

Child's best interest in child protection legislation of 44 jurisdictions

By

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Abbreviations

CBI	Child's best interests
CO	Concluding Observation
CPS	Child protection system
CRC Committee	Committee on the Rights of the Child
CRC	Convention on the Rights of the Child
SDG	Sustainable Development Goals
Tusla	Irish Child and Family Agency
UK	The United Kingdom
UN	United Nations

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Chapter 1 Introduction

In democratic states, when a state takes action to protect the child from harm, actions have to follow the legislative guidance of children's rights and be formally and substantively justified for the protection of the right of the particular child. The current report focuses on how 40 countries and four constituent entities of the UK (n=44),¹ have incorporated the concept of 'best interests of the child' (CBI) into their child protection legislation as required by the CRC Article 3(1). The empirical focus is on how CBI informs and guides the protection of the children who are at risk of harm and the corresponding state's responsibility when it takes child protection measures (as required by Article 19 of the CRC). The reason for examining these 44 legal systems is both practical and principled. We can expect high-income countries and the EU member states to be relatively similar in their ratification level of the CRC, forming a sound basis for comparison. Further, the Unicef Research Office - Innocenti regularly reports on these countries providing a range of valuable data for a better conceptualisation of the findings of this research. This report contains a descriptive mapping of how a range of high-income states provide meaning to the Child's best interests principle in their child protection legislation, and by this what signals and guiding decision-makers – front line staff as well as the judiciary – are given in their exercise of discretion in deciding the child's best interest (see Skivenes and Sørsdal, 2018).

The report builds on and expands the work of Skivenes & Sørsdal (2018), that analysed the way national legislations of 14 high income states interpreted CBI and what kind of discretion these provisions left to the decision-makers who evaluate the child's best interests. The report further builds on the central premises of the ERC Consolidator grant project [Discretion and the Child's Best Interests in Child Protection](#),² where a primary focus is on the discretionary decision-making in child protection cases and the way such decisions are justified. While the Discretion project mainly focuses on the practices of eight European countries, this report takes a wider look into the way substantive child-protection decisions-making is guided by the CBI and gives a comparative background for the rest of the project.

Thirty-six of the states (counting UK as one state) included in the current report are member states of the Organisation for Economic Co-operation and Development (OECD).³ OECD aims to stimulate economic progress and world trade; in recent years, it has also concentrated on the wellbeing of children and families.⁴ Generally, OECD members have high-income economies, with a high Human Development Index (HDI) and advanced governmental structures. In addition, the report covers five member states of the European Union that are not members of the OECD (Bulgaria, Croatia, Cyprus, Malta and Romania) but fulfil the requirements of a liberal market economy, democracy, and the rule of law. The European Union has, in recent years, focused on the protection of the rights of the child and the build-up of the national child protection systems within the EU (European Commission, 2015). Thus, it can be presumed that national legislation

¹ The countries are Australia, Austria, Belgium, Bulgaria, Canada (Ontario), Chile, Croatia, Cyprus, Columbia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Republic of Korea (South Korea), Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, UK (England, Scotland, Wales, Northern Ireland).

² <https://www.discretion.uib.no/> (26.06.2020).

³ As of June 2020, OECD has 37 member states. Current report includes child protection legislations of: Australia, Austria, Belgium, Canada, Chile, Colombia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, South Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, UK.

⁴ <https://www.oecd.org/social/family/> (20.06.2020).

and practice of these four countries resemble the other 22 members of the European Union. The data excludes one OECD member, the United States, as it has not ratified the CRC. The report has separately included four entities of the United Kingdom as their legislative traditions as well as the child protection legislation varies substantively. In a more general overview, the data related to them are unified under the title UK.

According to the World Bank classification, 39 of the 44 countries included in this report are high-income countries, and five are upper-middle-income countries (Bulgaria, Colombia, Mexico, Romania, and Turkey).⁵ All of the countries are included in the KidsRightsIndex and UNICEF STG index. These indexes are reflected in Table 3 below.

The report is based on the premise that legislation has several functions and, in addition to showing the democratic decided values, goals and ambitions in a society, makes explicit the rules for what is right and wrong in the legal community and what the judiciary should judge by. Simultaneously legislation instructs and guides a decision-maker in a particular case towards the essential factual elements and factors which should be taken into account when making and justifying individual decisions (Hawkins, 1992; cf Molander et al., 2012). This is our main focus in this report. Legislation delegates the authority to exercise discretionary assessments to a decision-maker, and this authority may imply a wide or narrow discretion to reach a decision and justify it in a particular case, and thus also provide a way to hold the decision-maker accountable.

The current report follows the analysis conducted by Skivenes and Sørsdal (2018), who analysed incorporation of the CBI in 14 countries,⁶ all also included in the current analysis. Skivenes & Sørsdal examined how CBI in child protection legislation in the 14 countries has been formulated, and what types of discretionary leeway decision-makers have been delegated in terms of CBI decisions. Skivenes & Sørsdal also included an analysis of the factors that are enlisted by the CRC Committee in General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) compared to the national legislation on CBI in the 14 countries.

The mapping for this report has two steps. First, it focuses on the function the CBI principles have in the national legal acts and aims to understand whether these different functions can be conceptualised similarly to Skivenes and Sørsdal (2018). Secondly, the report follows the coding scheme used in Skivenes and Sørsdal (2018).

The report has four parts. First is an overview of the CBI and discusses the ways this principle has been understood by the CRC Committee. Secondly, it discusses the selection of the data – national legal provisions incorporating the CBI principle – and the limitations relating to it. Third, it conceptualises the data by discussing the different functions CBI principle can have in the national legal system. Fourth, it crudely divides the way that the states have functionally phrased the CBI principle into four categories and implements the coding scheme of Skivenes and Sørsdal (2018) to provide further insight into the substantive considerations states deem relevant for their child protection systems.

⁵ <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups> (accessed 4th of March, 2022). Note that the World Bank does not consider the UK constituent parts separately.

⁶ Australia, Austria, Canada, Denmark, England, Estonia, Finland, Germany, Ireland, Norway, Spain, Sweden, Switzerland, and USA.

Chapter 2 Legal background

CRC Child protection requirements

The precondition of the CRC is that states are to undertake ‘all appropriate legislative, administrative, and other measures’ to incorporate and implement the rights guaranteed to children (Article 4 of the CRC; CRC Committee, 2003). CRC requires that states incorporate and implement children’s rights perspective into all their decision-making, but especially to the decisions that directly relate to a particular child. A general premise of accession to CRC is that when signing a treaty, states undertake an obligation to incorporate and implement the treaty obligations in their national legal systems (Hoffman and Stern, 2020; McCall-Smith, 2019).

The General build-up of CRC requires a holistic approach to child rights. First, it requires seeing child rights as interconnected. This requirement is especially evident in the way the CRC Committee has defined the general principles of the CRC – non-discrimination (Art. 2), best interests of the child principle (Art. 3(1)), child right to life, survival, and development (Art. 6), and hearing the child (Art 12). Secondly, the CRC does not include an exhaustive list of measures states have to take. Article 4 notes that states have to employ appropriate legislative, administrative, and other measures (Article 4 CRC; CRC Committee, 2003). The CRC Committee has further discussed other obligations including the importance of sufficient financing for the protection of child rights (CRC Committee, 2016), and the obligations of the private sector (CRC Committee, 2013a).

Family is central for the full and harmonious development of the child (p 5, 6 CRC preamble). Article 19 of the CRC obliges the state to protect a child from any type of violence, including abuse of the parental powers (CRC Committee, 2011, p. 13). Furthermore, Article 3(2) gives the child the right to such protection and care as is necessary for his or her well-being and best interests. The obligation to protect the child might require separating the child from parental care (Sandberg, 2018).

CRC article 19 grants the child a right to be free from all forms of physical and mental violence when in care of parents or others. Violence in Article 19 is defined all-encompassing as it includes, besides physical and mental violence, other types of potentially harmful activities – injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (CRC Committee, 2007).

Article 19 is an overarching article that guides the state’s action also under other provisions of the CRC. States have an overall obligation to ensure to the fullest extent possible the survival and development of the child (Article 6). Furthermore, states’ specific obligations to provide appropriate assistance to parents (Article 18) together with rights to health care (Article 24), to benefit from social security (Article 26) to an adequate standard of living (article 27), and to education (Article 28) are all particularly relevant to the prevention of neglect. Child safety is in practical terms guaranteed by the separation from parents (Article 9), protection of children deprived of family environment (Article 20), and child protection adoptions (Article 21; see Hodgkin et al., 2007, p. 257).

In order to provide a child with appropriate protection, the child protection system under Article 19 requires a reporting and referral mechanism for both the child and the adults who see a child in danger (CRC Committee, 2011, para. 49). Such process should entail a multi-disciplinary assessment of the needs of the child and the caregivers giving due weight to the views of the child; referral of the child (and a family) to necessary services; follow-up and evaluation of the intervention (p. 50). Article 19 does not enlist different types of possible measures that the CPS must take. While separating the child from the family is not usually desirable, the measures taken to protect the child might also include separation (Sandberg, 2018, pp. 29–30). As a general

principle, the state should take ‘the least intrusive intervention as warranted by the circumstances’ (CRC Committee, 2011, para. 54).

In this context, the CRC obliges the states to assess that the measures used in a particular case are taken for the Child’s best interests when the rights of the child and the biological parents are balanced in a particular case, the CBI is a primary consideration in the child protection.

CRC Article 3(1)

The ‘best interests of the child’ encompassed in article 3 is one of the general principles of the Convention and which is central for interpreting and implementing all the other rights of the child (CRC Committee, 2009, para. 2, 2003, para. 12). It is a dynamic and relatively indeterminate concept that in every instance of application requires an assessment of what is appropriate to the specific context. Article 3(1) CRC reads as follows:

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.

The CBI principle gives the child the right to have their best interests assessed and taken into account as ‘a primary consideration’ in all actions or decisions that concern them in both public and private spheres (Freeman, 2007). The principle of the best interests is, thus, the benchmark according to which decisions concerning children should be made (Eekelaar, 2017, p. 24). Eekelaar points out that the best interests principle requires clear guidelines and legislation for the individual cases concerning a specific child; at the same time, it has to be applied as a principle in matters relating to children as a group (Eekelaar, 2015). Similarly, the CRC Committee has consistently asked the states ‘to develop procedures and criteria to guide all relevant persons in authority for determining the best interest of the child in every area and for giving it due weight as a primary consideration’ (Luhamaa, 2020).

The Convention explicitly refers to the Child’s best interests in other provisions as well: separation from parents (Article 9); family reunification (Article 10); parental responsibilities (Article 18); deprivation of family environment and alternative care (Article 20); adoption (Article 21); separation from adults in detention (Article 37 (c)) and procedural guarantees, including the presence of parents at court hearings for penal matters involving children in conflict with the law (Article 40 2 (b) 9).

Best interests of the child principle should be the ‘primary consideration’ in decisions relating to the child, and this has shifted the focus of the proceedings from the protection of the family to the rights of the individual child (Gilbert et al., 2011; Skivenes and Sørsdal, 2018). According to the CRC Committee, the concept of the Child’s best interests is aimed at ensuring, firstly, the full and effective enjoyment of all the rights recognized in the Convention, and, secondly, the holistic development of the child. Thus, the best interest of the child has potential to conflict with the interests of other members of the family; furthermore, it is unclear, who should have the right and/or obligation to determine the best interests of the child, and how much it has to take into account the view of the child. As an example, the CRC Committee has pointed out that ‘an adult’s judgment of a Child’s best interests cannot override the obligation to respect all the Child’s rights under the Convention.’ (CRC Committee, 2013b, para. 4).

Full application of the concept of the Child’s best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote their human dignity. Hence, according to the CRC Committee, the best interests of the child comprises three intertwined components (CRC Committee, 2013b, para. 6):

1. A substantive right – this is a primary consideration when different interests are being considered; it is guaranteed that this right will be implemented whenever a decision is to be made concerning a child, a group of children or children in general. Article 3(1) creates an intrinsic obligation for states, is directly applicable (self-executing) and can be invoked before a court.
2. A fundamental and interpretative legal principle – if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the Child’s best interests should be chosen.
3. A rule of the procedure – when a decision affects a child or children, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. This also requires procedural guarantees such as justification of a decision or participation in proceedings.

The CRC Committee has used the traditional tripartite division (see Schutter, 2014, pp. 279–295) of respect, protect and ensure to further open the meaning of these obligations (CRC Committee, 2013b, paras. 14–16):

1. A Child’s best interests are appropriately integrated and consistently applied in every action taken by a public institution, especially in legislation, all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children.
2. All judicial and administrative decisions, as well as policies and legislation concerning children, demonstrate that the Child’s best interests have been a primary consideration. This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision.
3. The interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child.

The dividing line between what is best for children as a group and what is in the primary interest of an individual child is not clear from the CRC itself. The principle enshrined in Article 3 relates to both contexts. Nonetheless, the interests of an individual child cannot (necessarily) be understood ‘as being the same as those of children in general’; Article 3 (1) requires that ‘the best interests of a child must be assessed individually’. The CRC Committee emphasised in General Comment No. 14 that a range of issues has relevance when deciding what is in the best interests of the child in any concrete case. These considerations include but are not limited to: the views of the child, preservation of the family environment and maintaining relations; the care, protection and safety of the child; a situation of vulnerability; the child’s right to health; the child’s right to education (cf Skivenes and Sørsdal, 2018). Additionally, several procedural guarantees should be followed including the right of the child to express their views; establishing the facts; decisions should be taken by qualified personnel including, when necessary, legal representation; and mechanisms to review decisions.

As an example, as to custody decisions, the CRC Committee has stressed the importance of the best interests of the particular (individual) child, stating that it is contrary to these interests ‘if the law automatically gives parental responsibilities to either or both parents’ (CRC Committee, 2013b, para. 67). Consequently, the dividing line between an understanding of the CBI principle in relation to children as a group and the specific, individual child is unclear. The report follows the more detailed operationalisation of the implementation of the CBI as proposed by the CRC Committee (CRC Committee, 2013b, paras. 46–79) and operationalised in Skivenes and Sørsdal (2018; see Table 1).

Table 1: Codes for identifying themes in the texts as developed by Skivenes and Sørsdal (2018).

Code name	Code description. Criteria for including or excluding text
Child's future	Includes factors concerning the future of the child and/or a long-term perspective for the child, including mentioning the situation of the child as an adult.
Child's identity	Includes text that raises considerations of the Child's individual characteristics, cultural inheritance or other aspects that may be important to the Child's identity.
Child's needs	Includes factors about the needs of the child, physical and emotional support and care, personal development, education, nutrition, stimulation and activation. This code does not include references to general terms of the Child's well-being, such as best interests, well-being or the need for stability or the Child's relationship with the parent/caregiver (covered by other codes).
Child's participation	Includes statements about participation for and/or involvement of children, including hearing the Child's viewpoint, feelings, wishes, meaning, and opinions.
Child's relationship	Includes considerations of the Child's relationship with a caregiver or a parent, and/or with the family or a wider network of relations. It also includes text concerning the 'biological principle' and/or the importance of the biological family.
Parent's perspective	Includes text about the rights and/or capacity of parent(s) or caregiver(s) to take care of the child and/or their caregiving or parental skills, and/or their views or opinions.
Protection	Includes factors about protection of the child against harm or risk of harm, and/or considerations of prior experiences of harm or potential future risk situations.
Permanency	Includes text related to the importance of permanency or stability of emotional and/or physical living conditions and upbringing of the child.
Weight and procedures	Includes text that states how the best interest of the child should be weighed against other principles or rights, and/or how material factors should be ranked and/or whether a time frame is mentioned.

The Committee noted in the General Comment No 14, that the list of criteria they had included in their comment is not exhaustive. Rather, it saw it possible that the states include other criteria into the CBI (CRC Committee, 2013b, para. 50). Thus, to ensure that any such additions by the states are noted, coding of the legal norms was also exploratory and paid attention to other criteria

included in the CBI provisions. Exploratory coding revealed that states often refer in the CBI provision also to the importance of the family and specify that the CBI evaluation should also recognise the importance of the family and that any measures taken for the child's best interests, should recognise the primacy of family related measures. Therefore, the current report includes an additional criterion:

Family *Includes text related to the central importance of the family as a growing environment; as well as the need to support family as an entity prior to removal.*

The Committee noted the non-exhaustive and non-hierarchical list of criteria as necessary when assessing and determining the Child's best interests in a particular case:

- a. the Child's views;
- b. the Child's identity;
- c. preservation of the family environment and maintaining relations;
- d. care, protection, and safety of the Child;
- e. situation of vulnerability;
- f. the Child's right to health, and
- g. the Child's right to education.

Each of these elements are laid out in more detail in the comment and should provide clear instructions for professionals across countries. The content of each element necessarily varies from child to child and from case to case, depending on the type of decision and the concrete circumstances, as will the importance of each element in the overall assessment. The non-exhaustive nature of the elements in the list implies that it is possible to go beyond those and consider other factors relevant in the specific circumstances of the individual child or group of children. Thus, the list should provide concrete guidance, yet flexibility. The Committee has requested that the states identify the criteria they use in practice in the reports they submit to the Committee (Luhamaa, 2020). Thus, national legislation or secondary implementation guidelines should go further than merely acknowledging the importance of the CBI. Skivenes and Sørsdal (2018) operationalised this criterion further (Table 1).

The focus of the current report is on CBI as it is understood and implemented in child protection legislation of these 44 jurisdictions. Previous research shows that the determination of the principle should consist of two parts (Skivenes and Pösö 2017). First, the decisions are informed by the scientific knowledge of a child's development and needs. Research establishes the ground rules and the important arguments and considerations of valid determinations of what is best for the child. Secondly, the normative ethical-cultural considerations about a good life and a good childhood have to be taken into account. There is variation across cultures, religions and states, and between individuals and groups about meaningful and good ways of life (Rawls 1971; Skivenes 2002). There are many competing and legitimate ways of bringing up children and as such, defining what is good or best for them. Skivenes and Sørsdal (2018) summarised:

there is not one 'best interest value' that can be expected to be valid and accepted as right for all children. For the former expert-based dimension, there is an argument based on the strength of the evidence and the validity of knowledge, and to some degree, there will be consensus on what has been established as solid knowledge and what is less solid. For the latter value-based dimension, by definition, when there is disagreement and plurality, ethical discussions and interpretations must consider what might be good for a particular individual, family or community. Thus, decisions about the best interests of a child cannot be based solely on expert evaluations, but also on values and norms that hold meaning for human beings.

Following the mapping of these elements, the research of Skivenes and Sørsdal (2018) connected the elements of CBI with the concepts of weak and strong discretion (following Dworkin, 1967, pp. 14–46). Strong discretion, in this context, means that the decision-maker is bound by no or limited standards set by the authority, whereas in weak discretion, the authority to use judgment is limited by numerous instructions. Thus, the states that included a detailed list of CBI conditions, allowed the decision-maker weaker discretion than the states that framed the CBI in general terms.

Chapter 3 Method and data

The mapping undertaken in this report focuses on the Child's best interests principle as incorporated into their child protection system of the 44 countries. The ambition of this overview is to identify how lawmakers have interpreted and formulated the Child's best interests principle in child protection. Based on this mapping, the report further divides the states as granting strong or weak discretion to the decision-makers (see Skivenes and Sørsdal (2018; following Dworkin, 1967, pp. 14–46). Strong discretion, in this context, means that the decision-maker is bound by no or limited standards set by the authority, whereas in weak discretion, the authority to use judgment is limited by numerous instructions. Thus, the states that included a detailed list of CBI conditions, allowed the decision-maker weaker discretion than the states that framed the CBI in general terms.

Data for the research comes from written legal texts that incorporate the CBI principle in national child protection legislation. The selection included both federal and unitary states. From the selection, seven states were federal states Australia, Austria, Belgium, Canada, Germany, Mexico, and Switzerland. Most of the national legislations are applicable in the whole state. Exceptions were the federal states of Australia, Canada, and Switzerland, where the analysed legislation was applicable in a determined part of the federal state. In other federal countries, the child protection legislation was adopted at the federal level and implemented in all states.

The 44 states included in the report represent different legal systems and legal cultures (Table 2). The sample includes common law countries (N=8), countries with mixed legal systems (N=3), civil law countries (N=28), and Nordic civil law countries (N=5). Common law countries rely to a larger extent on the precedents created through practice. Common law, as the body of law made by judges, stands in contrast to and on equal footing with statutes which are adopted through the legislative process, and regulations which are promulgated by the executive branch. Civil law, in contrast, focuses on codified law and all of its legal rules are codified into a referable system, which serves as the primary source of law. Conceptually, civil law proceeds from abstractions, formulate general principles and distinguish substantive rules from procedural rules. It holds case law secondary and subordinate to statutory law. Mixed legal systems are historically influenced both by the statutory law and the common law; often the approach to court practice in these countries differ; some legal systems take inspiration from canon law. Nordic law has its foundation in customary law but has for now codified legislation. It is pliable and less authoritarian than other European legal systems as it is relatively less restrictive. The laws focus on rules, principles and precedents; the courts are open to reflect changing social conditions (Koch and Sunde, 2017).

The report's starting point is the legal texts collected by Skivenes and Sørsdal (2018). During 2018-2019, research assistants Amy McEwan-Strand and Trond Helland compiled the list of legislations for most of the other countries by utilising two main methods. First, they systematically examined the descriptions made in research, and especially country system presentations in edited book projects (Burns et al., 2017; Gilbert et al., 2011; Skivenes et al., 2015), as well as the draft chapters developed for the International Handbook of Child Protection Systems edited by Berrick, Gilbert & Skivenes (in press). Secondly, we examined court-cases of the European Court of Human Rights

on child protection and the legislation reported herewith. Finally, we examined the national reports submitted to the CRC. When necessary, the research assistants contacted the national experts included in the upcoming Handbook on Child Protection Systems (Berrick et al, in press) to inspect and confirm our selection of legislation (see Table 2). Research by Skivenes and Sørdsdal (2018) showed that the CBI can be worded in many ways. Thus, the search for the current report focused on all the different forms of the terms as identified in their article. Central was references to the ‘interests’, ‘welfare’ or ‘wellbeing’ of the child or other similar terms used in the legislation.

The report analyses English translations of these national legal provisions (see table 2). For eight countries, this was the original language of the legal text; 15 countries provided the official translation of the text. For 12 countries, Google translate was used for translating the legislation. Later this translation was checked with the country expert. For two countries, the translation was included in a CRC report; for five countries, the translation was included either in a book or an academic article; for one country, the translation was included in a judgment of the European Court of Human Rights. The legislation was then checked against the national legislation database to ensure that the English translation was up to date.

The material was collected spring 2020 by Katre Luhaama and updated and reviewed in July 2021. First, the review focused on whether the legislation had been changed or amended. For that, the webpages of the national child protection bodies were searched, and the national legislation in the native language was found, and the latest status of this legislation was confirmed in the official national legislation databases. Secondly, for the countries where the legislation was missing, the higher-level legislation (Constitution) was checked together with the latest national report to the CRC. Third, the review also included literature search focused on the legal analysis of the national child protection systems (see Table 2).

All 44 legal systems do include detailed references to the best interests of the child principle (with Japan having the least precise reference), even though some states have a specific child protection legislation whereas others regulate the matter in family laws or civil codes. A detailed overview of the coding of the legislation is presented in the Appendix.

Table 2: Country, type of legal system, central legal act, and status of translation of this legal act or CBI provision.

Country	Legal system	Legal act	Translation
Australia	common law	Children and Young People Act (2008)	Original
Austria	civil law	Civil Code	Article
Belgium	civil law	Constitution	Official
Bulgaria	civil law	Child Protection Act	Official
Canada (Ontario)	common law	Child, Youth and Family Services Act (2017)	Original
Chile	civil law	Civil Code	Google
Croatia	civil law	Family Act	ECtHR
Cyprus	mixed	Children Law	Official
Columbia	civil law	Children’s and Adolescents Code	Google
Czech Republic	civil law	Act on the social and legal protection of children	Google
Denmark	Nordic civil law	Act on Social Services	Official
Estonia	civil law	Child Protection Act	Official

Finland	Nordic civil law	Child Welfare Act	Official
France	civil law	Code de l'action sociale et des familles	Google
Germany	civil law	Civil Code (BGB)	Official
Greece	civil law	Civil Code	Book
Hungary	civil law	Civil Code; Protection and guardianship administration to children	Official
Iceland	Nordic civil law	Child Protection Act	Official
Ireland	common law	Constitution; Child Care Act	Original
Israel	common law	Youth Care and Supervision Law 1960	CRC / Google
Italy	civil law	Civil Code	Google
Japan	civil law	Child Welfare Act (v 2016)	Google
Korea (South Korea)	civil law	Child Welfare Act	Google
Latvia	civil law	Law on the Protection of the Children's Rights	Official
Lithuania	civil law	Fundamentals of the Protection of the Rights of the Child	Official
Luxembourg	civil law	Civil Code; Youth Act	CRC / Google
Malta	mixed	Minor Protection (Alternative Care) Act	Official
Mexico	civil law	Act on the Protection of the Rights of Children and Adolescent	Google
Netherlands	civil law	Civil Code	Google
New Zealand	common law	Care of Children Act 2004	Original
Norway	Nordic civil law	Child Welfare Act	Official
Poland	civil law	Family and Guardianship Code	Book
Portugal	civil law	Constitution; Protection of Children and Youth in Danger Act; Civil Code	Official
Romania	civil law	Child Protection Act	Google
Slovak Republic	civil law	Social and legal protection of children	Google

Slovenia	civil law	Family Code	Google
Spain	civil law	Organic Law 1/1996	Official
Sweden	Nordic civil law	Social Services Act, 2001:453; Children and Parents Code (1949: 381) S 6-2	Amesto
Switzerland	civil law	Support and Welfare Act for Children And Youths	Amesto
Turkey	civil law	Child Protection Law	Int. Org.
UK (England)	common law	Children Act 1989	Original
UK (Scotland)	Mixed	Children Act 1995; Children's Hearings	Original
UK (Wales)	common law	Social Services and Well-being (Wales) Act 2014	Original
UK (Northern Ireland)	common law	The Children (Northern Ireland) Order 1995	Original

The data material for this report is more diverse than the sample used by Sørsdal and Skivenes (2018). First, the proportion of common law countries is much smaller, with 8 out of the 44 legal acts coming from a purely common law system and three from a mixed system with common law elements (Cyprus, Malta and Scotland), as opposed to 33 of the legal acts stemming from a version of a civil law system. Further, the sample of countries is more of a mix geographically, with several Central, Eastern and South-eastern European countries in the sample, as well some Asian and two Latin-American countries (Mexico, Colombia).

Limitations

As in Skivenes and Sørsdal (2018), we examine the formulation of the principle in the legislation that guides child protection. Thus, the analysis excluded other legislation or other mechanisms that may instruct professionals in the front-line services and the courts, such as political-administrative directives or case laws. Further, the current research does not consider how the principle is applied and reasoned in courts or child protection agencies. Thus, the mapping does not focus on aiming to understand the substantive interpretation and implementation context.

Due to the peculiarities of the common law and mixed law systems, the report might miss out where the CBI evaluation criteria have been established through national court practice. As an example, Israeli legislation includes a definition of the child in need and the CBI in this context functions as an intervention threshold. The substantive criteria for the evaluation of the CBI in court has in this case developed through the practice of the courts and it is not reflected in a particular legal instrument. Thus, current research cannot fully capture the hierarchy or co-dependency of the CBI with other legal norms (see Luhamaa, 2015).

Furthermore, the mapping does not examine the position of the CRC itself in the national legal system. This might mean that we miss out when the courts of a country implement the CRC directly and do not have a system in which principles are duplicated in national legislation. We can capture the direct references to the CRC (Colombia, and Slovak Republic), but miss out when a court would apply the CRC directly because the position of the international treaties in the national legislation or because such guidance has been given by higher courts. Thus, we cannot fully appreciate the complexity, hierarchy and relationships of national legal norms and a country's judiciary.

Furthermore, there are countries where the CBI is included in several different legal norms. The example of Germany illustrates the complexity of the legal system and illustrate a limitation of the approach in the report. The Civil Code of Germany includes the principle of Child's best interests in Article 1697a. This provision is general in its nature and applies to all family matters: *'To the extent not provided otherwise, the court, in proceedings on the matters provided for in this title, makes the decision that, taking into account the actual circumstances and possibilities and the justified interests of those involved, is most conducive to the best interests of the child'*. The provision includes references to weight and procedures, as well as the needs of the child. The Civil Code stresses the importance of the CBI, also in Article 1666 that deals with measures that courts can take for the protection of the child. There, the law instructs the judge to consider the willingness and ability of the parents to avert the danger as well as stresses the need to protect the child through child protection measures. Thus, the analysis of article 1697a only would not show the full scope of considerations that are obligatory for the child protection decision-making, and we include here the Civil Code.

Thus, we cannot exclude that we do not capture that some countries include the general principles of their child protection systems within the best interest principle, whereas others have laid out principles and important considerations elsewhere in legislation and/or their administrative/legal systems.

Despite these limitations, arguable national legislation should be understandable to every citizen in a country; and the rights of the child should also be accessible to children. Thus, the premise that national legislation does explicitly incorporate child rights, including the CBI reflects the child-centric understanding of national legislation.

Chapter 4 Findings

Different functions of the CBI

Legal norms have different functions in the national legal system. Functional comparative analysis goes beyond formal structures of law and looks at the substantive function of the legal norm. First, functionalist comparative law is factual; it focuses not on rules but on their effects. Second, functionalist comparative law combines its factual approach with the theory that its objects must be understood in the light of their functional relation to society. Law and society are thus thought to be separable but related. Consequently, and third, function itself serves as *tertium comparationis*. Institutions, both legal and non-legal, even doctrinally different ones, are comparable if they are functionally equivalent, if they fulfil similar functions in different legal systems (e.g. Michaels, 2006).

For the purposes of the current report, CBI can function at the different level of the legislation and has different forms of application, even though all the selected legal norms also guide the decision-maker in the child protection matters. For functional division, central is whose actions is the CBI principle intended to guide, i.e. how wide is its intended audience and to how many different types of activities is it intended to cover. Typically, legal norms are more general, the more addressees it has. Table 3 shows the different functions the CBI can have.

First, when the CBI is defined as a general right or obligation (typically defined in a constitution), its most likely echoes the general wording of the CBI in the CRC as its audience includes all the state institutions, all national legislation as well as all the different types of actions that could be relevant for the child.

Secondly, CBI can be a general principle of child protection understood in a wider (cover support, services, child protection budgeting as well as all family related matters) or narrower sense (focuses

on state intervention in child protection matters). In such cases, the intended audience of the legislation are more defined, and typically include child protection institutions and bodies making child-protection decisions.

Thirdly, CBI can be a procedural requirement that has to be followed when child protection matter requires decision-making. In some cases, such procedural requirement can be wide and cover all child protection decisions (provision of services, support, interventions) or be narrow and directed towards a concrete decision-maker in a particular removal case.

Fourth, CBI can be defined as an intervention threshold requiring the state to action when the natural carers of the child are not protecting CBI.

Table 3: Functional typology of CBI in national legislation

Type of legal act	Function in the legal system	Operationalisation	Example
1. CBI as general right or obligation	General right or obligation to take into account the CBI guides all public and private actors and guides the interpretation and implementation of all the other legal acts.	When the state has included CBI as a general right or obligation, it presumably also applies CBI in the CP matters. Such regulations typically target a wide range of subjects – legislator, CP professionals and decision-makers.	<i>The Belgian Constitution Article 22bis</i> <i>‘4. In all decisions concerning children, the interest of the child is a primary consideration.’</i>
2. CBI guiding general child protection	Child protection acts can a) guide all actions relating to children; b) focus on the state’s child protection system.	When the state has included CBI in their general child protection legislation, it should apply it, as a minimum, in all care proceedings. Subjects of such regulations are typically CP professionals and decision-makers.	<i>Bulgaria, Child Protection Act Article 3. Child protection shall rest on the following principles:</i> <i>3. (amended, SG No. 14/2009) the best interest of the child shall be secured;</i>
3. Procedural regulation	Procedural regulations guide the process in a child protection matter.	Such regulation would guide all the decision-makers	<i>Chile Civil Code Art. 225-2. In establishing the regime and exercise of personal care, the following criteria and circumstances will be considered and weighed together: [...]</i> <i>j) Any other relevant background considering the best interests of the child.</i>
4. CBI as an intervention threshold	Such regulation shows when a state can/should intervene in otherwise protected family life.	Such regulation would guide all the decision-makers	<i>Croatia, Family Act, section 131</i> <i>‘1. Measures to protect the rights and welfare of a child shall be ordered on the basis of an expert assessment if it has been established that there has been an infringement of the Child’s rights or welfare or that the Child’s rights or welfare are at risk.’</i>

In Table 4 a summary of the legislative wording and functions of the law/legal norms that include CBI within the 44 legal systems is presented (see Appendix for an overview of the coding of the

legislation). First, most of the countries (N=31) had incorporated CBI in their national child protection legislation and CBI is applied as a general child protection principle. Second, in nine countries, the CBI functioned as an intervention threshold. Thirdly, in 16 countries, the CBI focused on the decision-maker and the decision-making process. Finally, 13 countries include the CBI as a general right or a general obligation of the state. These four categories are not mutually exclusive as different parts of the legal provision can have different functions. One legal provision can both include the general CBI provision as well guide the decision-maker more specifically.

Table 4: Functional division of the CBI.

Country	CBI terminology	CPS principle	Intervention threshold	Decision maker or process	General right or obligation
Total	-	31	9	16	13
Australia	Best interests	Yes		Yes	
Austria	Wellbeing	Yes			Yes
Belgium	Best interests				Yes
Bulgaria	Best interests	Yes		Yes	
Canada (Ontario)	best interests, protection and well-being of children	Yes		Yes	
Chile	best interests			Yes	
Croatia	Child's rights and welfare		Yes		
Cyprus	welfare; best interests	Yes			
Columbia	best interests				Yes
Czech Republic	interests and wellbeing	Yes			
Denmark	best interests	Yes			
Estonia	interests	Yes		Yes	Yes
Finland	interests, wellbeing	Yes		Yes	
France	Best Interests	Yes		Yes	
Germany	best interests		Yes	Yes	
Greece	interests			Yes	
Hungary	interests		Yes		
Iceland	best interests	Yes			
Ireland	welfare of the child	Yes	Yes	Yes	
Israel	Child in need		Yes	Yes	
Italy	abilities, inclinations and aspirations			Yes	
Japan	welfare	Yes			Yes
Korea (South Korea)	interests	Yes			Yes
Latvia	interests	Yes			Yes
Lithuania	best interests	Yes	Yes		Yes
Luxembourg	best interests	Yes			Yes
Malta	best interests	Yes			
Mexico	best interests	Yes			Yes
Netherlands	Best interests	Yes			

New Zealand	welfare and best interests	Yes			
Norway	best interests	Yes			Yes
Poland	best interests		Yes	Yes	
Portugal	best interests	Yes			
Romania	best interests	Yes			Yes
Slovak Republic	legally protected interests	Yes			
Slovenia	interests	Yes	Yes		
Spain	best interests	Yes			Yes
Sweden	best interests	Yes			
Switzerland	Wellbeing				Yes
Turkey	interests and wellbeing	Yes	Yes		
UK (England)	welfare	Yes		Yes	
UK (Scotland)	welfare			Yes	
UK (Wales)	Wellbeing	Yes			
UK (Northern Ireland)	welfare			Yes	

When the CBI is included in the legislation as a general right or obligation that must be followed in all the three general senses discussed by the CRC Committee in policymaking and in deciding a particular matter. The norm is expected to be general in its wording. It would not include specific criteria that have to be evaluated in a particular case. When a CBI is included as an intervention threshold, it defines the prohibited action that obliges the state to act. Such a norm presumably would include minimal guidance for the decision-maker on what measures to consider when the threshold is passed by the Child's carers. When the CBI is a procedural principle, it focuses on the decision-making process and not on the substantive criteria or rights to be evaluated in the process. Finally, when the CBI is a child protection principle, it presumably focuses on the substantive evaluative criteria and focuses less on the decision-making process.

Wording of provisions

As discussed above, the CBI includes two central focus points. First, the decision-maker has to aim his or her decision to Child's 'best' interest. This presupposes evaluation of different interests of the child, balancing these interests and rights of others against each other and finding the best balance of these rights and interests. Secondly, the CRC Article 3(1) requires that CBI is a 'primary' consideration. Twenty countries used 'best interest' in the text; six countries used 'wellbeing' or 'welfare' as the central term. Seven countries referred to the 'interests' of the child, and one country referred to legally protected interests. Seven countries included a combination of these terms, and the two countries used other terms. Israel referred to the '*child in need*'; Italian legislation referred to '*abilities, inclinations and aspirations*' of the child. Table 5 summarises the wording of the legislation as well as the position of the criteria and shows that the CBI is worded in various ways.

Wide or narrow discretion?

Skivenes and Sørsdal (2018) proposed that countries that include four or more criteria grant the decision-makers narrow discretion for deciding in a concrete case. Out of the 44 countries, 26 included four or more criteria in their national legislation, whereas 18 countries included 3 or less criteria, four of which include only one criterion (Columbia, Israel, Netherlands, Switzerland).

There were two countries that included 9 criteria (Romania and Spain); and four countries that included 8 (Australia, Austria, Canada, England). Interestingly, three of these states are common law countries. Thus, the hypothesis that common law countries have less detailed regulations does not hold.

Child's future

Seven countries refer to the Child's future or long-term perspective. Bulgarian legislation requires that *'the development of children of prominent talent shall be ensured'*. Legislation of Lithuania requires that *'specific situation of the individual child, assessing and determining what is most beneficial to the child in the near and future'* has to be taken into account in child protection matters.

Child's identity

Considerations that focus on the Child's individuality in terms of cultural inheritance or other aspects important to the Child's identity are mentioned in the child protection legislation of 16 countries. The legislation that requires that the Child's identity, individuality or culture be considered varies in the comprehensiveness and details of the wording and text.

Finnish legislation stresses the need to *'take account of the Child's linguistic, cultural and religious background.'*

Child's needs

Thirty-three of the 44 countries include some wording regarding the needs of the child. The Child's need is a contested concept. Although most of the considerations around best interest are directly or indirectly about the needs and care of the child on the broader sense, here we focus on the direct mention of particular needs concerning the child, such as physical, emotional, intellectual and educational needs. Thus, this code does not include statements that focus on aspects such as the need for parental care or protection from harm, or any other consideration that is included in the other seven categories that we identified in the material.

As an example, French legislation provides: *'The best interests of the child, the consideration of his fundamental, physical, intellectual, social and emotional needs as well as the respect of his rights must guide all decisions concerning him.'*

Child's participation

Child participation requirement is included in Article 12 of the CRC. Thus, this might be a requirement that is included in a separate legal provision of the general child protection laws and could have been missing for some of the countries. Twenty-eight of the 44 analysed provisions require the Child's view, opinion, wishes, feelings, or meanings to be considered (cf. Table 5). These instructions vary in both strength and content. As an example, the Belgian Constitution requires: *'Each child has the right to express his or her views in all matters affecting him or her, the views of the child being given due weight in accordance with his or her age and maturity.'* Danish legislation provides: *'The support shall be based on the Child's or young person's own resources, and the views of the child or young person shall always be taken into account, and proper importance shall be attributed to such views in accordance with the age and maturity of the child or young person in question.'*

Child's relationships

The legislation in 19 countries includes various forms of consideration of the Child's relationship with a caregiver or other significant others. This code does not include text that relates to the parent's or caregiver's care of the 'Child's needs' intended to conserve 'permanency/stability' for the child. Amongst the eight countries that mention the Child's relationships, most emphasize both the relationship to the caregivers or parents and the Child's relationship with other family members.

As an example, Austrian legislation provides that assessment should focus on: *'reliable contact between the child and both parents and important caregivers and secure relationships between the child and these people.'*

Parent's perspective

Twenty-five countries mention the parents' or caregivers' capacity to care for the child or their opinion about the child. This finding differs substantively from the findings of Skivenes and Sørsdal (2018) where only four countries included similar provisions. For example, Bulgarian law requires that *'the ability of the parents to care for the child'* is taken into account. Similarly, the legislation of Chile requires that *'The aptitude of the parents to guarantee the well-being of the child and the possibility of procuring a suitable environment for them, according to their age'* has to be evaluated.

Protection

Thirty-one of the countries includes consideration of the Child's safety or risk factors. The focus is on two types of risk: (a) the potential harm unnecessary removal or intervention may have on the child, and/or (b) the risks of abuse, neglect or harm to the child if he or she remains in a potentially dangerous situation.

Legislation of Bulgaria obliges the decision-makers to take into account: *'the danger or harm which has been caused or which is likely to be caused to the child.'*

Permanency

Sixteen of the countries cite factors related to the importance of permanency and stability of emotional and/or physical living conditions and the upbringing of the child. Permanence is essential for structure, strength and consistency to support children's development (Skivenes and Thoburn 2017). Several of the countries have a focus on stability in relation to the birth family or a change to an established living arrangement.

For example, Iceland legislation provides: *'Child protection work shall promote stability during childhood.'* Spanish legislation is more detailed: *'The need for stability in solutions adopted in order to promote effective integration and development of the minor within society, as well as to minimise the risk of any material or emotional changes that these may have in their personality and future development.'* It also stresses the importance of the birth family *'Permanence in their birth family shall be prioritised and maintenance of their family relations shall be met, provided this is possible and positive for the minor.'*

Weight and Procedures

Although the interpretation of the best interest principle varies considerably, 43 countries specify how factors should be ranked or the best interest principle weighted against other principles or mention a timeline. Central is the role of the principle in relation to other principles and rights – whether the CBI is *imperative* (Colombia), has *decisive importance* (Norway) or it is *considered first* (Korea).

Importance of the family

Next to the criteria utilised by Skivenes and Sørsdal (2018), the N=22 legislations included considerations that follow the approach taken in the practice of the European Court of Human Rights (Breen et al., 2020), and that focus on the preventive measures, the importance of the family life and family support and stress that separation from the family has to be last resort measure.

As an example, the legislation of the Czech Republic provides that *‘The primary aspect of social and legal protection is the interest and well-being of the child, the protection of parenthood and the family, and the mutual right of parents and children to parental education and care.’* French legislation obliges the judge to *‘always endeavour to obtain the support of the family for the measure envisaged and decide in strict consideration of the best interests of the child.’*

These legal texts aim to show that child’s rights have to be balanced with the parental rights and see the family unit as something that is principally at the best interests of the child. In principle, this criterion could be part of the weight and procedures criteria as it is an element connected to the right to family life and rights of the parent that the decision-maker has to take into account when evaluating the rights of the child. The difference is that in these countries the importance of the family was at the core of the provision and ranked higher than other criteria.

Chapter 5 Summary of findings

Table 5: Main findings.

<i>Country</i>	<i>Future</i>	<i>Identity</i>	<i>Needs</i>	<i>Participation</i>	<i>Relationship</i>	<i>Parent's perspective</i>	<i>Protection</i>	<i>Permanency</i>	<i>Weight and procedures</i>	<i>Total no factors</i>
Summary findings	7	16	33	28	19	25	31	16	43	
<i>Australia</i>	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	8
<i>Austria</i>	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	8
<i>Belgium</i>	-	-	Yes	Yes	-	-	Yes	-	Yes	4
<i>Bulgaria</i>	-	Yes	Yes	Yes	-	Yes	Yes	Yes	Yes	7
<i>Canada (Ontario)</i>	-	Yes	Yes	Yes	Yes		Yes	Yes	Yes	7
<i>Chile</i>	-	-	-	Yes	Yes	Yes	-	Yes	Yes	5
<i>Croatia</i>	Yes	-	-	Yes	Yes	Yes	Yes	-	Yes	6
<i>Cyprus</i>	-	Yes	Yes	-	-	Yes	-	-	Yes	4
<i>Columbia</i>	-	-	-	-	-	-	-	-	Yes	1
<i>Czech Republic</i>	-	-	Yes	-	Yes	Yes	-	-	-	3

<i>Denmark</i>	Yes	-	Yes	Yes	Yes	-	-	Yes	Yes	6
<i>Estonia</i>	-	-	Yes	Yes	-	-	-	-	Yes	3
<i>Finland</i>	Yes	Yes	Yes	Yes	-	-	Yes	-	Yes	6
<i>France</i>	-	-	Yes	-	-	-	-	-	Yes	2
<i>Germany</i>	-	-	Yes	-	-	Yes	Yes	-	Yes	4
<i>Greece</i>	-	-	-	Yes	-	Yes	-	-	Yes	3
<i>Hungary</i>	-	Yes	Yes	-	Yes	Yes	Yes	-	Yes	6
<i>Iceland</i>	-	-	-	Yes	-	-	Yes	Yes	Yes	4
<i>Ireland</i>	-	-	-	Yes	-	Yes	Yes	-	Yes	4
<i>Israel</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	Yes	8
<i>Italy</i>	-	-	Yes	Yes	Yes	Yes	Yes	-	Yes	6
<i>Japan</i>	-	-	Yes	Yes	-	Yes	Yes	-	Yes	5
<i>Korea (South Korea)</i>	-	-	Yes	-	-	-	Yes	-	Yes	3
<i>Latvia</i>	-	-	Yes	-	-	Yes	Yes	-	Yes	4
<i>Lithuania</i>	Yes	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes	8

<i>Luxembourg</i>	-	-	Yes	Yes	-	Yes	-	-	Yes	4
<i>Malta</i>	-	-	-	-	-	-	Yes	Yes	Yes	3
<i>Mexico</i>	-	Yes	Yes	Yes	-	-	-	-	Yes	4
<i>Netherlands</i>	-	-	-	-	-	Yes	Yes	-	Yes	3
<i>New Zealand</i>	-	Yes	Yes	-	Yes	Yes	Yes	Yes	Yes	7
<i>Norway</i>	-	-	-	-	Yes	-	-	Yes	Yes	3
<i>Poland</i>	-	-	-	-	-	-	Yes	-	Yes	2
<i>Portugal</i>	-	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7
<i>Romania</i>	-	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7
<i>Slovak Republic</i>	-	-	Yes	-	-	-	Yes	-	Yes	3
<i>Slovenia</i>	-	Yes	Yes	-	-	Yes	Yes	-	Yes	5
<i>Spain</i>	Yes	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes	8
<i>Sweden</i>	-	-	Yes	Yes	Yes	-	Yes	-	Yes	5
<i>Switzerland</i>	-	-	-	-	-	-	-	-	Yes	1

<i>Turkey</i>	-	-	Yes	Yes	Yes	-	Yes	-	Yes	5
<i>UK (England)</i>	-	Yes	Yes	Yes	-	Yes	Yes	Yes	Yes	7
<i>UK (Scotland)</i>	Yes	-	Yes	Yes	Yes	Yes	Yes	-	Yes	7
<i>UK (Wales)</i>	-	Yes	Yes	Yes	-	Yes	-	-	Yes	5
<i>UK (Northern Ireland)</i>	-	Yes	Yes	Yes	-	Yes	Yes	Yes	Yes	7

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Appendix: National CBI provisions

Appendix for the report: Child's best interest in child protection legislation of 44 jurisdictions

Australia (Capital Territory)

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Australia	Children and Young People Act (2008) ⁷	c.10.3, s. 349	English	N/A	CP	Australian Capital Territory

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Australia	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	8	Best interests

Australian Capital Territory

Children and Young People Act 2008

Part 10.3 Principles and considerations care and protection chapters

349 What is in best interests of child or young person?

1. For the care and protection chapters, in deciding what is in the best interests of a child or young person, a decision-maker must consider each of the following matters that are relevant to the child or young person:
 - a. the need to ensure that the child or young person is not at risk of abuse or neglect;
 - b. any views or wishes expressed by the child or young person;
 - c. the nature of the Child's or young person's relationship with each parent and anyone else;
 - d. the likely effect on the child or young person of changes to the Child's or young person's circumstances, including separation from a parent or anyone else with whom the child has been living;
 - e. the practicalities of the child or young person maintaining contact with each parent and anyone else with whom the child or young person has been living or with whom the child or young person has been having substantial contact;
 - f. the capacity of the Child's or young person's parents, or anyone else, to provide for the Child's or young person's needs including emotional and intellectual needs;
 - g. for an Aboriginal or Torres Strait Islander child or young person—that it is a high priority to protect and promote the Child's or young person's cultural and spiritual identity and development by, wherever possible, maintaining and building the Child's or young person's connections to family, community and culture;
 - h. that it is important for the child or young person to have settled, stable and permanent living arrangements;

⁷ <https://www.legislation.act.gov.au/a/2008-19/> (23.04.2020)

- i. for decisions about placement of a child or young person – the need to ensure that the earliest possible decisions are made about a safe, supportive and stable placement;
 - j. the attitude to the child or young person, and to parental responsibilities, demonstrated by each of the Child’s or young person’s parents or anyone else;
 - k. any abuse or neglect of the child or young person, or a family member of the child or young person;
 - l. any court order that applies to the child or young person, or a family member of the child or young person.
2. For the care and protection chapters, in deciding what is in the best interests of a child or young person, a decision-maker may also consider any other fact or circumstance the decision-maker considers relevant.

Austria

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Austria	Civil Code ⁸	s. 138	German	?	Civil law	Federal

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
<i>Austria</i>	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	8	Wellbeing

Austrian Civil Code

Child’s Wellbeing

Section 138. The wellbeing of the child should serve as the guiding principle and be guaranteed insofar as possible in all matters concerning the minor child, particularly parental custody and personal contact. Important criteria in the assessment of a Child’s wellbeing include in particular

1. suitable provisions, in particular of food, medical care, sanitation, living space and a thorough education for the child;
2. care, security and the protection of the Child’s physical and mental integrity;
3. the parents’ appreciation and acceptance of the child;
4. the encouragement of the Child’s talents, skills, interests and opportunities to grow;
5. the consideration of the Child’s opinion in accordance with his/her understanding and ability to form an opinion;
6. the prevention of an adverse effect on the child due to the taking of action against his or her will;
7. removal of the risk that the child may suffer violence or assault or see such happen to important caregivers;
8. removal of the risk that the child may be illegally removed or retained or otherwise come to harm;
9. reliable contact between the child and both parents and important caregivers and secure relationships between the child and these people;
10. the prevention of conflicts of loyalties and guilty feelings on the part of the child;
11. the protection of the Child’s rights, needs and interests and

⁸ <https://www.legislation.act.gov.au/View/a/2008-19/current/PDF/2008-19.PDF> (23.04.2020).

12. the living conditions of the child, his or her parents and environment.

Belgium

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Belgium	Constitution ⁹	s. 22bis	German, French, Dutch	Official	Constitution	Federal

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
<i>Belgium</i>	-	-	Yes	Yes	-	-	Yes	-	Yes	4	Best interests

Belgium implements CRC directly in its legal system. The legislative power to deal with child protection matters is entrusted to the regions, that regulate further the protection and removal conditions for the child.

The Belgian Constitution

Article 22bis

Each child is entitled to have his or her moral, physical, mental and sexual integrity respected.

Each child has the right to express his or her views in all matters affecting him or her, the views of the child being given due weight in accordance with his or her age and maturity.

Each child has the right to benefit from measures and facilities which promote his or her development.

In all decisions concerning children, the interest of the child is a primary consideration.

The law, federate law or rule referred to in Article 134 ensures these rights of the child.

Bulgaria

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Bulgaria	Child Protection Act ¹⁰	s. 3(3) + suppl. §1	Bulgarian	Official	General (CP)	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
<i>Bulgaria</i>	-	Yes	Yes	Yes	-	Yes	Yes	Yes	Yes	7	Best interests

Child Protection Act

⁹ https://www.dekamer.be/kvvr/pdf_sections/publications/constitution/GrondwetUK.pdf (23.04.2020).

¹⁰ <https://www.mlsp.government.bg/index.php?section=CONTENT&I=226&lang=> ‘Закон за закрила на детето’; in English: <https://www.mlsp.government.bg/index.php?section=POLICIESI&I=263&lang=eng>

Article 3. Child protection shall rest on the following principles:

1. recognition and respect for the Child's personality;
2. the child shall be brought up in a family environment;
3. (amended, SG No. 14/2009) the best interest of the child shall be secured;
4. (amended, SG No. 14/2009) special protection shall be provided to children at risk;
5. voluntary participation in child protection activities shall be encouraged;
6. persons directly involved in child protection activities shall be selected in accordance with their personal qualities and social communication abilities, and with care as to their professional training
7. restrictive measures shall be of temporary nature;
8. (new, SG No. 36/2003) child protection actions shall be immediate;
9. (new, SG No. 36/2003, amended, SG No. 38/2006, SG No. 14/2009) care in accordance with the needs of the child;
10. (new, SG No. 14/2009) the development of children of prominent talent shall be ensured;
11. (new, SG No. 14/2009) responsible parenthood shall be encouraged;
12. (new, SG No. 14/2009) support for the family;
13. (new, SG No. 38/2006, renumbered from Item 10, SG No. 14/2009) preventive measures for child safety and protection;
14. (renumbered from Item 8, SG No. 36/2003, renumbered from Item 10, SG No. 38/2006, renumbered from Item 11, SG No. 14/2009) the effectiveness of measures undertaken shall be controlled.

Supplementary provisions

§ 1. Within the meaning of this Act:

- ‘5. (New, SG No. 14/2009) ‘The best interest of the child’ shall be an assessment of:
- a) the desires and feelings of the child;
 - b) the physical, mental and emotional needs of the child;
 - c) the age, gender, past and other characteristics of the child;
 - d) the danger or harm which has been caused or which is likely to be caused to the child;
 - e) the ability of the parents to care for the child;
 - f) the consequences which will ensue for the child with a change of circumstances;
 - g) other circumstances with a bearing on the child.’

Canada (Ontario)

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Canada	Child, Youth and	s. 1, s. 74(3)	English	N/A	CP	Regional

	Family Services Act (2017) ¹¹										
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	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Canada (Ontario)	-	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes	7	best interests, protection and well-being of children

Child, Youth and Family Services Act, 2017

Paramount purpose

1 (1) The paramount purpose of this Act is to promote the best interests, protection and well-being of children.

Interpretation, Definitions

74 [...] Best interests of child

3. Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,

- Consider the Child's views and wishes, given due weight in accordance with the Child's age and maturity, unless they cannot be ascertained;
- in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the Child's cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and
- consider any other circumstance of the case that the person considers relevant, including,
 - a. (i) the Child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,
 - b. (ii) the Child's physical, mental and emotional level of development,
 - c. (iii) the Child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
 - d. (iv) the Child's cultural and linguistic heritage,
 - e. (v) the importance for the Child's development of a positive relationship with a parent and a secure place as a member of a family,
 - f. (vi) the Child's relationships and emotional ties to a parent, sibling, relative, other member of the Child's extended family or member of the Child's community,
 - g. (vii) the importance of continuity in the Child's care and the possible effect on the child of disruption of that continuity,
 - h. (viii) the merits of a plan for the Child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent,
 - i. (ix) the effects on the child of delay in the disposition of the case,

¹¹ <https://www.ontario.ca/laws/statute/17c14> (23.04.2020).

- j. (x) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent, and
- k. (xi) the degree of risk, if any, that justified the finding that the child is in need of protection.

Chile

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Chile	Civil Code ¹²	s.225-2	Spanish	Google	Civil law	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Chile	-	-	-	Yes	Yes	Yes	-	Yes	Yes	5	Best interests

Article 1 of the Constitution of Chile stresses the importance of the protection of the family. Thus, all the provisions of ordinary legislation have to be interpreted as also bearing in mind this obligation.

Civil Code

Art. 225-2. In establishing the regime and exercise of personal care, the following criteria and circumstances will be considered and weighted together:

a) The emotional bond between the child and his parents, and other people in his family environment.

b) The aptitude of the parents to guarantee the well-being of the child and the possibility of procuring a suitable environment for them, according to their age.

c) The contribution to the maintenance of the child while he was under the personal care of the other parent, being able to do so.

d) The attitude of each of the parents to cooperate with the other, in order to ensure maximum stability to the child and guarantee the direct and regular relationship, for which it will especially consider the provisions of the fifth paragraph of article 229.

e) The effective dedication that each of the parents procured the child before the separation and, especially, the one that he can continue developing according to his possibilities.

f) The opinion expressed by the child.

g) The result of the expert reports that have been ordered to be carried out.

h) The agreements of the parents before and during the respective trial.

i) The address of the parents.

j) Any other relevant background considering the best interests of the child.

Art. 226. The judge, in the case of physical or moral incapacity of both parents, may entrust the personal care of the children to another competent person or persons, watching primarily for the best interests of the child according to the criteria established in the article. 225-2.

¹² <http://bcn.cl/2dac2>

In the election of these people, the closest blood relatives will be preferred, and especially the ancestors.

Croatia

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Croatia	Family Act ¹³	s. 131(1)	Croatian	ECtHR judgment ¹⁴	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	<i>sum</i>	<i>Term</i>
<i>Croatia</i>	Yes	-	-	Yes	Yes	Yes	Yes	-	Yes	6	Welfare or interests of the child

The Constitution of Croatia¹⁵ stresses the rights of the parents to make independent decisions on their children (Article 63). Thus, the Family Act has to be applied taking into account this strongly worded parents' right. At the same time, the Constitution provides that the state protects children (Article 64) and their right to decent living (Article 62). According to the Constitution, one of the aims of the upbringing of children is their harmonious development (Article 63, s 2).

Family law act includes several provisions that relate to obligatory elements connected to the assessment of the welfare of the child. As current analysis looks at child welfare court proceedings, central provisions that include the evaluation of the welfare / interests of the child. Thus, the criteria is not included in a single provisions but in several connected provisions that enlist.

Family Act

Article 5 (The principle of primary protection of the welfare and rights of the child)

(1) Courts and bodies governed by public law which conduct proceedings in which the rights of the child are decided directly or indirectly must first of all protect the rights of the child and his or her welfare.

(2) The child has the right to have personal relations with both parents, unless it is contrary to the child's welfare.

Article 86 (The child's right to express an opinion)

[...]

(2) In all proceedings in which a child's right or interest is decided, the child has the right to find out in an appropriate manner the important circumstances of the case, to receive advice and express his opinion and to be informed of the possible consequences of respecting his opinion. The opinion of the child is taken into account in accordance with his age and maturity.

Section 128

¹³ https://narodne-novine.nn.hr/clanci/sluzbeni/2015_09_103_1992.html (24.04.2020)

¹⁴ Translation in case A and B v. Croatia (2019), para 65. <http://hudoc.echr.coe.int/eng?i=001-194217> (24.04.2020).

¹⁵

https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf (2.07.2021).

When determining the appropriate measure to protect the rights and welfare of a child, the body conducting the procedure shall ensure that a measure is applied which restricts as little as possible a parent's right to care for the child where it is possible to protect the rights and welfare of the child by such a measure.

Section 131

1. Measures to protect the rights and welfare of a child shall be ordered on the basis of an expert assessment if it has been established that there has been an infringement of the Child's rights or welfare or that the Child's rights or welfare are at risk.
2. The rights of the child are considered endangered if the care of the child is inadequate or if the child has psychosocial difficulties which are manifested through behaviour, emotional, school and other problems in the Child's growing up or if it is likely to occur.

Cyprus

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Cyprus	Children Law ¹⁶	s.3, 12	Greek	Official	CP	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Cyprus	-	Yes	Yes	-	-	Yes	-	-	Yes	4	welfare; best interests

The Constitution of Cyprus¹⁷ grants the right to family life (Article 15(1)). The Convention on the Rights of the Child and other international conventions have primacy before any national law. Therefore, all Services involved are required by legislation to make decisions based on the best interest of the child.¹⁸

Children law includes different actions that support the welfare of the child. There is no general definitive provision enlisting the elements of the welfare of the child. Thus, a provision relating to the general powers of the Director to act at the welfare of the child and take measures for the protection of the rights of the child was included in the report. Cyprus is developing new child protection legislation.¹⁹

Children Law

3. (1) Where it appears to the Director with respect to a child appearing to him to be under the age of sixteen—

¹⁶

[http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/86CD3D9C9F22BACEC2256E7E004D60F2/\\$file/Childrens%20Law%201956.pdf?OpenElement](http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/86CD3D9C9F22BACEC2256E7E004D60F2/$file/Childrens%20Law%201956.pdf?OpenElement) (24.04.2020).

¹⁷ <http://www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html> (01.07.2021)

¹⁸ Reply to Issues to the CRC Committee. CRC/C/CYP/RQ/5-6, submitted 14 Feb 2020, paras 30-31. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCYP%2fRQ%2f5-6&Lang=en (1.07.2021).

¹⁹ Ibid.

(a) that he has neither parent nor guardian or has been and remains abandoned by his parents or guardian or is lost; or

(b) that his parents or guardians are, for the time being or permanently, prevented by reason of mental or bodily disease, or infirmity or other incapacity or any other circumstances from providing for his proper accommodation, maintenance or upbringing and there is no available person or persons capable, fit or willing to undertake the care of such child; and

(c) in either case, that the intervention of the Social Welfare Department under this section is necessary in the interests of the welfare of such child, it shall be lawful for the Director to receive the child into his care under this section.

(2) Where the Director has received a child into his care under this section it shall, subject to the provisions of this Part, be his duty to keep the child in his care so long as the welfare of the child appears to him to require it and the child has not attained the age of eighteen.

(3) Nothing in this section shall authorize the Director to keep a child in his care under this section if any parent or guardian desires to take over the care of the child and the Director shall, in all cases where it appears to him to be consistent with the welfare of the child so to do, endeavour to secure that the care of the child is taken over either—

(a) by a parent or guardian of his; or

(c) by a relative or friend of his, being, where possible, a person of the same religious persuasion as the child or who gives an undertaking that the child will be brought up in that religious persuasion.

12. (1) Where a child is in the care of the Director it shall be the duty of the Director to exercise any powers with respect to him so as to further his best interests and to afford him opportunity for the proper development of his character and abilities.

(2) In providing for a child in his care the Director shall make such use of facilities and services available for children in the care of their own parents as appears to the Director to be reasonable in his case.

Colombia

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Colombia	Children's and Adolescents Code ²⁰	s.6, 8	Spanish	Google	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Colombia	-			-	-		-	-	Yes	1	best interests

Constitution of Colombia²¹ protects, among other rights, also the rights of children (Article 44). Among other things, it protects child's right to identity and child's needs, requires protection of

²⁰ http://www.secretariasenado.gov.co/senado/basedoc/ley_1098_2006.html (19.05.2020).

²¹ https://www.constituteproject.org/constitution/Colombia_2015.pdf?lang=en (1.07.2021).

the child as well as guarantee their free and full development. Article 42 of the Constitution provides for the protection of the family. The Children’s and Adolescents Code has to be read in that context. Neither of the provisions reference the CBI. CRC can be directly implemented in Colombia as it is an integral part of the national legislation.

Children’s and Adolescents Code

Article 6. Interpretation and Application Rules.

The norms contained in the Political Constitution and in the international treaties or conventions on Human Rights ratified by Colombia, especially the Convention on the Rights of the Child, will become an integral part of this Code, and will serve as a guide for its interpretation and application. **In any case, the rule most favorable to the best interests of the child or adolescent will always be applied.**

Article 8. Best Interest of Children, Girls and Adolescents.

The best interest of the child and adolescent **is understood as the imperative that compels all people to guarantee the comprehensive and simultaneous satisfaction of all their Human Rights**, which are universal, prevalent and interdependent.

Czech Republic

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Czech Republic	Act on the social and legal protection of children ²²	s.1, 5, (s.13, s.13a)	Czech	official	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Czechia	-		Yes	-	Yes	Yes		-		3	best interests

The Constitution of Czech Republic²³ (Article 10) includes international treaties as inherent part of national legislation. Thus, national legislation should be interpreted in accordance with the CRC. Section 1 of the Act on the Social and Legal Protection of Children enlists general principles of child protection including the “justifies interests of the child”. Article 5 of this Act includes general principles of the interests of the child. Sections 13 and 13a include regulation of child protection measures and removals.

Act on the social and legal protection of children

Section 1

Social and Legal Protection of Children

²² <https://www.zakonyprolidi.cz/cs/1999-359> (24.04.2020); English translation with the updates until 2012 https://www.mpsv.cz/documents/625317/625903/Act_359-1999.pdf/87861589-c041-8606-40d1-a6dbfe35d356 (1.07.2021). The provisions referred to in the current analysis have not been amended since 2012.

²³ <https://www.psp.cz/en/docs/laws/1993/1.html> (1.07.2021).

(1) The social and legal protection of children (hereinafter “social and legal protection”) shall be understood to include primarily the following:

- (a) Protection of a child’s right to positive development and due upbringing;
- (b) Protection of a child’s justified interests, including the protection of his or her property;
- (c) Efforts aimed at reviving deteriorated functions of a family; and
- (d) Efforts aimed at providing for a substitute family environment for a child who cannot be brought up in his or her own family permanently or temporarily.

(2) Special legal regulations that also govern the protection of the rights and justified interests of children shall remain unchanged.

(3) This Act shall apply to legal relationships that are not governed by any directly-applicable regulation of the European Union in the area of foster care benefits).

Section 5

The key aspect of social and legal protection shall be the interest and wellbeing of children, the protection of parenthood and the family and the right of parents and children for parental upbringing and care, while taking into consideration the child’s wider social community.

Denmark

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Denmark	Act on Social Services ²⁴	s.46,	Danish	Official	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Denmark	Yes	-	Yes	Yes	Yes	-	-	Yes	Yes	6	Best interests

The Constitution of Denmark does not enlist general of the child (except child’s right to education) or family. International treaties do not have a direct effect in Denmark.

Consolidation Act on Social Services

46.—

(1) The purpose of assisting children and young persons with special needs is to provide such children and young persons with the same opportunities for personal development, health and an independent adult life as other children and young persons. The support shall be provided to secure the best interests of the child or young person and shall be designed to

- (i) ensure continuity in childhood and youth and a safe environment of care offering close and stable relations to adults, for instance by supporting the Child’s or young person’s family relations and other network,

²⁴ <https://english.sim.dk/media/32805/engelsk-oversaettelse-af-bekendtgoerelse-af-lov-om-social-service-2018-opdateret-juni-2019.pdf> (24.04.2020).

- (ii) secure the Child’s or young person’s opportunities for personal development and acquisition of skills to build social relations and networks,
 - (iii) support the Child’s or young person’s schooling and chances of completing an education,
 - (iv) promote the health and welfare of the child or young person and
 - (v) prepare the child or young person for an independent adult life.
- (2) The support shall be provided at an early stage and on a continuous basis so that any problems encountered may as far as possible be remedied in the home or the immediate environment. On the basis of a case-by-case assessment, the support must be adapted to the specific situation of the individual child or young person and his/her family.
- (3) The support shall be based on the Child’s or young person’s own resources, and the views of the child or young person shall always be taken into account, and proper importance shall be attributed to such views in accordance with the age and maturity of the child or young person in question. Where possible, the difficulties of the child or young person shall be resolved in consultation and cooperation with his/her family. Where this is not possible, the background, purpose and constituent features of the specific measure taken must be explained to the custodial parent as well as to the child or young person.

Estonia

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Estonia	Child Protection Act ²⁵	s.5, s. 21	Estonian	Official	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	<i>sum</i>	<i>Term</i>
<i>Estonia</i>	-	-	Yes	Yes	-	-	-	-	Yes	3	(Best) interests/wellbeing

Estonian Constitution²⁶ stresses the state’s obligation to protect the family (Article 26) and importance of the rights of the parents in its constitution (Article 27). Furthermore, the Child Protection Act notes (Section 2) that it has to be interpreted in accordance with international treaties including the CRC. Article 21 of the Act includes central requirements of the CBI in Estonia. However, it has to be read together with the definition of the wellbeing of the child (article 4) and general principles of ensuring the well-being of the child as included in Article 5. Article 5 includes one principle typically coded for other countries – child’s needs. Therefore, when only coding Article 21, two (2) criteria are present. When including Article 5 (and/or Article 4), one further code on the needs of the child is present compared to the findings of Skivenes and Sørdsdal.

The reference to the “effect of the decision to the child” (s 21(2)1) has in other places been coded as permanence. However, in these other cases, the effect is more connected to the change of circumstance, whereas here the reference is made to the effect of the decision in general.

²⁵ <https://www.riigiteataja.ee/en/eli/511012019009/consolide> (24.04.2020).

²⁶ <https://www.riigiteataja.ee/en/eli/530122020003/consolide> (1.07.2021).

Child Protection Act

§ 5. Principles of ensuring rights and well-being of children

Upon ensuring the rights and well-being of children, the following principles provided for in the convention shall be based on:

- 1) every child has the inherent right to life, survival and development;
- 2) every child has the right to equal treatment without any discrimination;
- 3) in all action concerning children, the best interests of the child shall be a primary consideration;
- 4) every child has the right to independent opinion in all matters affecting the child and the right to express his or her views.

§ 21. Setting best interests of child as primary consideration

(1) Upon the adoption of or deciding not to adopt decisions affecting a child and choosing between different options upon planning a decision (hereinafter deciding together), the best interests of the child shall be ascertained and they shall be based on as the primary consideration upon the making of decisions.

(2) In order to ascertain the best interests of the child, it is necessary:

1) to ascertain all the relevant circumstances concerning the situation and person of the child and other information which is necessary to evaluate the effect of the decision on the Child's rights and well-being;

2) to explain the content and reasons of the planned decision to the child, to hear the child in a manner taking account of his or her age and development and to account for his or her opinion based on the Child's age and development as one of the circumstances upon ascertaining the best interests of the child;

3) assessing all the relevant circumstances in aggregate, to form a reasoned opinion concerning the best interests of the child with regard to the planned decision.

(3) If the best interests of a child differ from the Child's opinion or if a decision which does not coincide with the Child's opinion is made on other grounds, the reasons for not taking the Child's opinion into account must be explained to the child.

Finland

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Finland	Child Welfare Act ²⁷	s.4	Finnish	Official	CP	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	<i>sum</i>	<i>Term</i>
<i>Finland</i>	Yes	Yes	Yes	Yes	-	-	Yes	-	Yes	6	welfare

²⁷ https://www.finlex.fi/en/laki/kaannokset/2007/en20070417_20131292.pdf (24.04.2020). The law has been amended later, however, Section 4 has remained the same. <https://www.finlex.fi/fi/laki/ajantasa/2007/20070417> (1.07.2021).

Finnish Constitution²⁸ provides that children can influence matters pertaining to them (Article 6 s 3). Article 19 of the Constitution provides that the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children.

Section 4 – Main principles of child welfare

(1) Child welfare must promote the favourable development and wellbeing of the child. Child welfare must provide support in child upbringing and care for parents, custodians and other persons responsible for child care and upbringing. Child welfare must be aimed at preventing child and family problems and intervening sufficiently early if problems are found. When assessing the need for child welfare and in the provision of child welfare, it is first and foremost the interests of the child that must be taken into account.

(2) When assessing the interests of the child, consideration must be given to the extent to which the alternative measures and solutions safeguard the following for the child:

- 1) balanced development and wellbeing, and close and continuing human relationships;
- 2) the opportunity to be given understanding and affection, as well as supervision and care that accord with the Child's age and level of development;
- 3) an education consistent with the Child's abilities and wishes;
- 4) a safe environment in which to grow up, and physical and emotional freedom;
- 5) a sense of responsibility in becoming independent and growing up;
- 6) the opportunity to become involved in matters affecting the child and to influence them; and
- 7) the need to take account of the Child's linguistic, cultural and religious background.

(3) In child welfare, action must be taken with as much sensitivity as possible, and assistance in open care must be given precedence, unless the interests of the child demand otherwise. If substitute care is needed in view of the interests of the child, this must be arranged without delay. When providing substitute care, the aim of reuniting the family must be taken into account in a manner that accords with the Child's interests.

France

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
France	Code de l'action sociale et des familles ²⁹	s.L112-4	French	Google	CP	General

²⁸ <https://www.finlex.fi/en/laki/kaannokset/1999/en19990731> (1.07.2021).

²⁹ https://beta.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074069/2020-04-24 (24.04.2020). Other possible legal acts. Number of changes were entered into the legislation by law 2016-297 (<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032205234&categorieLien=id>). Central from there is s.375-1 Civil Code – obligation of the judge to make the decisions in the best interest of the child (<https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006150091&cidTexte=LEGITEXT000006070721&dateTexte=20200424> 24.04.2020).

	Civil Code ³⁰	s.371 et seq	French	Google	Family law matters	General
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	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
France	-	-	Yes	-	-	-	-	-	Yes	2	Best interests

The Constitution of France provides (article 55) that ratified international treaties prevail over national legislation. Thus, CRC, including Articles 3(1) and 12 are directly applicable in France.³¹

Code de l'action sociale et des familles

Article L112-4

The best interests of the child, the consideration of his fundamental, physical, intellectual, social and emotional needs as well as the respect of his rights must guide all decisions concerning him.

Civil Code

Article 375-1

The children's judge has jurisdiction, on appeal, for all matters relating to educational assistance.

He must always endeavor to obtain the support of the family for the measure envisaged and decide in strict consideration of the best interests of the child.

Germany

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
	Constitution	Article 6	German	Official	General	Federal
Germany	Civil Code (BGB) ³²	s.1666, 1697a	German	Official	CP and Court proceedings	Federal

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Germany	-	-	Yes	-	-	Yes	Yes	-	Yes	4	Best interests

German Constitution provides strong protection for the family and parental rights. At the same time, it also requires protection of the child when the parents fail in their duties or when the child is in danger. General removal legislation is provided in the German Civil Code (BGB), however, the measures allowed by the CRC are permissible only after extensive social work with the family following the Social Code (SGB). Skivenes and Sørsdal only analysed Section 1697a of the BGB.

³⁰

<https://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000006426462&idSectionTA=LEGISCTA000006136194&cidTexte=LEGITEXT000006070721&dateTexte=20160604> (24.04.2020).

³¹ CRC Committee. Fifth periodic report of France. 28.01.2015, CRC/C/FRA/5, p 175-176. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2F%2FFRA%2F5&Lang=en (1.07.2021).

³² http://www.gesetze-im-internet.de/englisch_bgb/index.html (24.04.2020)

Nevertheless, the criteria listed for Germany is wider than included in 1697a of BGB as it follows the national interpretation of CBI provision in the context of other legislation (including the Constitution and the SGB). Current analysis extends the selection of legal provisions and includes article 1666 of BGB and Article 6 of the Constitution. Additional codes from these provisions are included in the brackets. Thus, the coding for Germany is more limited and differs from Skivenes and Sørsdal.

Constitution

Article 6

[Marriage – Family – Children]

- (1) Marriage and the family shall enjoy the special protection of the state.
- (2) The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty.
- (3) Children may be separated from their families against the will of their parents or guardians only pursuant to a law and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect.
- (4) Every mother shall be entitled to the protection and care of the community.
- (5) Children born outside of marriage shall be provided by legislation with the same opportunities for physical and mental development and for their position in society as are enjoyed by those born within marriage.

Civil Code

Section 1666

Court measures in the case of endangerment of the best interests of the child

- (1) Where the physical, mental or psychological best interests of the child or its property are endangered and the parents do not wish or are not able to avert the danger, the family court must take the measures necessary to avert the danger.
- (2) In general it is to be presumed that the property of the child is endangered if the person with care for the property of the child violates his maintenance obligation towards the child or his duties connected with the care for the property of the child or fails to comply with orders of the court that relate to the care for the property of the child.
- (3) The court measures in accordance with subsection (1) include in particular
 1. instructions to seek public assistance, such as benefits of child and youth welfare and healthcare,
 2. instructions to ensure that the obligation to attend school is complied with,
 3. prohibitions to use the family home or another dwelling temporarily or for an indefinite period, to be within a certain radius of the home or to visit certain other places where the child regularly spends time,
 4. prohibitions to establish contact with the child or to bring about a meeting with the child,
 5. substitution of declarations of the person with parental custody,
 6. part or complete removal of parental custody.

(4) In matters of care for the person of the child, the court may also undertake measures with effect against a third party.

Section 1697a Principle of best interests of child

To the extent not provided otherwise, the court, in proceedings on the matters provided for in this title, makes the decision that, taking into account the actual circumstances and possibilities and the justified interests of those involved, is most conducive to the best interests of the child.

Greece

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Greece	Civil Code ³³	s.1511	Greek	In a book	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Greece		-		Yes		Yes	-		Yes	3	Best interests

Greece Constitution³⁴ Article 21(1) stresses both the protection of the family as well as childhood. The Constitution affords further protection to the families with many children. According to Article 28(1) states that international treaties are part of national law. Thus, CRC can be implemented directly in Greece.

Civil Code

Art 1511

Any decision made by the parents in the exercise of parental care must aim at the promotion of the Child's interest.

At the interest of the child must also aim a Court decision where according to the provisions of the law the Court decides in the matter of entrusting (to someone) parental care or of the way in which it shall be exercised. The decision of the Court must also respect the equality between the parents and not make any distinction based on gender race language religion political or any other orientation citizenship national or social origin or property.

With due regard to the maturity of the child its opinion must be sought and taken into consideration before any decision pertaining to parental care to extent that such decision concerns the Child's interests.

Hungary

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Hungary	Civil Code ³⁵	s.4:2	Hungarian	Official	Family matters	General

³³ <http://ceflonline.net/wp-content/uploads/Greece-Parental-Responsibilities-Legislation.pdf>

³⁴ <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agglisko.pdf> (1.07.2021).

³⁵ https://njt.hu/translation/I2013T0005P_20200903_FIN.pdf (1.07.2021)

	Protection and guardianship administration to children ³⁶	s.7	Hungarian	Google	CP	General
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	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Hungary	-	Yes	Yes	-	Yes	Yes	Yes	-	Yes	6	interests

The Fundamental Law of Hungary³⁷ enlists the protection of the family as a foundation of the Fundamental Law (L). Furthermore, Article 15 points out that the state protects both the family and children. Article 16 includes further protection of children's rights, including protection of child's needs and identity, and the rights of the parents. As the Fundamental law does not reference the best interests of the child or the welfare of the child, this provision is not included in the current sample. However, the provisions of the Civil Code and the Guardianship Administration of Children have to be interpreted in accordance with the requirements of the Fundamental Law. The latter act also makes reference to the CRC (s 5) as well as includes in separate provisions various rights of the child. Current selection includes section 7 from this legal act that relates to proceedings for the removal of the child and stressed the importance of the child's interests in these proceedings. Further requirements of this provision are included in the brackets.

Civil Code

Section 4:2 [Protection of the interests of the child]

(1) In legal relationships concerning the family, the interests and rights of the child shall be granted increased protection.

(2) The child shall have the right to be brought up in his own family.

(3) If the child cannot be brought up in his own family, it shall be ensured that the child grow up in a family environment and keep his own earlier family relationships if possible. Act V of 2013 on the Civil Code (as in force on 17 July 2019)

(4) The Child's right to be brought up in his own family or in a family environment and his right to maintain his earlier family relationships may only be restricted in cases set out by an Act, exceptionally and in the interests of the child.

The protection and guardianship administration to children

§ 7. (1) A child may be separated from his or her parents or other relatives only in his or her own interests, in cases and in the manner specified by law. A child should not be separated from his or her family solely because of a financial risk.

(2) The child has the right to protection, in the form of an adoptive family or in the form of other benefits to replace the family, in lieu of parental or other relative care. The child's temporary care and home care should be provided primarily by the adoptive parent. The placement of a child under the age of twelve with a host parent may be waived only if:

(a) the placement of a chronically ill or severely disabled child with the adoptive parent is not in the best interests of the child or is not possible due to his or her condition,

³⁶ http://njt.hu/cgi_bin/njt_doc.cgi?docid=29687.376552 (24.04.2020).

³⁷ <https://hunconcourt.hu/rules/fundamental-law> (1.07.2021).

(b) the siblings cannot be accommodated together with the host parent or for other reasons it is necessary to provide institutional accommodation, or

(c) in the case of temporary care of children, institutional placement is requested by the parent or other legal representative and is not contrary to the best interests of the child.

3. Substitute protection of the child shall respect his or her freedom of conscience and religion and shall respect his or her nationality, ethnicity and culture.

(4) Unless otherwise provided by law, even if the parent's right of custody ceases, the child has the right to know his or her origin, blood family and, with the consent of the blood family, to keep in touch.

(5) A child has the right to have contact with both parents, even if the parents live in different states.

Iceland

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Iceland	Child Protection Act ³⁸	s.1,4	Icelandic	Official	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Iceland	-	-	-	yes	-		Yes	Yes	Yes	4	Best interests

Article 71 of the Constitution of Iceland³⁹ protect the right to family life. Article 76(3) of the Constitution obliges the state to adopt legislation that protects the well-being of the child.

Child Protection Act

Article 1: Rights of children and duties of parents.

Children have a right to protection and care. Their rights shall be maintained in accordance with their age and maturity.

[All those involved in the care and upbringing of children shall treat them with respect and consideration, and no child may ever be subjected to violence or any other degrading treatment. Parents shall treat their children with care and consideration and observe their duties of upbringing and custodianship as to best suit their Child's interests and needs. They shall create satisfactory conditions for their children to grow up in and ensure their welfare in all respects.] (Act No. 52/2009, Article 1.)

Article 4 - Principles of child protection work.

In child protection work, those arrangements shall be made which may be expected to be best for the child. The interests of children shall always be paramount in the work of child protection authorities.

³⁸ https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Child-Protection-Act-as-amended-2016.pdf (24.04.2020).

³⁹ <https://www.government.is/topics/governance-and-national-symbols/constitution/> (1.07.2021)

In their work, child protection authorities shall take account of children’s views and wishes, in accordance with the age and maturity of the child.

Child protection work shall promote stability during childhood.

Child protection authorities shall seek to maintain good collaboration with children and parents with whom they have dealings, and always show them the utmost tact and respect.

Child protection authorities shall in their work seek to maintain good collaboration among themselves, and with other agencies concerned with children.

Child protection authorities shall in their work and in all decision-making maintain consistency and equity.

Child protection authorities shall as far as possible ensure that general measures to support the family are tried before other measures are taken. The aim shall also be to apply the minimum measures to achieve the desired results. Coercive measures shall only be applied if the legally-required objectives cannot be achieved by other, lesser measures.

All those who work in child protection shall maintain complete confidentiality on the circumstances of children, parents, and others with whom they have dealings.

Ireland

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Ireland	Constitution ⁴⁰	s.42a	English	N/A	General	General
	Child Care Act ⁴¹	S 24	English	N/A	CP	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Ireland	-	-	-	Yes	-	Yes	Yes	-	Yes	4	Best interests / welfare

Skivenes and Sørsdal used Irish Child Care Act s 24 as a central provision for the analysis. Upon further consultations, the importance of Article 42a of the Constitution protecting the rights of the child was included as it guides the implementation of all child protection legislation. Furthermore, there are other provisions in the CCA that also relate to the assessment of the welfare of the child. The wording of the Constitution and the CCA differ. The Constitution Article 42a refers to the best interests of the child together with the welfare of the child, whereas the CCA only uses the “welfare of the child” concept. There are also other provisions in the CCA e.g. s 3, that refer to the best interests of the child in the work of the Child and Family Agency. As this provision more or less repeats the requirements present in the Constitution as well as in s 24, this is not separately included in the current section.

Constitution

Article 42a

⁴⁰ <http://www.irishstatutebook.ie/eli/cons/en#article42> (24.04.2020).

⁴¹ <http://revisedacts.lawreform.ie/eli/1991/act/17/revised/en/html> (24.04.2020).

1 The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.

2 1° In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent **that the safety or welfare of any of their children is likely to be prejudicially affected**, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

2° Provision shall be made by law for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require.

3 Provision shall be made by law for the voluntary placement for adoption and the adoption of any child.

4 1° Provision shall be made by law that in the resolution of all proceedings—

i brought by the State, as guardian of the common good, **for the purpose of preventing the safety and welfare of any child from being prejudicially affected**, or

ii **concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration.**

2° Provision shall be made by law for securing, as far as practicable, **that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.**

Child Care Act

Welfare of child to be paramount.

24.— In any proceedings before a court under this Act in relation to the care and **protection of a child** F192 [and in proceedings before the High Court under Part IVA (as amended by the Child Care (Amendment) Act 2011) in relation to special care], the court, having regard to the rights and duties of parents, whether under the Constitution or otherwise, shall—

(a) **regard the welfare of the child as the first and paramount consideration**, and

(b) **in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child.**

Israel

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Israel	Youth Care and Supervision Law 1960 ⁴²	s.8C	Hebrew	CRC report 1 / Google	CP	General

⁴² https://www.nevo.co.il/law_html/law01/305_001.htm (24.04.2020).

	Foster Care Law of 2016 ⁴³			S 4	Hebrew	CRC Report, Google	CP, Foster care				
	<i>Fu</i>	<i>Id</i>	<i>Ne</i>	<i>Par</i>	<i>Rel</i>	<i>PP</i>	<i>Prot</i>	<i>perm</i>	<i>W&P</i>	<i>sum</i>	<i>Term</i>
<i>Israel</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	Yes	8	Child in need / best interests

There are two central legislations that are relevant for the child protection in Israel. First, the Youth Care and Supervision Law provides general definition of the child in need. The Foster Care Law of 2016, regulates the removal of the child and the principles applying to foster care as well as refers to the CRC as a central source of child rights. Section 1 of the Foster Care Law notes the importance of the child's best interests, section 3 enlists the right of the child to live in their family unless the best require their upbringing outside the family. Section 4 enlists criteria for the best interests of the child.

Youth care and supervision law 1960

s. 8C⁴⁴

'a court sitting in the matter of a minor is authorized, at any time, to appoint a legal guardian for the legal proceedings or any matter arising therefrom, if this will serve the best interests of the minor or protect his interests'.

Foster Care Law 2016

Section 4.

(A) In any action taken in respect of a child under this Act or a decision made in his case **the best interests of the child shall be a decisive consideration**; In the event of a conflict between the good of a particular child whose case is being discussed and the good of other children, proper weight shall be given to the good of the child whose case is being discussed.

(B) In determining the best interests of the child under this Law, **the full range of interests, needs and rights of the child shall be considered, including the considerations set out below:**

- (1) his physical and mental well-being;
- (2) his age and developing abilities;
- (3) his will, feelings, opinions and position on the matter in question;
- (4) the time dimension in the child's life;
- (5) the sex of the child, its characteristics and traits as well as its ethnic, religious, cultural and linguistic background;
- (6) the expected effect of a decision or action under this Act on his life in the short and long term;

⁴³ https://www.nevo.co.il/law_html/Law01/501_358.htm (1.07.2021).

⁴⁴ Translation in the First report of Israel to the CRC, para 27, CRC/C/8/Add.44. 2002. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f8%2fAdd.44&Lang=en

(7) his relationships and relationships with his parents and other significant people in his life, and maintaining the continuity of those relationships;

(8) the position of his parents or guardian and other significant persons in his life in the matter in question;

(9) the ability of his parents and any other person or framework concerned to provide for the needs of the child;

(10) the professional knowledge relevant to the matter in question;

(11) Any other consideration relating to the determination of the best interests of the child.

(C) Without derogating from the provisions of subsection (a), a decision of a competent body in the case of a child under this Act shall be reasoned and in writing, and shall relate to the application of the principle of the best interests of the child in light of the considerations set forth in subsection (b).

Italy

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Italy	<i>Civil Code</i> ⁴⁵	s.315, 316	Italian	Google	Family Law	General
	Law no 184 of 1983 ⁴⁶	S 4	Italian	Google	CP	

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Italy	-	-	Yes	Yes	Yes	Yes	Yes	-	Yes	6	Child in need / interests

The Constitution of Italy⁴⁷ protects the family and the rights of children in several legal provisions. Article 31 provides protection for the family and requires the state to adopt relevant child protection legislation. Article 30 stresses the rights and obligations of the parents to support, raise and educate their children. Child's best interests are included in several legal acts, there is no single provision establishing the general principle. In Italy, Civil Code is the central legislation regulating family law issues. Provision enlisting the rights of the child does not include the CBI principle (s 315-bis). However, the provision establishing central parental obligations stresses that when a family court judge makes a decision relating to parental rights and obligations, such decision has to be in the interests of the child (316). There are other legal acts that further specify some thematic areas generally regulated in the Civil Code. As an example, adoption and foster care is regulated in Law no 184 of 1983 (amended with law no 149 of 2001 and law no 173 of 2015).

Civil Code

⁴⁵ <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1942-04-04&atto.codiceRedazionale=042U0262&tipoDettaglio=multivigenza&qId=&tabID=0.7270589376956813&title=Atto%20multivigente&bloccoAggiornamentoBreadCrumb=true> (1.07.2021).

⁴⁶ <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1983-05-17&atto.codiceRedazionale=083U0184&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=10&qId=2dc3bbdd-bd38-4626-afa5-98196db337df&tabID=0.9180397230448012&title=lbl.dettaglioAtto> (1.07.2021).

⁴⁷ https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf (1.07.2021).

Art. 315-bis: Rights and duties of the child.

The child has the right to be maintained, educated, educated and morally assisted by the parents, respecting his abilities, his natural inclinations and his aspirations.

The child has the right to grow up in the family and to support meaningful relationships with relatives.

The child who has turned twelve, and also of younger age where capable of forming opinion, has the right to be listened to in all matters and procedures that concern him.

The child must respect the parents and must contribute, in relation to their abilities, their substances and their own income, to the maintenance of the family as long as it lives with it.

Law no 184 of 1983 on adoption and custody of minors, as amended by law 149 of 2001 and law no 173 of 2015

Section 4

1. Foster care is arranged by the local social service, subject to the consent expressed by the parents or by the parent exercising parental responsibility, or by the guardian, after consulting the child who has reached the age of twelve and younger, taking into account his ability to form an opinion. The tutelary judge of the place where the child is makes such decisions.

2. Where the consent of the parents exercising parental responsibility or of the guardian is lacking, the court of minors shall make the decision. Articles 330 and following of the civil code apply.

3. In the provision of family custody, the reasons for it must be specifically indicated, as well as the times and methods of exercising the powers allocated to the fosters, and the methods through which the parents and other members of the family unit can maintain relations with the child. The local social service to which responsibility for the assistance program is attributed must also be indicated, as well as supervision during the placement with the obligation to keep the tutelary judge or the juvenile court constantly informed, depending on whether it is a measure issued pursuant to paragraphs 1 or 2. The local social service to which responsibility for the assistance program is attributed, as well as the supervision during the placement, must report without delay to the tutelary judge or to the court for minors of the place where the child is, depending on whether it is a measure issued pursuant to sections 1 or 2 [of the current law], any event of particular importance and is required to submit a six-monthly report on the progress of the assistance program, on its presumable further duration and on the evolution of the difficult conditions of the family unit of origin.

4. In the provision referred to in paragraph 3, the presumed duration of the placement must also be indicated, which must be comparable to the set of interventions aimed at reuniting [the child with] the family of origin. This period cannot exceed the duration of twenty-four months and can be extended by the court of minors if the suspension of the custody would be prejudicial to the child.

5. Foster care ends with a decision of the same authority that ordered it, assessing the interest of the child, when the situation of temporary difficulty of the family of origin that caused it ceases, or in the case in which it is continually detrimental to the child.

5-bis. If, during a prolonged period of foster care, the child is declared adoptable pursuant to the provisions of Chapter II of Title II and if, in the presence of the requirements set out in Article 6, the foster family requests to be able to adopt him, the court of minors, in deciding on adoption,

takes into account the significant emotional ties and the stable and long-lasting relationship established between the child and the foster family.

5-ter. If, following a period of fostering, the child returns to the family of origin or is entrusted to another family or is adopted by another family, **the positive socio-affective relationships consolidated during foster care continue.**

5-quater. The judge, for the purposes of the decisions referred to in paragraphs 5-bis and 5-ter, also takes into account the documented assessments of the social services, **having heard the child who has reached the age of twelve or younger if capable of forming an opinion.**

((5-quinquies. In the case of a child who is left without a suitable family environment due to the death of the parent, voluntarily caused by one of the spouses through legal separation or divorce, on the dissolution of the civil union or from another emotional relationship, from the cohabitant or from a person linked to the parent, the competent court, having carried out the necessary investigations, **provides the continuity of the affective relationships consolidated between the child and the relatives up to the third degree. In the event that there are brothers or sisters, the court ensures, as far as possible, the continuity of affection between them.**

5-sexies. Upon notification of the competent court, the social services ensure the child referred to in paragraph 5-quinquies **receives adequate psychological support and access to support measures aimed at guaranteeing the right to study and placement in work)).**

6. The tutelary judge, once the foreseen duration period has elapsed, or the circumstances referred to in paragraph 5 have occurred, having consulted the local social service concerned and the child who has reached the age of twelve and also a younger child, taking into account his ability to form an opinion, requests, if necessary, the competent court of minors to adopt further measures in the interest of the child.

7. The provisions of this article apply, insofar as they are compatible, also in the case of child placed in a family-type community or a public or private assistance institution.

Japan

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Japan	Child Welfare Act (v2016)	s.1(2), 2(1), 3	Japanese	Google	General	Federal

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Japan	-	-	Yes	Yes	-	Yes	Yes	-	Yes	5	welfare

Article 98 of the Constitution of Japan⁴⁸ provides that international treaties concluded by Japan are “faithfully observed”. Therefore, the CRC is directly applicable in Japan. The Constitution protects marriage and equality of spouses and related freedoms. The Constitution does not include specific rights of children.

Child Welfare Act

⁴⁸ https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html (1.07.2021).

Article 1 (2016)

All citizens are born and nurtured in good physical and mental condition.

They have the right to be raised, to be guaranteed their lives, to be loved and protected, to have healthy growth and development of their body and mind, to be independent, and to have other welfare.

Article 2 (2016)

All citizens shall be respected in their opinions in accordance with the age and development of children in all fields of society, and their best interests shall be given priority in consideration of all children. We must strive to be able to grow up physically and mentally.

(2) Parents of children have the primary responsibility for nurturing their children both physically and mentally.

(3) The national and local governments are responsible for the healthy development of children both physically and mentally together with their parents.

Article 3 (1947)

The provisions of the preceding two Articles constitute the basic philosophy to guarantee children's welfare and this philosophy shall be consistently respected in enforcing all laws and regulations on children.

Korea (South Korea)

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Korea	Child Welfare Act ⁴⁹	s.1, 3(3)	Korean	Online Korean law translation	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Korea	-	-	Yes	-	-	-	Yes	-	Yes	3	welfare

The Constitution of Korea⁵⁰ protects the freedom to enter into marriage and family life as well as dignity and equality in this context (Article 36). There Constitution does not include specific rights of the child. International treaties form part of national legislation, thus, CRC can be implemented directly.

Child Welfare Act

Article 1 (Purpose)

The purpose of this Act is to guarantee the welfare of children so that they can be born healthy and brought up happily and safely.

Article 2 (Basic Ideas)

⁴⁹ https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=39028&type=sogan&key=10 (19.05.2020).

⁵⁰ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=1&lang=ENG (1.07.2021).

- (1) Children shall grow up without experiencing any kind of discrimination on the grounds of gender, age, religion, social status, property, whether having handicaps or not, birthplace, race, etc. of themselves or their parents.
- (2) Children shall grow up happily in a stable family environment for the development of perfect and harmonious personality.
- (3) In all activities concerning children, the interest of children shall be considered preferentially.
- (4) Children shall have the rights to be protected and assisted under this Act for the sake of their rights and promotion of welfare.

Latvia

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Latvia	Law on the Protection of the Children's Rights ⁵¹	s.6	Latvian	Official	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Latvia	-	-	Yes	-	-	Yes	Yes	-	Yes	4	Interests of child

The Constitution of Latvia⁵² protects the rights to family life, rights of parents and children (Article 110). In particular, the Constitution obliges the state to care for the rights of the child and support disabled children, children left without parental care or who have suffered violence. Furthermore, the preamble of the Constitution notes that family is a foundation of a cohesive society. International treaties are binding once they are concluded. Thus, CRC can be directly implemented in Latvia.

Law on the Protection of the Children's Rights

Section 6. Principle of Protection of the Rights of the Child

- (1) In lawful relations that affect a child, the rights and best interests of the child shall take priority.
- (2) In all activities in regard to a child, irrespective of whether they are carried out by State or local government institutions, public organisations or other natural persons and legal persons, as well as courts and other law enforcement institutions, the ensuring of the rights and interests of the child shall take priority.
- (3) Protection of the rights of the child shall be implemented in collaboration with the family, State and local government institutions, public organisations and other natural persons and legal persons. The organisation of institutional cooperation and the procedures for implementing the protection of children's rights shall be stipulated by the Cabinet.

⁵¹ <https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights> (24.04.2020). Changed 3 times later, these changes did not concern section 6.

⁵² <https://likumi.lv/ta/en/en/id/57980> (1.07.2021).

(4) During periods of out-of-family care necessary measures shall be taken to ensure the reunification of a child with his or her parents.

(5) An act or failure to act, as a result of which the rights of a child are not observed (leaving the child without a minimum amount of nourishment, accommodation, care, guardianship), or other acts which limit the personal or property rights and freedoms of the child, shall be considered amoral and illegal.

[15 May 2003; 17 March 2005; 2 March 2017]

Lithuania

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Lithuania	Fundamentals of the Protection of the Rights of the Child ⁵³	s. 4(1)	Lithuanian	Google		General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Lithuania	Yes	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes	8	Interests of child

The Constitution of Lithuania⁵⁴ protects family, parenthood and children (Articles 26, 38, 39). International treaties are part of Lithuanian legal system. Thus, CRC can be implemented direction by the decision-makers as it is also referred to in Article 4(3) of the Protection of the Rights of the Child.

Fundamentals of the Protection of the Rights of the Child

Article 4. Principles for the implementation of the protection of the rights and freedoms of the child

Parents, other representatives of the child according to the law, state and municipal institutions and establishments, non-governmental organizations, other natural and legal persons must follow the following principles:

1) the best interests of the child shall be a primary consideration for the best interests of the child when making decisions or taking any action relating to the child. This principle is applied on the basis of the specific situation of the individual child, assessing and determining what is most beneficial to the child in the near and future, taking into account the Child's views, identity, preservation of the family environment and family ties, maturity and ensuring the Child's proper development, satisfaction, physical and mental safety, ensuring the Child's right to health and education, and other special needs of the child. The child must be afforded the protection necessary for his or her well-being, with all possible coordinated comprehensive assistance;

No. XIII-2035 , 11/04/2019, published in TAR 2019-04-19, until 2019-06546

⁵³ <https://e-seimas.lrs.lt/portal/legalActEditions/lt/TAD/TAIS.26397> (24.04.2020).

⁵⁴ <https://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192> (1.07.2021).

Luxembourg

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Luxembourg	Youth Act ⁵⁵	s.2	French	Google		General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	<i>sum</i>	<i>Term</i>
<i>Luxembourg</i>	-	-	Yes	Yes	-	Yes	-	-	Yes	4	Best Interests

The Constitution of Luxembourg⁵⁶ protects the right to found a family (Article 11), it does not include specific protection for children. International treaties acceded by Luxembourg are part of national law and enjoy full primacy over rules of domestic law.

Youth Act 2008 (provision revised in 2016)

Art 2

(1) All children and young people have the right to the full development of their personality.

The action of the State and the municipalities is subsidiary to that of the parents or the legal representative to provide for the care, maintenance and education of the children and young people in their care and to the action of young adults to provide for themselves, training or employment.

(2) Any measure taken in favor of children or young people by the State, municipalities or organizations under the application of this law must be taken in the best interests of children or young people. It takes into account the specific needs arising from the life circumstances of children and young people in order to work for the equality of children and young people.

(3) The policy in favor of young people is a cross-cutting policy based on knowledge of the situation of young people and active consultation of young people on issues concerning them.

Malta

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Malta	Minor Protection (Alternative Care) Act ⁵⁷	s.1(2)	Malta	Official	CP	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	<i>sum</i>	<i>Term</i>
<i>Malta</i>	-	-	-	-	-	-	Yes	Yes	Yes	3	Best Interests

⁵⁵ <http://legilux.public.lu/eli/etat/leg/loi/2016/04/24/n3/jo> (24.04.2020)

⁵⁶ https://www.legislationline.org/download/id/5795/file/Luxembourg_Constitution_am200en.pdf (1.07.2021).

⁵⁷ <https://legislation.mt/eli/cap/569/eng/pdf> (1.07.2021).

The Constitution of Malta⁵⁸ protects right to family life (Article 32). It does not mention rights of the child.

Minor Protection (Alternative Care) Act (2019)

Section 1. (2) The scope of this Act is to safeguard, protect and give priority to the best interest of minors and to ensure, in the least possible time, the permanence of the care given to minors.

Mexico

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Mexico	Constitution	S 4	Spanish	Constitute project	General	
Mexico	Act on the Protection of the Rights of Children and Adolescent ⁵⁹	s.2	Spanish	Google	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Mexico	-	Yes	Yes	Yes	-	-	-	-	Yes	4	Best Interests

From 2011, the Constitution of Mexico⁶⁰ includes the CBI principle in Article 4 of the Constitution. The Constitution recognises that international treaties form part of the national legal order. Thus, CRC can be implemented directly in Mexico.

Constitution

Article 4

[...]

The State, in all decisions it makes and all actions it carries out, will safeguard and comply with the principle of doing what is in the best interest of children, thus entirely guaranteeing their rights. Boys and girls have the right to having their nutritional, health, educational and recreational needs satisfied for their proper development. This principle should guide the design, enforcement, following up and evaluation of the public policies focused on childhood.

General law of the rights of girls, children and adolescents

Article 2. To guarantee the protection of the rights of girls, boys, and adolescents, the authorities will carry out the actions and take measures, in accordance with the principles established in this Law. For this purpose, they must:

⁵⁸ <https://legislation.mt/eli/const/eng/pdf> (1.07.2021).

⁵⁹ http://www.diputados.gob.mx/LeyesBiblio/pdf/LGDNNA_171019.pdf (24.04.2020).

⁶⁰ <http://www.ordenjuridico.gob.mx/constitucion.php#gsc.tab=0> (1.07.2021)

I. Guarantee a comprehensive, transversal and human rights perspective approach in the design and implementation of government policies and programs;

II. Promote participation, take into account the opinion and consider the cultural, ethical, affective, educational and health aspects of girls, boys and adolescents, in all matters of their concern, according to their age, evolutionary, cognitive development and maturity, and

III. Establish transparent mechanisms for monitoring and evaluating the implementation of policies, government programs, legislation and commitments derived from international treaties on the matter.

The best interests of children should be considered primarily in decision-making on a debated issue involving children and adolescents. When different interpretations are presented, the provisions of the Constitution and international treaties of which Mexico is a party will be followed.

Amended paragraph DOF 03-06-2019

When a decision is made that affects girls, boys or adolescents, individually or collectively, the possible repercussions must be evaluated and weighed in order to safeguard their best interests and procedural guarantees.

Netherlands

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Netherlands	Civil Code ⁶¹	s.1:266, 1:269	Dutch	Google	Parental rights	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Netherlands	-	-	-	-	-	Yes	Yes	-	Yes	3	Best Interests

The Constitution of the Netherlands does not include rights of the child, parents or family. Based on articles 93 and 94 of the Constitution, Dutch courts may apply both written and unwritten international law. CBI principle is included in several provisions of the Civil Code dealing with the family relations (e.g. Article 1:163a relates to restricting contact between parents and the child). There is no general provision covering the whole child protection, thus, a provision relating to removal of parental authority was selected for the current sample.

Civil Code

Article 1:266 Grounds for a removal of parental authority

Provided that this is not contradictory to the interests of the children, the District Court may remove a parent from the right to exercise authority over one or more of his children on the ground that this parent is unfit or unable to comply with his duty to care for and raise his children.

Article 1:269 Grounds for a deprivation of parental authority

⁶¹ <http://www.dutchcivillaw.com/civilcodebook01.htm> (24.04.2020).

1. If the District Court thinks this is necessary in the best interests of the children, it may deprive a parent from the right to exercise authority over one or more of his children, on the ground of:

a. abuse of parental authority or a gross neglect in the care and upbringing of one or more children;

b. poor lifestyle;

c. an irrevocable conviction:

1°. for wilfully participating in a crime with a minor who is under his authority;

2°. for committing one of the criminal offences, described in Titles XIII-XV and XVIII-XX of the Second Book of the Penal Code, against the minor who is under his authority;

3°. to an imprisonment of two years or longer;

d. a serious disregard of the instructions of the Foundation meant in Article 1, under point (f), of the Youth Care Act or obstructing the minor's placement in care away from home under Article 1:261;

e. the existence of well-substantiated grounds to fear that the interests of the child will be neglected when the parent claims the child back or takes it back from other persons who have taken on the task of caring for and raising the child.

2. For the purpose of this Article a 'criminal offence' includes acting as an accomplice in a criminal offence as well as the attempt to commit a criminal offence.

New Zealand

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
New Zealand	Care of Children Act 2004 ⁶²	s.4,5	English	N/A	CP	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
New Zealand	-	Yes	Yes	-	Yes	Yes	Yes	Yes	Yes	7	Welfare/ Best Interests

Care of Children Act provides a comprehensive protection of all rights of the child. It includes some elements coded here as self-standing rights. As an example, protection of the family and hearing child's views are included in separate provisions. Section 3 of the Act enlists central aims of the Act and includes protection of the CBI. Section 4 states that the CBI is paramount and provides procedural requirements of the CBI, whereas section 5 enlists principles relating to the child's welfare and best interests.

Care of Children

4 Child's welfare and best interests to be paramount

⁶² <https://www.legislation.govt.nz/act/public/2004/0090/latest/whole.html#DLM317233> (1.07.2021).

(1) The welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration—

(a) in the administration and application of this Act, for example, in proceedings under this Act; and

(b) in any other proceedings involving the guardianship of, or the role of providing day-to-day care for, or contact with, a child.

(2) Any person considering the welfare and best interests of a child in his or her particular circumstances—

(a) must take into account—

(i) the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child's sense of time; and

(ii) the principles in section 5; and

(b) may take into account the conduct of the person who is seeking to have a role in the upbringing of the child to the extent that that conduct is relevant to the child's welfare and best interests.

[...]

5 Principles relating to Child's welfare and best interests

The principles relating to a Child's welfare and best interests are that—

(a) a Child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in sections 9(2), 10, and 11 of the Family Violence Act 2018) from all persons, including members of the Child's family, family group, whānau, hapū, and iwi:

(b) a Child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:

(c) a Child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:

(d) a child should have continuity in his or her care, development, and upbringing:

(e) a child should continue to have a relationship with both of his or her parents, and that a Child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:

(f) a Child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

Norway

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
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Norway	Child Welfare Act ⁶³	s.4-1	Norwegian	Official	CP	General
	Child Welfare Act ⁶⁴	S 1-3				

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Norway	-	-	-	-	Yes	-	-	Yes	Yes	3	Best Interests
Norway (2021)	-	-	-	Yes	-	-	-	-	Yes	2	Best interests

The Constitution of Norway⁶⁵ includes protection for children. Article 104 stresses that the best interests of the child is a fundamental consideration for all actions and decisions relating to the child. It further establishes that a child has a right to be heard in questions that concern them. Compared to Skivenes and Sørsdal, Child Welfare Act was changed in 2018 and subsection 2 of this provision providing child's right to be heard was revoked. Nevertheless, child's right to be heard remains in Article 104 of the Constitution. Child Welfare Act was reviewed in 2021 and the new provision is provided below and its criteria is enlisted in the second line of the table.

Child Welfare Act 1992

Section 4-1. Consideration of the Child's best interests

When applying the provisions of this chapter, **decisive importance shall be attached to finding measures which are in the Child's best interests.** This includes attaching importance to giving the child stable and **good contact with adults** and **continuity in the care provided.**

Child Welfare act 2021

Section 1-3 the Child's best interests

In actions and decisions that affect children, the best interests of the child shall be a fundamental consideration. The child welfare service's measures shall be in the best interests of the child. What is in the best interests of the child must be decided after a specific assessment. **The child's opinion is a key factor in the assessment of the child's best interests.**

Poland

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Poland	Family and Guardianship Code ⁶⁶	s.109(1)	Polish	Book	Family Law	General

⁶³ <https://lovdata.no/lov/1992-07-17-100/§4-1> (19.06.2020). Subsection 2 of this provision was repealed in 2018.

⁶⁴ <https://lovdata.no/dokument/NL/lov/2021-06-18-97> (1.07.2021).

⁶⁵ <https://lovdata.no/dokument/NLE/lov/1814-05-17> (1.07.2021).

⁶⁶ <https://depot.ceon.pl/bitstream/handle/123456789/16062/FAMILY%20LAW%20-%20BOOK.pdf?sequence=3&isAllowed=y> (24.04.2020)

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Poland	-	-	-	-	-	-	Yes	-	Yes	2	Welfare/ Best Interests

Polish Constitution⁶⁷ focuses on the rights of the parents to rear the child in accordance with their convictions (Article 48). The Constitution also includes the rights of the child (Article 72) including child's right to protection and giving priority to the views of the child. It does not mention separately the CBI. International treaties are, in principle, sources of Polish law (Constitution Article 87). Implementation of the family and guardianship code should take into account the focus on parental rights in the Constitution.

Family and Guardianship Code

Article. 109. [ordinance in order to protect the best interests of the child]

§ 1. If the best interests of the child is endangered, the Court of guardians will issue the appropriate orders.

§ 2. The Court of guardians may, in particular:

- 1) compel the parents and the minor to a specific procedure, and in particular to work with families, the implementation of other forms of work with the family, refer the minor to support daily, referred to in the rules about supporting the system of foster care and family or refer parents to the facility or specialist involved in family therapy, counseling or other family assistance with an indication of the way the performance audit issued orders;
- 2) determine what actions may not be made by the parents without the permission of the Court, or give parents other restrictions, which is subject to the guardian;
- 3) submit to the exercise of parental responsibility to the supervision of the probation officer;
- 4) refer the minor to an organization or institution appointed to apprenticeships or to another facility who has partial custody of children;
- 5) order the placement of a minor in foster care, the Child's family home or institutional care foster home or entrust temporarily acting as a foster family spouses or a person which does not satisfy the conditions for foster families, in terms of training necessary for specified in the rules about supporting the system of foster care and family or order the placement of a minor in educational establishment, in protective plant-care or in medical rehabilitation.

§ 3. The Court of guardians may also entrust the management of the estate of the minor set up for this purpose, the curator.

§ 4. In the case referred to in § 2 point 5, as well as in case of the application of the other measures referred to in the rules about supporting the family and the system of custody, guardianship shall notify the decision the correct organizational unit, foster families and foster care system, which provides a family of the minor appropriate assistance and consists of family Court, within the time

⁶⁷ <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (1.07.2021).

specified by the Court, reports on the situation of the family and assistance , including work with the family, and also works with a probation officer.

Portugal

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Portugal	Protection of Children and Youth in Danger Act ⁶⁸	s.4	Portuguese	Google	CP	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Portugal	-	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7	Best Interests

The Constitution of Portugal⁶⁹ does not include specific rights of children, parents or family. According to Article 8 of the Constitution, international treaties are an integral part of Portuguese law.

Protection of Children and Youth in Danger Act

Article 4: Guiding principles of intervention

Intervention to promote the rights and **protection of children and young people in danger** obeys the following principles:

- a) Best interests of the child and young person - **the intervention must take into account, as a priority, the interests and rights of the child and young person, namely the continuity of quality and meaningful relationships of affection**, without prejudice to the consideration that is due to other legitimate interests in the context of the plurality of interests present in the specific case;
- b) Privacy - **the promotion of the rights and protection of children and young people must be carried out with respect for intimacy, right to image and reservation of their private life;**
- c) Early intervention - **intervention must be carried out as soon as the danger situation is known;**
- d) Minimum intervention - intervention must be exercised exclusively by entities and institutions whose action is indispensable for the effective promotion of the rights and **protection of children and young people in danger;**
- e) Proportionality and timeliness - intervention must be necessary and adequate to the dangerous situation in which the child or young person finds themselves at the time the decision is taken and can only interfere in their life and that of their family to the extent what is strictly necessary for that purpose;
- f) Parental responsibility - **intervention must be carried out in such a way that the parents assume their duties towards the child and young person;**

⁶⁸ <https://dre.pt/web/guest/legislacao-consolidada/-/lc/34542475/view?q=147%2F99> (1.07.2021).

⁶⁹ <https://dre.pt/constitution-of-the-portuguese-republic> (1.07.2021)

- g) Primacy of continuity of deep psychological relationships - the intervention must respect the child's right to the preservation of structural affective relationships of great significance and reference for their healthy and harmonious development, with measures that ensure the continuity of a secure bonding;
- h) Family prevalence - in promoting the rights and protection of children and young people, measures that integrate them into the family, whether in their biological family, or promoting their adoption or other form of stable family integration, must be given priority;
- i) Mandatory information - the child and young person, the parents, the legal representative or the person who has de facto custody have the right to be informed of their rights, the reasons that determined the intervention and how it is processed;
- j) Mandatory hearing and participation - the child and young person, separately or in the company of their parents or a person chosen by them, as well as the parents, legal representative or person who has de facto custody, have the right to be heard and to participate in the acts and definition of the measure for the promotion of rights and protection;
- k) Subsidiarity - intervention must be carried out successively by entities with competence in matters of childhood and youth, by committees for the protection of children and youth and, ultimately, by the courts.

Romania

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Romania	Child Protection Act ⁷⁰	s.2	Romanian	Official	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Romania	-	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7	Best Interests

The Constitution of Romania⁷¹ protects the family (Article 44) as well as the rights of children (Article 45). It does not include CBI. International treaties, including the CRC, are part of Romanian law (Article 11).

Child Protection Act

Article 2

(1) This law, any other regulations adopted in the field of respect and promotion of the rights of the child, as well as any legal act issued or, as the case may be, concluded in this field shall be subordinated with priority to the principle of the best interests of the child.

(2) The best interests of the child shall be limited to the Child's right to normal physical and moral development, to socio-affective balance and to family life.

⁷⁰ <https://dre.pt/web/guest/legislacao-consolidada/-/lc/34542475/view?q=147%2F99> (1.07.2021).

⁷¹ http://www.cdep.ro/pdfs/constitutie_en.pdf (1.07.2021).

(3) The principle of the best interests of the child shall be imposed including in relation to the rights and obligations of the Child's parents, other legal representatives of the child, as well as any persons to whom he has been legally placed.

(4) The principle of the best interests of the child shall prevail in all proceedings and decisions concerning children, taken by public authorities and authorized private bodies, as well as in cases resolved by the courts.

(5) The persons provided in par. (4) are obliged to involve the family in all decisions, actions and measures concerning the child and to support the care, upbringing and training, development and education of the child within the family.

6. In determining the best interests of the child, at least the following shall be taken into account:

a) the needs for physical, psychological, educational and health development, security and stability and belonging to a family;

b) the Child's opinion, depending on the age and degree of maturity;

c) the Child's history, taking into account, in particular, situations of abuse, neglect, exploitation or any other form of violence against the child, as well as potential situations of risk that may occur in the future;

d) the capacity of the parents or of the persons who are to take care of the upbringing and care of the child to respond to his concrete needs;

e) maintaining personal relationships with the persons to whom the child has developed attachment relationships.

Slovak Republic

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Slovak Republic	Social and legal protection of children ⁷²	s.1	Slovak	Google	CP	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Slovakia	-	-	Yes	-	-	-	Yes	-	Yes	3	Legal interests

The Constitution of Slovakia⁷³ protects parenthood and family and provides special protection to children (Article 41). However, the Act on Social and legal protection of children refers to international treaties, therefore, CRC has the potential to be implemented directly in child protection matters.

Social and legal protection of children

§ 1 Subject matter

⁷² <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/305/20200425> (24.04.2020).

⁷³ <https://www.prezident.sk/upload-files/46422.pdf> (1.07.2021).

(1) This law regulates the social legal protection of children and social guardianship to ensure the prevention of crisis situations in the family, protection of rights and legally protected interests of children, prevention of deepening and recurrence of disorders of mental development, physical development and social development of children and adults and to prevent the growth of social events.

(2) Social protection of children is a set of security measures

a) the protection of the child, which is necessary for his or her well-being and which respects his or her best interests under an international convention, 1)

b) education and all-round development of the child in his natural family environment,

c) an alternative environment for a child who cannot be brought up in his or her own family.

(3) Social guardianship is a set of measures to eliminate, alleviate and prevent the deepening or recurrence of disorders of mental development, physical development and social development of the child and adult natural person and provide assistance depending on the severity of the disorder and the situation of the child or adult natural person.

(4) The protection of the rights and legally protected interests of the child by measures of social and legal protection of children and social guardianship is part of the protection of the rights and legally protected interests of the child under the international convention. The implementation of measures of social legal protection of children and social guardianship does not affect the rights and obligations of other entities in the protection of the rights and legally protected interests of the child under special regulations.

Slovenia

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Slovenia	Constitution ⁷⁴	s. 54	Slovenian	Supreme Court	Constitution	Generl
	Family Code ⁷⁵	s. 7	Slovenian	Google	Family law	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Slovenia	-	Yes	Yes	-	-	Yes	Yes	-	Yes	5	Legal interests

Constitution

Article 54 (Rights and Duties of Parents)

Parents have the right and duty to maintain, educate, and raise their children. This right and duty may be revoked or restricted only for such reasons as are provided by law in order to protect the Child's interests.

Family Code

⁷⁴ <https://www.us-rs.si/en/about-the-court/legal-basis/constitution/> (13.5.2020).

⁷⁵ <https://www.icj.org/wp-content/uploads/2013/05/Slovenia-Marriage-and-Family-Relations-Act-1977-eng.pdf> (13.05.2020). Suzana Kraljic, Vesna Rijavec (2018) New family code of Slovenia (2017): procedural aspect. https://www.researchgate.net/publication/327848576_New_family_code_of_Slovenia_2017_procedural_aspect

Article 7 (principle of Child's interests)

(1) Parents shall take care of the Child's interests in all activities related to the child. Children are brought up with respect for their person, individuality and dignity.

(2) Parents have priority over all others in the care and responsibility for the benefit of the child.

(3) Parents work for the benefit of the child if, in particular, taking into account the Child's personality, age and developmental level and desires, they adequately satisfy his material, emotional and psychosocial needs by acting to indicate their care and responsibility towards the child, appropriate educational leadership and encourage it in its development.

(4) State bodies, public service providers, holders of public authority, local community bodies and other natural and legal persons must take care of the Child's interests in all activities and procedures related to the child.

(5) The state shall provide conditions for the operation of non-governmental organizations and professional institutions for the development of positive parenting.

Spain

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Spain	Organic Law 1/1996 ⁷⁶	s.2	Spanish	Official	General	Federal

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Spain	Yes	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes	8	Best interests

Spanish Constitution⁷⁷ ensures all children full protection (Article 39(2)). International treaties are part of national law and can be directly implemented.

Legal protection of children and young people Organic act 1/1996, dated January 15, which partially modifies the Civil Code and the Civil Procedure Act

Article 2. Best interest of children and young people

1. Every child and young person has the right to have their best interested appreciated and considered as paramount in all actions and decisions concerning them, both in the public and the private sphere. For the application of this act and any other rules affecting them, as well as measures regarding minors adopted by public or private institutions, Courts and legislative bodies, their best interest shall prevail over any other legitimate interest that may simultaneously occur.

Limitations to minors' ability to act shall be construed restrictively and, at any rate, in their best interest always.

2. For the purposes of interpreting and applying the minor's best interest in each case, the following general criteria shall be taken into consideration, without prejudice to those established in the

⁷⁶ http://noticias.juridicas.com/base_datos/Privado/lo1-1996.html (24.04.2020).

⁷⁷ <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf> (1.07.2021).

applicable specific legislation, as well as any others that may be deemed appropriate, given the specific circumstances surrounding each case:

a) Protecting the minor's right to life, survival and development, as well as meeting their basic, including material, physical, educational, emotional, and affective.

b) Taking into consideration the minor's wishes, feelings and opinions, as well as their right to gradually participate -depending on their age, maturity, development and personal growth- in the process to determine their best interest.

c) Convenience for their life and development to take place in an adequate violence-free family environment. Permanence in their birth family shall be prioritised and maintenance of their family relations shall be met, provided this is possible and positive for the minor. Should any protection measure be agreed upon, family placement shall be prioritised above residential placement. Where the minor has been removed from their family unit, likelihood and convenience for their return shall be assessed, taking the family's evolution from the time the protection measure was adopted into consideration and always putting the minor's interest and needs above those of the family.

d) Preserving the minor's identity, culture, religion, ideas, sexual preferences and identity, and language. Non-discrimination of the minor due to these or any other conditions whatsoever, including disability, thus ensuring the harmonious development of their personality.

3. These criteria shall be weighted taking the following general elements into consideration:

a) The minor's age and maturity.

b) The need to ensure their equality and non-discrimination due to special vulnerability, be it down to the lack of a family unit, having suffered abuse, being disabled, their sexual preferences and identity, their status as a refugee, asylumseeker or ancillary protection seeker, belonging to an ethnic minority or any other relevant characteristic or circumstance.

c) The irreversible effect of the lapse of time in their development.

d) The need for stability in solutions adopted in order to promote effective integration and development of the minor within society, as well as to minimise the risk of any material or emotional changes that these may have in their personality and future development.

e) Preparing the transition into an adult independent life, in line with their abilities and personal circumstances.

f) Any other weighing elements that may be deemed relevant in a specific case, so long as they respect children and young people's rights.

The above elements shall be assessed as a whole, in accordance with the principles of necessity and proportion, so that the measure adopted in the minor's best interest is not restrictive and does not limit more rights than it protects.

4. In the event of any other legitimate interest coinciding with the minor's best interest, any measures responding to the latter and respecting the other legitimate interest concurring too shall be prioritised.

Where it is not possible to respect all concurring legitimate interest, the minor's best interest shall come above any other legitimate right that may simultaneously apply.

Decisions and measures adopted in the minor's best interest shall take into consideration the fundamental rights of any other people that may be affected, at any rate.

5. Any measure in the minor’s best interest shall be adopted under the appropriate assurances of the process, and, specifically:

a) The minor’s rights to be informed, heard and listened to, and to take part in the process in accordance with the current rules.

b) Intervention of qualified or expert personnel in the process. Where necessary, said personnel shall have received sufficient training to determine the specific needs of disabled children. Any especially relevant decisions affecting the minor shall be accompanied by the chartered report of a multidisciplinary technical team specialising in the appropriate fields.

c) Participation in the process to defend their interest of the minor’s biological parents, tutors or legal representatives or a legal defender should there exist any conflicts or disputes with them, as well as the prosecuting authority.

d) Adoption of a decision including in its grounds the criteria used, the elements applied for weighting the criteria against each other and any other present or future interest, and procedural guarantees observed.

e) The existence of resources that allow for the review of a decision adopted that does not take the minor’s best interest as a paramount consideration or where the very development of the minor or significant changes in their circumstance substantiating said decision make it necessary to review it. Children and young people shall have the right to free legal assistance in the cases provided by the law.

Sweden

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Sweden	Social Services Act, 2001:453	s.1-2	Swedish	Amesto	CP	General
	Children and Parents Code (1949: 381)	S 6-1, 6-2a	Swedish	Google	CP	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	<i>sum</i>	<i>Term</i>
Sweden	-	-	Yes	Yes	Yes	-	Yes	-	Yes	5	Best interests

The Children and Parents Code includes several provisions that mention the CBI. Here the provisions relating most to the care order regulation are taken into account.

Swedish Social Services Act (2001:453)

2 In the event of measures affecting children, particular attention should be given to the best interests of the child.

Decisions or other measures relating to the care or treatment of children should be based on what is best for the child.

All individuals under the age of 18 are regarded as children. Act (2012:776).

Swedish Children and Parents Code (1949: 381)

Section 1

Children have the right to care, security and a good upbringing. Children must be treated with respect for their person and individuality and must not be subjected to corporal punishment or other abusive treatment.

Section 2 a

The best interests of the child shall be decisive for all decisions on custody, accommodation and contact.

When assessing what is best for the child, special attention must be paid to

- the risk of the child or someone else in the family being abused or of the child being unlawfully abducted or detained or otherwise harmed, and
- the child's need for close and good contact with both parents.

The will of the child must be taken into account, taking into account the child's age and maturity.

Switzerland, Basel-Stadt

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Switzerland	Support and Welfare Act for Children And Youths ⁷⁸	s.3(1)	German	Amesto	General	Canton Basel

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	sum	Term
Switzerland	-	-	-	-	-	-	-	-	Yes	1	wellbeing

The Federal Constitution of Switzerland⁷⁹ protects the rights of children and affords them protection (Article 11). The Constitution also protects right to family life (Article 13). International treaties form part of national legal system in Switzerland (Article 193), thus CRC can be directly implemented in Switzerland.

Support and Welfare Act for Children and Youths (Children and Young Persons Act, KJG)

II. Principles

Section 3. Child's Wellbeing

The wellbeing of children and youths should be considered a matter of priority in all government action concerning such persons.

⁷⁸ https://www.gesetzessammlung.bs.ch/app/de/texts_of_law/415.100/versions/3254 (24.04.2020).

⁷⁹ <https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/1999/404/20210101/en/pdf-a/fedlex-data-admin-ch-eli-cc-1999-404-20210101-en-pdf-a.pdf> (1.07.2021).

Turkey

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
Turkey	Constitution ⁸⁰	S 41	Turkish		CP	
	Child Protection Law ⁸¹	s.4	Turkish	International organisation	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	<i>sum</i>	<i>Term</i>
Turkey	-	-	Yes	Yes	Yes	-	Yes	-	Yes	5	Best interests

Constitution

ARTICLE 41- (Paragraph added on October 3, 2001; Act No.4709) Family is the foundation of the Turkish society and based on the equality between the spouses.

The State shall take the necessary measures and establish the necessary organization to protect peace and welfare of the family, especially mother and children, and to ensure the instruction of family planning and its practice.

Paragraph added on May 7, 2010; Act No. 5982) Every child has the right to protection and care and the right to have and maintain a personal and direct relation with his/her mother and father unless it is contrary to his/her best interests.

(Paragraph added on May 7, 2010; Act No. 5982) The State shall take measures for the protection of the children against all kinds of abuse and violence.

Child Protection Law / Juvenile Protection Law

Fundamental Principles

Article 4-

(1) For the purposes of this Law, in order to protect the rights of juveniles, the following fundamental principles shall be observed:

- a) safeguarding juveniles' right to life, development, protection and participation,
- b) safeguarding the interest and well-being of juveniles,
- c) No discrimination towards the juvenile or his/her family for any reason whatsoever,
- d) ensuring the participation of the juvenile and his/her family in the process via keeping them informed,
- e) cooperation between the juvenile, his/her family, the related authorities, public institutions and non-governmental organizations,
- f) following a procedure that is based on human rights, fair, effective and swift,

⁸⁰ <https://www.anayasa.gov.tr/en/legislation/turkish-constitution/> (1.07.2021).

⁸¹ <https://rm.coe.int/1680470946> (24.04.2020).

- g) employing special care appropriate to the situation of the juvenile throughout the investigation or prosecution process,
- h) supporting the juvenile in developing his/her personality, social responsibility and education as appropriate for his/her age and development, when taking and implementing the decisions,
- i) Penalty of imprisonment and measures that restrict liberty shall be the last resort for juveniles,
- j) When deciding measures, caring at institution and keeping at institution shall be considered as the last resort; when taking and implementing the decisions, ensuring that social responsibility is shared,
- k) Keeping juveniles separate from adults at the institutions where they are cared for and looked after and where the court decisions are implemented,
- l) Taking measures to prevent others from detecting the identity of the juvenile in transactions related to juveniles, trials and when carrying out the decisions.

UK (England)

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
England and Wales	Children Act 1989 ⁸²	s.1	English	N/A	General	General

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	<i>sum</i>	<i>Term</i>
<i>England</i>	-	Yes	Yes	Yes	-	Yes	Yes	Yes	Yes	7	Welfare

Children Act 1989

1 Welfare of the child.

(1) When a court determines any question with respect to—

(a) the upbringing of a child; or

(b) the administration of a Child's property or the application of any income arising from it, the Child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

[F1(2A) A court, in the circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the Child's welfare.]

(2B) In subsection (2A) 'involvement' means involvement of some kind, either direct or indirect, but not any particular division of a Child's time.]

(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

⁸² <http://www.legislation.gov.uk/ukpga/1989/41/section/1> (24.04.2020).

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g) the range of powers available to the court under this Act in the proceedings in question.

(4) The circumstances are that—

(a) the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or

(b) the court is considering whether to make, vary or discharge [F2a special guardianship order or] an order under Part IV.

(5) Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

[F3(6) In subsection (2A) ‘parent’ means parent of the child concerned; and, for the purposes of that subsection, a parent of the child concerned—

(a) is within this paragraph if that parent can be involved in the Child’s life in a way that does not put the child at risk of suffering harm; and

(b) is to be treated as being within paragraph (a) unless there is some evidence before the court in the particular proceedings to suggest that involvement of that parent in the Child’s life would put the child at risk of suffering harm whatever the form of the involvement.

(7) The circumstances referred to are that the court is considering whether to make an order under section 4(1)(c) or (2A) or 4ZA(1)(c) or (5) (parental responsibility of parent other than mother).]

UK (Scotland)

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
UK (Scotland)	Children (Scotland) Act 1995 ⁸³	s.1	English	N/A	Parental responsibilities	Scotland
	Children’s Hearings (Scotland) Act 2011 ⁸⁴	s.25	English	N/A	CP court proceedings	Scotland

⁸³ <http://www.legislation.gov.uk/ukpga/1995/36> (24.04.2020).

⁸⁴ <http://www.legislation.gov.uk/asp/2011/1/section/25> (24.04.2020).

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	<i>sum</i>	<i>Term</i>
<i>Scotland</i>	Yes	-	Yes	Yes	Yes	Yes	Yes	-	Yes	7	Welfare

Children Act

1 Parental responsibilities.

(1) Subject to section 3(1)(b) [F1, and (d)] and (3) of this Act, a parent has in relation to his child the responsibility—

- (a) to safeguard and promote the Child's health, development and welfare;
- (b) to provide, in a manner appropriate to the stage of development of the child—
 - (i) direction;
 - (ii) guidance to the child;
 - (c) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and
 - (d) to act as the Child's legal representative, but only in so far as compliance with this section is practicable and in the interests of the child.

11. Court orders relating to parental responsibilities etc.

(7) Subject to subsection (8) below, in considering whether or not to make an order under subsection (1) above and what order to make, the court—

(a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and

(b) taking account of the Child's age and maturity, shall so far as practicable—

- (i) give him an opportunity to indicate whether he wishes to express his views;
- (ii) if he does so wish, give him an opportunity to express them; and
- (iii) have regard to such views as he may express.

In carrying out the duties imposed by subsection (7)(a) above, the court shall have regard in particular to the matters mentioned in subsection (7B) below.

(7B) Those matters are—

(a) the need to protect the child from—

(i) any abuse; or

(ii) the risk of any abuse,

which affects, or might affect, the child;

(b) the effect such abuse, or the risk of such abuse, might have on the child;

(c) the ability of a person—

(i) who has carried out abuse which affects or might affect the child; or

(ii) who might carry out such abuse,

to care for, or otherwise meet the needs of, the child; and

(d) the effect any abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has (or, by virtue of an order under subsection (1), would have) those responsibilities.

Children’s Hearing

25 Welfare of the child

(1) This section applies where by virtue of this Act a children’s hearing, pre-hearing panel or court is coming to a decision about a matter relating to a child.

(2) The children’s hearing, pre-hearing panel or court is to regard the need to safeguard and promote the welfare of the child throughout the Child’s childhood as the paramount consideration.

UK (Wales)

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
UK (Wales)	Social Services and Well-being (Wales) Act 2014 ⁸⁵	s.6	English	N/A	Parental responsibilities	Scotland

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	<i>sum</i>	<i>Term</i>
<i>Wales</i>	-	Yes	Yes	Yes	-	Yes	-	-	Yes	5	Welfare

Social Services and Well-being (Wales) Act

6 Other overarching duties: general

(1) A person exercising functions under this Act in relation to—

(a) an individual who has, or may have, needs for care and support,

(b) a carer who has, or may have, needs for support, or

(c) an individual in respect of whom functions are exercisable under Part 6 (looked after children etc), must comply with the duties in subsection (2).

(2) The person must—

(a) in so far as is reasonably practicable, ascertain and have regard to the individual’s views, wishes and feelings,

(b) have regard to the importance of promoting and respecting the dignity of the individual,

(c) have regard to the characteristics, culture and beliefs of the individual (including, for example, language), and

⁸⁵ <http://www.legislation.gov.uk/anaw/2014/4/section/6> (24.04.2020).

(d) have regard to the importance of providing appropriate support to enable the individual to participate in decisions that affect him or her to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is limited for any reason. [...]

(4) A person exercising functions under this Act in relation to a child falling within subsection (1) (a), (b) or (c), in addition—

(a) must have regard to the importance of promoting the upbringing of the child by the Child's family, in so far as doing so is consistent with promoting the well-being of the child, and

(b) where the child is under the age of 16, must ascertain and have regard to the views, wishes and feelings of the persons with parental responsibility for the child, in so far as doing so is—

(i) consistent with promoting the well-being of the child, and

(ii) reasonably practicable.

UK (Northern Ireland)

Country	Legal act	Provision	Original language	Translation	Type of legislation	Application
UK (NI)	The Children (Northern Ireland) Order 1995 ⁸⁶	S 3	English	N/A	Court proceedings	Northern Ireland

	Fu	Id	Ne	Par	Rel	PP	Prot	perm	W&P	<i>sum</i>	<i>Term</i>
<i>Northern Ireland</i>	-	Yes	Yes	Yes	-	Yes	Yes	Yes	Yes	7	Welfare

The Children (Northern Ireland) Order 1995

Child's welfare to be paramount consideration

3.—(1) Where a court determines any question with respect to—

(a) the upbringing of a child; or

(b) the administration of a Child's property or the application of any income arising from it,

the Child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to—

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

⁸⁶ <http://www.legislation.gov.uk/nisi/1995/755/contents> (24.04.2020).

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;

(g) the range of powers available to the court under this Order in the proceedings in question.

(4) The circumstances are that—

(a) the court is considering whether to make, vary or discharge an Article 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or

[F1(aa) the court is considering whether to make an order under Article 7; or]

(b) the court is considering whether to make, vary or discharge an order under Part V.

(5) Where a court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.