| Chapter 1 |

Introduction – Broad Concept of Child Protection

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1. Introduction

Social rights are one of the most controversial areas of human rights and some of the most variably regulated rights in different states. According to some legal scholars, social rights are as important a factor in a person becoming a citizen as are classical fundamental rights.[1] The declaration of social rights, or some form of regulation of social rights, always presents a faithful picture of a particular state's values, its vision of a man and its own role; such a declaration is generally linked to prevailing political views and, of course, the more narrowly defined conceptions of constitutional law.

Economic, social and cultural rights, as second-generation rights, contrast in many ways with civil and political rights as first-generation rights. One difference lies in the state obligation they entail.[2] According to Gábor Kardos, a behavioural obligation exists in relation to second-generation rights. To effectively guarantee a significant group of rights, the state must engage in well-defined conduct in accordance with the rules of the relevant constitution or international treaty.[3] The United Nations (UN) body, the Committee on Economic, Social and Cultural Rights sets out three types of state obligations: respect, fulfilment and satisfaction.[4]

Note that, similar to Hajdú, we believe that the generational division of human rights can be misleading. Human rights are indivisible, interdependent and

1 Sári, 1997, p. 217.
2 The question of whether the state's conduct is a positive or negative sign has been raised in two cases: the Marckx case, judgment of 13 June 1979, ECHR, Series A, No 31, and the McCann and Others case, judgment of 27 September 1995, ECHR, Series A, No 324.
3 Kardos, 2003, p. 27. For example, to ensure the right to health, a social security system must be in place.
4 See: Committee on Economic, Social and Cultural Rights, General Comment No. 12. (1999), UN doc, E/2000/22.

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interrelated. The quality of human existence is determined by second-generation rights. Social security is an integral part of a life worth living. While there is a difference between the nature of each generation, the following can be said with certainty: All human beings have an indivisible right to human rights; the quality of human life is largely determined by the opportunities offered by these social rights; and the state is present in all generational rights, differing only in the extent and intensity of its presence.[5]

The difference between the two groups of human rights lies the direct nature of the state obligation in the case of civil and political rights as well as its gradual nature in the case of social rights. The temporal dimension can thus be contrasted.[6]

From the point of view of enforceability, the accountability of economic, social and cultural rights depends on supporting norms, that is, lower-level legislation. It is possible to sue for the substantive elements laid down in lower-level legislation. In the case of civil and political rights, the court will repair the violation of the mother law on merits.[7]

Economic, social and cultural rights, as well as human rights in general, place the state under pressure to justify any regulation by its impact on those it regulates. Moreover, human rights place the burden of proof on the state. The consequence is that human rights are reduced to the logical premise of the right to subsistence.[8] The right to subsistence must be interpreted broadly, including the need to satisfy all human needs.[9] The need for economic, social and cultural rights can be justified by not only basic human needs but also the avoidance of human suffering closely related to them.

There is a great need for integrated protection of human rights. The exercise of civil and political rights is hardly conceivable without at least minimum *social empowerment*. The former presupposes the latter. Further, the enjoyment of human dignity requires at least a minimum level of social entitlement. The guarantee of this entitlement can also be underpinned by solidarity within a community of citizens and national, ethnic or religious communities. The idea of equality can also be raised as a basis for social entitlements.[10]

5 See: Hajdú, 2021, p. 31; Halmai and Tóth, 2008, pp. 81–107. See also: the Ministerial Conference on Human Rights held in Rome on 5 November 1990, which stressed the need to preserve the indivisible nature of all human rights (whether civil, political, economic, social or cultural) and to give new impetus to the European Social Charter. Therefore, at the Ministerial Conference held in Turin on 21 and 22 October 1991, it was decided to modernise the European Convention on Human Rights and amend it to consider the fundamental social changes that had taken place in the 30 years since the text was adopted. See: Hajdú, 2021, p. 33.

6 Ibid., p. 29.

7 Ibid., p. 30.

8 Ibid., p. 32.

9 These include survival needs, needs arising from social participation and self-actualisation needs. For more details, see: Jayakumar Nayar, 1996, pp. 171–194.

10 Kardos, 2003, pp. 33–34.

Social rights provide distributive entitlements and guarantee services to people who are on the weaker side of a struggle against organised interests. Political debates also often raise the idea of protection of the weaker, but these do not comprise absolute arguments, and economic and social rights do not lose their legitimacy because of them.[11]

International legal sources rarely define social security. In most cases, it is assumed that social security represents an umbrella concept, that is, the basic goal of the science of social law, which is achieved through various subsystems such as social insurance and social protection systems. Consequently, social security can be a goal the society strives for to ensure decent living conditions and an existential minimum for as many residents as possible; this goal will be achieved through the developed social insurance and social protection systems, which will enable individuals to exercise their basic rights and receive appropriate protection if certain social risk appears. Therefore, it is the state's obligation to create a valid normative framework that will regulate the procedure and conditions for exercising social security rights and providing social protection measures. Without developed legal and sub-legal legislation, a clear constitutional framework or appropriate measures for supervising implementation of the law, ensuring social security for citizens will be a difficult task for every state.[12]

Ravnić wonders what social security would encompass – individual subjective rights or something broader – while analysing German law, according to which social benefits and services include only those recognised by the public authorities responsible for public social benefits and services. Namely, social law regulated by state public law norms establishes a relationship between the individual and state, in which individuals are granted benefits and services regulated by public authorities. According to Ravnić, social content regulated by a contract – unilaterally on a voluntary basis by a charitable institution or even compulsorily by public authorities – would be part of the *content of social protection law* as a gender concept consisting of different forms of insurance and assistance for individuals and, to a lesser extent, for groups. Social protection in this sense is only part of the social law and is by no means the law's sole task. However, Ravnić clearly emphasises that the concept of *social security* has displaced the concept of *social protection*, and social security, seen as a system, encompasses social areas based on insured risks, social needs and other insured cases, overlapping with the concept of social law or the right to social security. In an objective sense, social law is actually

> 'a set of norms, regulations and rules that regulate legal and social relationships, and in a subjective sense, it is a set of powers conferred by law to individuals, and less frequently to groups, to demand certain social benefits (provisions or actions) in a state of social need, provided that they meet certain conditions.'[13]

11 Ibid., p. 36.
12 Bojić, 2023, pp. 155–156.
13 Vinković, 2023, pp. 76–77; see also: Ravnić, 2004, pp. 226–228.

One of the greatest Croatian labour law theorists, Nikola Tintić, criticises the ambiguity of the attribute "social" and its usage because of various meanings of the term. The term "social" can be considered as the totality of protective legislation *in favorem* workers; limitation of the employer's contractual dictate, particularly in relation to vulnerable groups of workers (minors and women); and a system of social assistance and protection in the broadest sense, in relation to members of the society in a state of social need, or as provisions elevated in such cases to the level of *specific social rights of individuals*. Moreover, he clearly states that social law and social security *in different periods of history or the social, political and economic systems are based on different conditions, social relations, interests, possibilities, goals and concepts*. Based on such reflections on social law by Tintić, social policies generally become a very important instrument. This is because, unlike static social or social security law, they have a more dynamic nature and are able to adapt to different social challenges, needs and even programmes of political elites.[14]

Legal scholarship offers several definitions of social security law, especially in college textbooks. Koldinsky sees social security law as a set of legal norms that implement the rights formulated primarily in Arts. 30 to 32 of the Charter of Fundamental Rights and Freedoms, respond to legally recognised social situations and, as a whole, constitute a system of social protection. Matlák stresses that social security law acts as a separate legal branch, but at the same time, it is the subject of both pedagogical and scientific approach and constitutes both a scientific and pedagogical discipline. He further states that social security law constitutes a set of legal norms regulating social, collective and individual relations arising in social security as well as in the application or implementation of social policy and social partnership of individual subjects of the social sphere. Galvas and Gregorova consider social security law to be a set of legal norms that regulate the behaviour of subjects in social relations arising in the provision of material security or other assistance to citizens who, as a result of social events accepted by law, need such benefits or assistance.[15]

Vieriu explains that social security is not only an activity or concern of states. Rather, it is a set of legal rules governing this activity – the protective measures, their specifics and their beneficiaries. The legal rules governing social relations make up the branch of law known as social law. Just as labour law has separated from its parent discipline – civil law – social law has also separated from labour law to become an autonomous discipline and a new branch of law.[16]

As regards the integration of social security law into the legal system, one can agree with the views that it is, by its nature, primarily a public law branch, with administrative law being the closest (especially in procedural norms), and similarities can also be found with financial law (the nature of insurance premiums in the social insurance system is similar to that of the tax system). At the same time,

14 Vinković, 2023, p. 72; Tintić, 1969, p. 29.
15 Dolobáč, 2023, pp. 179–180; Koldinská et al., 2022, p. 13; Matlák et al., 2012, p. 42.
16 Vieriu, 2016, p. 113.

however, many private law elements can be found in social security law (e.g. private law contracts concluded between the provider and recipient of certain social or health services). We would add to these considerations that social security law has a special relationship with labour law, and we find several overlaps. There is a particular correlation in the protection of employees caring for children. The basic code of labour law provides these employees (and other groups) with special care and legal protection (interruptions at work, maternity leave, paternity leave, etc.), which is supplemented by financial security provided by the standards of social security law.[17]

Modern constitutions have overwhelmingly taken the view that there is a need for some level and type of regulation of social rights in general. *The exercise of classical freedoms and social (existential) security are parts of human quality that are mutually dependent. In a society, as a kind of moral community, solidarity must be expressed in some form*. The modern state must protect the individual against social impossibility. It is true, of course, that the extent of social rights depends on the capacity of the state to deliver, but this should not mean that constitutions do not enshrine some realistic system of support for the vulnerable. Indeed, where the line is drawn between economic policy decisions and constitutional decisions depends on the constitutionalisation of social rights and quality of the regulation. If provision of the necessary means of subsistence follows directly from the constitution (human dignity), then it is not an economic policy decision whether to provide the necessary means of subsistence to the citizens but rather a matter of fundamental rights.[18]

According to the UN Convention on the Rights of the Child (CRC), a child who is temporarily or permanently deprived of his or her family environment, or cannot be allowed to remain in that environment in his or her own best interests, shall be entitled to special protection and assistance provided by the state. States are obliged to provide alternative care to these children. The system of protection the states provide varies from one country to another. The aim of this book is to provide a detailed understanding of the meaning of the right to alternative care and the characteristics of an effective and caring system. The book uses the Central European comparative perspective to consider, as widely as possible, the good practices as well as obstacles in the system to reveal and demonstrate the best methods to care for this particularly vulnerable group of children.

2. Integrated Child Protection System

Every community creating an organism, such as the state, is composed of a range of different people. Such a community comprises adults, including senior citizens, as well as children. The state as invoked here is a common good,[19] that is, an entity

17 Dolobáč, 2023.
18 Téglási, 2019, p. 337.
19 For the common good, see: Trzciński, 2018, p. 23.

responsible for providing its citizens with conditions in which they can function and satisfy their needs. This means that the state is also obliged to ascertain that children are guaranteed the conditions allowing them to live in their natural families, and if, for various reasons, this is not possible, the state will take measures to create conditions in which the children can live and grow up peacefully.[20]

Responsibility for the development, growth, upbringing and protection of the child lies primarily with the parents, as prescribed by Art. 18 para. 1 of the CRC.[21] This range of care options should exist 'with priority to family and community based solutions'. Importantly, the UN Guidelines for the Alternative Care of Children acknowledge that family-based settings and good quality residential care facilities form part of a range of appropriate responses, provided that such residential care facilities conform to certain specifications and are used only for "positive" reasons – that is, when they are the most appropriate response to the situation and the needs of the child. In other words, the lack of other options, of time or of resources in finding a more appropriate setting needs to be addressed in its own right, and it does not constitute a sufficient reason for providing a child with a residential living situation.[22]

The competent state authority intervenes to protect children when parent(s) cannot take care of the child independently or satisfactorily. Therefore, it is the task of state authorities to intervene with the goal of protecting children if their rights and welfare are threatened by unlawful actions of the parent(s), family member(s) or third unrelated person(s). Procedures and measures that state authorities undertake are a form of assistance to the child, parents and the family, as prescribed by Art. 18 Para. 2 in accordance with Art. 9 of the CRC.

> The UN Children's Fund defines a child protection system as
> 'the set of laws, policies, regulations and services needed across all social sectors – especially social welfare, education, health, security and justice – to support prevention and response to protection-related risks. These systems are part of social protection, and extend beyond it .... Responsibilities are often spread across government agencies, with services delivered by local authorities, non-State providers, and community groups, making coordination between sectors and levels, including routine referral systems, a necessary component of effective child protection systems.'[23]

20 For the state obligations, see: Florczak-Wątor, 2018, p. 119.

21 The CRC (Official Journal of the SFRY, No. 15/90, Official Gazette – International treaties, No. 12/93, 20/97, 4/98 and 13/98) is an international global legal source that represents a component of the domestic legal order of the Republic of Croatia and has primacy over domestic legal sources but not over the Constitution (Art. 134 Constitution).

22 Davidson, 2015, p. 384; see also: Davidson et al., 2016, pp. 754–769; Van Breda et al., 2020.

23 European Union Agency for Fundamental Rights, 2024.

Child protection has historically focused on particular issues or specific groups of vulnerable children. This approach can serve the needs of a targeted group. However, it is also subject to important limitations.

Children may have multiple protection problems. Fragmented child protection interventions deal with a single problem, and they fail to provide a comprehensive solution to children's diverse needs. Focusing on selected issues alone, or on particular groups of children, is neither sustainable nor effective.

An integrated child protection system places the child at the centre and endorses and promotes the provisions of the CRC. The system bases its work on the rights and obligations enshrined in the CRC. It aims to ensure that all essential actors and systems – education, health, welfare, justice, civil society, community and family – work together to prevent abuse, exploitation, neglect and other forms of violence against children. It also aims to protect and assist children in these situations.

The 2006 UN Secretary General's study on violence against children[24] recommends that 'all States develop a multifaceted and systematic framework to respond to violence against children which is integrated into national planning processes'. An integrated, systemic approach to child protection benefits all children. It can respond to various situations a child might encounter.

An integrated child protection system places the child at the system's centre and endorses and promotes the CRC. It ensures that all essential actors and systems – education, health, welfare, justice, civil society, community and family – work in concert to prevent abuse, exploitation, neglect and other forms of violence against children as well as protect and assist children in these situations. [25]

The following are the 10 principles for integrated child protection systems:

1. Every child is recognised, respected and protected as a rights holder, with non-negotiable rights to protection.
2. No child is discriminated against.
3. Child protection systems include effective prevention measures.
4. Families are supported in their role as primary caregivers.
5. Societies are aware and supportive of the child's right to freedom from all forms of violence.
6. Child protection systems ensure adequate care.
7. Child protection systems have transnational and cross-border mechanisms in place.
8. The child has support and protection at any time from a legal guardian or other recognised responsible adult or competent public body.
9. Training on identification of risks for children in potentially vulnerable situations is available for a wide range of professionals and practitioners.

24 United Nations, 2007.
25 European Commission, 2015; Desai, 2020, pp. 29–61.

10. There are safe, well-publicised, confidential and accessible reporting mechanisms in place, including helplines and hotlines.26

In its Conclusions on the EU Strategy on the Rights of the Child (2022), the Council of the European Union called on the Member States to strengthen cooperation and coordination between all relevant authorities and stakeholders. The council called on them to increase their efforts to prevent and combat all forms of violence against children, in particular by: a) promoting cooperation among support services, and supporting a holistic response to violence; b) developing integrated and targeted specialist support services for child victims, in addition to or as part of general victim support services and investing in preventing secondary victimisation; c) strengthening the development, evaluation and promotion of integrated child protection systems where all relevant services cooperate according to a coordinated and multidisciplinary approach, in the best interests of the child, for example the Children's Houses (Barnahus) or any other equivalent children's rights ... friendly model; d) banning corporal punishment in all settings, and strengthening integrated support services for children and families. [27]

3. Guidelines for the Alternative Care of Children

The Guidelines for the Alternative Care of Children are intended to enhance the implementation of the CRC and relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or are at risk of being so. The guidelines set out desirable orientations for policy and practice. They are designed for wide dissemination among all sectors directly or indirectly concerned with issues relating to alternative care. In particular, they seek to support efforts to keep children in, or return them to, the care of their family or, failing this, find another appropriate and permanent solution, including adoption and kafala of Islamic law; ensure that, while such permanent solutions are being sought, or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative care are identified and provided, under conditions that promote the child's full and harmonious development; assist and encourage governments to better implement their responsibilities and obligations in these respects, considering the economic, social and cultural conditions prevailing in each state; and guide policies, decisions and activities of all those concerned with social protection and child welfare in both the public and private sectors, including the civil society.[28]

The guidelines were created to ensure that the two basic principles of alternative care for children are respected, which require that such care is genuinely needed (the

26 European Commission, 2015.
27 European Union Agency for Fundamental Rights, 2024.
28 United Nations General Assembly, 2010, p. 1.

"necessity principle") and, when this is so, care is provided in an appropriate manner (the "suitability principle").

Acting on the necessity principle first involves preventing situations and conditions that can lead to alternative care being foreseen or required. The range of issues to be tackled is considerable: from material poverty, stigmatisation and discrimination to reproductive health awareness, parent education and other family support measures such as provision of day-care facilities. It is worth noting that, as the guidelines' drafting process progressed, government delegates increasingly expressed an interest in ensuring that preventive responses were given the most comprehensive coverage possible. The second action point for the necessity principle concerns the establishment of a robust "gatekeeping" mechanism capable of ensuring that children are admitted to the alternative care system only if all possible means of keeping them with their parents or the wider (extended) family have been examined. The implications here are twofold: they require adequate services or community structures to which referrals can be made and a gatekeeping system that can operate effectively regardless of whether the potential formal care provider is public or private. Furthermore, the necessity of placement must be regularly reviewed. These are clearly significant challenges for many countries, but experience shows that they need to be confronted if unwarranted placements are to be avoided.[29]

Regarding the suitability principle, if it is determined that a child does indeed require alternative care, it must be provided in an appropriate way. This means that all care settings must meet the general minimum standards in terms of, for example, conditions, staffing, regime, financing, protection and access to basic services (notably, education and health). To ensure this, a mechanism and process must be put in place for authorising care providers based on established criteria and for carrying out subsequent inspections over time to monitor compliance. The second aspect of suitability relates to matching the care setting with the individual child concerned. This means selecting a setting that will, in principle, best meet the child's needs at the time. This also implies that a range of family-based and other care settings are in place, so that a real choice exists, and there is a recognised and systematic procedure for determining which is most appropriate ("gatekeeping"). In developing this range of options, priority should clearly be given to 'family and community-based solutions'[30]. At the same time, the guidelines recognise family-based settings and residential facilities as complementary responses[31], provided that the latter conform to certain specifications[32] and are used only for "positive" reasons (i.e. when they constitute the most appropriate response to the situation and the needs of the child concerned[33]. For example, a child taken into care because of a negative family experience may be unable to cope with immediate placement in another "family-based" setting and

29 Cantwell et al., 2012, pp. 379–387.
30 Art. 53 of the Guidelines for the Alternative Care of Children
31 Ibid., Art. 23.
32 Ibid., Arts. 123 and 126.
33 Ibid., Art. 21.

may, therefore, first need a less intimate or less emotionally demanding environment. Equally, if foster care is envisaged as the most favourable solution, the foster family will need to be selected according to its potential willingness and ability to respond positively to the characteristics of the child in question. Again, suitability of a placement must be subject to regular review – when and how often being dependent on the purpose, duration and nature of the placement – and consider all pertinent developments that may have occurred since the original decision was made.[34]

The Guidelines for the Alternative Care of Children frequently reference the 'best interests of the child'. However, much confusion surrounds the meaning and implications of this concept in the context of promoting and protecting children's rights. Misinterpreting the aims and scope of the "best interests principle" can lead in practice to highly inappropriate and harmful responses to children who are, or are at risk of being, without parental care. The child has the right to have his or her "best interests" taken into account as "a primary consideration" when decisions affecting the child are made by 'public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'[35]. These decisions can have far-reaching consequences. So, it is all the more important to be clear about the way the "best interests" are to be approached when implementing the guidelines. Essentially, three interdependent requirements emerge from Art. 3.1 CRC: (1) Whenever the entities mentioned above are involved, they must determine the best interests of the child. This means deciding based on all the information requested and/or made available. This responsibility for determining best interests is particularly important where there is a conflict of opinion or there is no primary caregiver. (2) In making a decision that affects the child, these entities should also consider the rights and legitimate interests of any other party (e.g. parents, other individuals, bodies or the state itself) as well as other pertinent factors. Thus, although prioritising the child's best interests is seen as the guiding rule in practice, decision-makers are not actually bound to follow this in every instance. Requirement (2) should be balanced with requirements (1) and (3) and should not be interpreted outside the context of these three CRC requirements. (3) When a "best interests" decision must be made between various appropriate and viable options for a child, it should in principle favour the solution considered to be the most positive for the child – immediately and in the longer term. At the same time, any final decision should thoroughly comply with all other rights of the child. Importantly, from a rights perspective, "best interests" do not transcend or justify ignoring or violating one or more other right – if that were so, the concept could never have been included in the CRC. The "right" in the CRC simply seeks to ensure that the child's best interests are duly considered when decisions are made about the most effective way to safeguard his or her overall rights. The responsibility for that decision-making clearly lies with the bodies specified; it cannot be taken over arbitrarily by others. In a field such as alternative care – both in practice

34 Cantwell, 2012, p. 23; Davidson, 2015, p. 384.
35 Art. 3.1 CRC

and from a policy perspective – it is reasonable to expect that in most situations, the child's duly determined best interests should be followed. If and when this is not the case, it must be demonstrated that doing so would seriously compromise the rights and interests of others. One example of this, provided in the UN High Commissioner for Refugees (UNHCR) Guidelines on Determining the Best Interests of the Child (see below), is the decision to not place a child having an infectious disease in a foster family before treatment, even if family-based care has been determined as being in his or her best interests. Similarly, it is possible that the physical security of foster carers looking after a particular child is threatened by third parties, resulting in the need to relocate that child to a group setting where staff protection can be better assured. It follows that situations where the child's initially determined best interests cannot be prioritised are truly exceptional. Furthermore, the "best interests of the child" are the determining factors in two situations that are directly relevant to alternative care: examining the need to separate a child from his or her parents (Arts. 9.1 and 20.1 CRC) and exploring adoption as an option for a child who has been taken into alternative care (Art. 21 CRC). In these cases, the child's best interests should clearly take automatic precedence, but it is still vital to remember that the two other core elements of Art. 3.1 CRC (decision-making responsibility and the rights-compliant nature of the chosen solution) remain intact.[36]

What information, factors and criteria should constitute the basis for that decision? In other words, how are the best interests to be determined? To date, the most comprehensive attempt to respond to this question at the international level is undoubtedly the Guidelines on Determining the Best Interests of the Child drawn up by the UNHCR (2008). Although the best interests determination (BID) model that these guidelines propose was largely designed for unaccompanied and separated refugee children, it is a prime source of inspiration when any significant decisions are to be made about a child and his or her future. For children for whom alternative care is, or may be, a reality, BID should be grounded in an assessment undertaken by qualified professionals. Moreover, it should cover at least the following issues:

1. The child's own freely expressed opinions and wishes (based on the fullest possible information), considering the child's maturity and ability to evaluate the possible consequences of each option presented
2. The situation, attitudes, capacities, opinions and wishes of the child's family members (parents, siblings, adult relatives and close "others"), as well as the nature of their emotional relationship with the child
3. Level of stability and security provided by the child's day-to-day living environment (whether with parents, in kinship or other informal care, or in a formal care setting):
    a. Currently (immediate risk assessment)
    b. Previously in that same environment (overall risk assessment)

36 Cantwell, 2015, p. 24.

   c. Potentially in that same environment (e.g. with any necessary support and/or supervision)
   d. Potentially in any of the other care settings that could be considered
4. Where relevant, the likely effects of separation and the potential for family reintegration
5. The child's special developmental needs:
   a. Related to a physical or mental disability
   b. Related to other particular characteristics or circumstances
6. Other issues as appropriate, such as
   a. The child's ethnic, religious, cultural and/or linguistic background, so that efforts can be made, as far as possible, to ensure continuity in upbringing and, in principle, maintenance of links with the child's community
   b. Preparation for transition to independent living.
7. A review of the suitability of each possible care option for meeting the child's needs, considering all the above

The results of such an assessment should form the basis of the BID by competent bodies, who will also consider all other factors (including the availability of options in practice and the interests and rights of others) before making a decision. The reason for their decision should be explained to the child, especially if it does not correspond to the opinion that child expressed. A BID assessment should also be carried out each time a placement comes up for review (see Art. 25 CRC and § 67 of the UNHCR Guidelines on Determining the Best Interests of the Child). In certain egregious situations, the danger a child faces will require immediate protective action. Here, it is vital to ensure that the full BID process is launched as soon as practicable after the initial emergency response – ideally with an agreed protocol for doing so. In particular, no definitive and durable solution must be arranged before the assessment process has been completed and its findings have been considered by a competent authority.[37]

3. Closing Remarks

This is the theoretical background against which the chapters of this book have been written. We thought it important to emphasise that social rights are one of the most controversial areas of human rights and one of the most variably regulated rights in different states. *The exercise of classical freedoms and social (existential) security are parts of human quality that are mutually dependent. In a society, as a kind of moral community, solidarity must be expressed in some form*. The modern state must protect the individual against social impossibility. It is true, of course, that the extent of social rights depends on the capacity of the state to deliver them, but this should not mean that constitutions do not enshrine some realistic system of support for the vulnerable.

37 Cantwell, 2012, p. 25.

According to the CRC, a child who is temporarily or permanently deprived of his or her family environment, or who cannot be allowed to remain in that environment in his or her own best interests, shall be entitled to special protection and assistance provided by the state. States are obliged to provide alternative care to these children. The UN Children's Fund defines a child protection system as

> 'the set of laws, policies, regulations and services needed across all social sectors – especially social welfare, education, health, security and justice – to support prevention and response to protection-related risks. These systems are part of social protection, and extend beyond it.'

The Guidelines for the Alternative Care of Children are intended to enhance the implementation of the CRC and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or are at risk of being so. The guidelines set out desirable orientations for policy and practice. They are designed for wide dissemination among all sectors directly or indirectly concerned with issues relating to alternative care.

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