach to children's rights protection in the EU. The biggest hope lies within the mainstreaming mechanism, which embodies the great potential to create a unique integral context for the protection of children's rights. Despite the big challenges, there is one clear tendency – a constant moving forward in ensuring the wellbeing of children in the EU.

References

Alajos Kiss v. Hungary, App. No. 38832/06, 20 May 2010.

Brunnberg, E. and Visser-Schuurman, M. (2015) 'Speak Up! Voices of European Children in Vulnerable Situations', *International Journal of Children's Rights,* Vol. 23, 569-601.

Canetta, E., Meurens, N. McDonough, P. and Ruggiero, R. (2012) *European Framework of Law for Children's Rights,* Brussels: European parliament.

Chapman v. United Kingdom, App. No. 27238/95, 18 January 2001.

Consolidated Version of the Treaty on the EU, Official Journal of the European Union, C 115/13.

D'Addato, A. (2016) 'Reflections on Recent EU Developments in the Field of Children's Rights and Well-being', in Matthes, M., Pulkkinen, L., Heys, B., Clouder, C., Pinto, L.M., *Improving the Quality in Childhood in Europe, Volume 6,* Tallinn: Printon Printing House, 112-119.

D'Addato, A. (2018) 'Reflections on How Recent EU Developments in the Social Field can Deliver for Children in Europe', in Matthes, M., Pulkkinen, L., Clouder, C., and Heys, B., *Improving the Quality of Childhood in Europe, Volume 7,* Tallinn: Printon Printing House, 181-189.

D.H. and others v. the Czech Republic, App. No. 57325/00, 13 November 2007

Dootalieve, A. and Lembrechts, S. (2017) *The European and International Policy Agendas on Children, Youth and Children's Rights*, Flemish government.

EU Alliance for Investing in Children (2016) 'How the European Commission Can Make a European Pillar of Social Rights Fit for Children', retrieved from: http://www.alliance4investinginchildren.eu/how-the-

european-commission-can-make-a-european-pillar-of-social-rights-fit-for-children/ (accessed: 12/12/2018).

Eurochild (2014) 'Mainstreaming Children's Rights in EU Legislation, Policy and Budget. Lessons from Practice', retrieved from https://www.cnape.fr/documents/document-paper_eurochild_mainstreaming-childrens-rights/ (accessed: 12/12/2018).

Eurochild (2017) 'Eurochild's Policy Position on the European Pillar of Social Rights. How the European Pillar of Social Rights, the Work-Life Balance Directive and the Investing in Children Recommendation can deliver for children in Europe.', retrieved from: https://www.eurochild.org/fileadmin/public/05_Library/Thematic_priorities/02_Child_Poverty/Eurochild/Eurochild_s_Policy_Position_on_the_European_Pillar_of_Social_Rights.pdf (accessed: 15/05/2019).

EuroHealthNet (2018) 'Children's rights: Introduction and Opportunities', retrieved from: https://eurohealthnet.eu/health-gradient/social-protection/childrens-rights (accessed: 13/12/2018).

EuroHealthNet (2018) 'The EU added value of investing in children and youth in vulnerable situations', retrieved from: https://eurohealthnet.eu/news-ehn-members/eu-added-value-investing-children-and-youth-vulnerable-situations (accessed: 13/12/2018).

European Commission (2010) 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: the European Platform Against Poverty and Social Exclusion: a European Framework for Social and Territorial Cohesion', retrieved from: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52010DC0758) (accessed:13/12/2018).

European Commission (2011) 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Agenda for the Rights of the Child', COM(2011) 60 final, retrieved from: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0060:FIN:EN:PDF (accessed: 13/12/2018).

European Commission (2013) 'Commission Recommendation of 20 February 2013 Investing in Children: Breaking the Cycle of Disadvantage', retrieved from: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013H0112 (accessed: 13/12/2018).

European Commission (2014) 'EU Funding Mechanisms Relevant to Integrated Child Protection Systems: Annex I, V0.1 14 November

2014', retrieved from: http://ec.europa.eu/justice/fundamental-rights/ files/roc_funding_mechanisms_2014.pdf (accessed:10/12/2018).

European Commission (2015) 'EU Acquis and Policy Documents on the Rights of the Child', retrieved from: http://ec.europa.eu/justice/fundamental-rights/files/acquis_rights_of_child.pdf (accessed: 10/12/2018).

European Commission (2017) 'Taking Stock of the 2013 Recommendation on "Investing in Children: Breaking the Cycle of Disadvantage", Commission Staff Working Document, SWD (2017) 258 final', retrieved from: http://ec.europa.eu/social/main.jsp?catId=1060 (accessed: 12/12/2018).

European Commission (2019) 'Child guarantee for vulnerable children', retrieved from: https://ec.europa.eu/social/main.jsp?catId=1428&langId=en (accessed: 08/05/2019).

European Council (2009) 'The Stockholm Programme - An open and secure Europe serving and protecting the citizens', retrieved from: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_ stockholm_programme_-_an_open_and_secure_europe_en_1.pdf (accessed: 09/05/2019).

European External Action Service (2017) 'EU Guidelines for the Promotion and Protection of the Rights of the Child', retrieved from: https://eeas. europa.eu/sites/eeas/files/eu_guidelines_rights_of_child_2017.pdf (accessed: 11/12/2018).

European Parliament (2019) 'European Parliament resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017' (2018/2103(INI)), retrieved from: http://www.europarl.europa. eu/doceo/document/TA-8-2019-0032_EN.pdf (accessed: 15/05/2019).

European Social Network (2019) 'No child left behind - Supporting the most vulnerable children', retrieved from: https://www.esn-eu.org/ news/1032/index.html (accessed: 08/05/2019).

European Union Agency for Fundamental Rights (2015) 'Child-friendly justice Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States', retrieved from: https://fra.europa.eu/sites/default/ files/fra-2015-child-friendly-justice-professionals_en.pdf (accessed: 11/12/2018).

European Union Agency for Fundamental Rights (2018) 'Children's rights and justice Minimum age requirements in the EU', retrieved from: https:// fra.europa.eu/sites/default/files/fra_uploads/fra-2018-minimum-age-children-rights_en.pdf (accessed: 11/12/2018).

Frazer, H. and Marlier, E. (2017), *Progress across Europe in the Implementation of the 2013 EU Recommendation on 'Investing in Children: Breaking the Cycle of Disadvantage' A Study of National Policies 2017*, European Social Policy Network (ESPN), Brussels: European Commission.

Guy Peters, B. (2012) *Governance and the Rights of the Children: Policy, Implementation and Monitoring, Working paper 2012-11,* Florence: UNICEF Office of Research.

Iusmen, I. and Stalford, H. (2016) 'Introduction: the EU as a Children's Rights Actor: Law, Policy and Structural Dimensions', in, Iusmen, I. and Stalford, H. (eds.) *The EU as a Children's Rights Actor: Law, Policy and Structural Dimensions,* Opladen, Berlin &Toronto: Barbara Budrick Publishers, 9-18.

Janta, B., Iakovidou E., and Butkute, M. (2018) *Changes in Child and Family Policies in the EU28 in 2017 European Platform for Investing in Children: Annual Thematic Report*, European Commission: Brussels.

Kickbusch, I, and Gleicher, D. (2012) 'Governance for Health in the 21st Century', Denmark: World Health Organisation: Regional office for Europe, retrieved from: http://www.euro.who.int/__data/assets/pdf_file/0019/171334/RC62BD01-Governance-for-Health-Web.pdf, (accessed: 10/12/2015).

Marx, A., Hachez, N., Meuwissen, K., Schmitt, P., Raube, K., Jaraczewski, J., Roszak J., Lewis, T., Starl, K., Morondo Taramundi M. D., Tuovinen, A. K., and Weatherburn, A. (2014) ' Multilevel Protection of the Rule of Law and Fundamental Rights – the Role of Local and Regional Authorities and of the Committee of the Regions', retrieved from: https://cor.europa.eu/en/engage/studies/Documents/Multilevel-Protection-Rule-of-Law-Fundamental-Rights.pdf (accessed: 11/12/2018).

Mustaniemi-Laakso, M., Heikkilä, M., Del Gaudio, E., Konstantis, S., Nagore Casas, M., Morondo, D., Hegde, V. G., Finlay, G. (2016) *The Protection of Vulnerable Individuals in the Context of EU Policies on Border Checks, Asylum and Immigration,* FRAME, Brussels: European Commission.

Oršuš and others v. Croatia (GC), App. No. 15766/03, 16 March 16 2010.

Overseas Development Institute (2009) '*Raising the Game: Mainstreaming Children 's Rights, Briefing paper 56,* London.

Peroni, L. and Timmer, A. (2013) 'Vulnerable Groups: the Promise of an Emerging Concept in European Human Rights Convention Law', *Oxford University Press* and New York University School of Law, Vol. 11, No. 4, 1056–1085.

Sampanis and others v. Greece, App. No. 32526/05, 5 June 2008.

Schapper, A. (2017) 'Children's Rights Implementation as a Multilevel Governance Process', *Human Rights Quarterly,* 39, 104-129.

Schuurman, M. (2015) 'Developing a Model for Mainstreaming Children's Rights into EU Law and Policy Making', in Iusmen, I. and Stalford, H. (eds.) The EU as a Children's Rights Actor: Law, Policy and Structural Dimensions, Opladen, Berlin &Toronto: Barbara Budrick Publishers, 49-76.

Stalford, H. (2012) *Children and the EU: Right, Welfare and Accountability*, Oxford: Hart Publishing.

Villazón, L. A. (2015) 'Vulnerable Citizens in the EU, a border line between Policies and Law' , retrieved from: http://beucitizen.eu/vulnerable-citizens-in-the-eu-a-border-line-between-policies-and-law/ (accessed: 12/12//2018).