

## PROPOSALS TO EU PARLIAMENTARIAN

We bring to your attention the results of our two-year project **“Support to Adult Survivors of Child Abuse in institutional settings (SASCA)”** [<http://www.sasca.eu/>], implemented by an European network of partners involved in research and advocacy activities on the issue of institutional maltreatment: Associazione Artemisia (Italy); Justice For Magdalenes (Ireland); Association victims of Il Forteto (Italy); Institute of Child Health (Greece); Waterford Institute of Technology (Ireland); Babeş-Bolyai University (Romania); Regional Government of Tuscany and the Società della Salute-Mugello (Italy).

**Then, we propose to your attention the need to enrich the EU legislation with specific rules and recommendations related to the abuse of children in institutional setting and to the prevention of this phenomenon.**

The institutional abuse of children is a phenomenon which assumes a multiplicity of forms and it happens in different settings, but there is a minimum common denominator: it represents the failure of the public system in protecting children.

Institutional abuse has not a single cause, and it is not only the responsibility of the direct author, it is often the result of an entire system which colludes, covers, justifies and sometimes motivates violence against children.

The institutional abuse is a hidden phenomenon, with rare disclosures in most EU countries. It is crucial to start discussing on this issue and inform children in care that they have the right to complain and seek for help. We must break the silence on this form of child abuse. The people know about these events only when they become a scandal and may be found on the newspapers or on TV, but there is not a correct information for prevention, for improving the necessary skills to detect the cases in order to timely intervene.

In the General comment No. 13 (2011) the UN<sup>1</sup> conceptualizes institutional and system violations of child rights and also the institutional responsibilities to protect children from all forms of violence as follow:

“Authorities at all levels of the State responsible for the protection of children from all forms of violence may directly and indirectly cause harm by lacking effective means of implementation of obligations under the Convention. Such omissions include the failure to adopt or revise legislation and other provisions, inadequate implementation of laws and other regulations and insufficient provision of material, technical and human resources and capacities to identify, prevent and react to violence against children. It is also an omission when measures and programmes are not equipped with sufficient means to assess, monitor and evaluate progress or shortcomings of the activities to end violence against children. Also, in the commission of certain acts, professionals may abuse children’s right to freedom from violence, for example, when they execute their responsibilities in a way that disregards the best interests, the views and the developmental objectives of the child” (art. CRC/C/GC/13, IV, A, 1/32).

**Institutional abuse is a violation of the rights of the child, which are part of human rights:** rights that the EU and EU countries must respect, protect and fulfill. The protection and promotion of the rights of the person and of human dignity are at the foundation of the construction and part of the system of the European Union. The EU has taken measures to ensure a continued implementation of human rights obligations parallel to the process of integration of the State members.

The Treaty of European Union (Articles 3 (1) and 2) state that EU’s aim is to “promote... its values and the well-being of its peoples”, and its values include “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights”.

The Treaty of Lisbon, which came into force on December 2009, has redirected the legal bases of the European Union around two fundamental instruments: The Treaty on Union and the Treaty on the Functioning of the Union; both contain important references to the rights of the person. The Lisbon Treaty also establishes the legal value of the Charter of Fundamental Rights and provides a new legal basis for EU accession to the European Convention on Human Rights. The EU has a large range of instruments for giving stronger effects to these standards.

1) [https://www.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](https://www.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf), accessed 15 January 2019

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The EU disposes of a human rights regime that allows human rights to be taken into consideration during the legislative process, and also allows the Court of Justice of the European Union to verify compliance after legislation has been adopted.

For the protection of victims of crimes, a crucial point of reference is the **DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. The victims' rights directive establishes minimum standards on the rights, support and protection of victims of crime and ensures that persons who have fallen victim of crime are recognized and treated with respect. **The Directive introduces important standards for the protection of the victim, but the hypothesis of the institutional abuse is not clearly taken into consideration.**

In the description of the crimes taken into consideration, the point 18 of Directive cites the violence that is committed *“in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss”*. The person that committed violence linked to institutional setting, according to his/her professional role has a relations of power with the victim; her/his professional duty of taking care of him/her makes the relationship with the child victim very similar to the definition of “close relationship”. Even in standard number 56, which discusses ‘the risk for secondary and repeat victimisation’, victims of institutional abuse in child-care-settings, have not been named<sup>2</sup>.

The Directive is relevant for those victims who has still the chance to denounce the crimes they suffered, but in the scope of the violence suffered in childhood in institutional settings, the victim may ask help after many years from the events. **Prescription is the main problem for giving a response to adult survivors**, and confirms that victims are invisible and without justice. Victims face difficulties in access to justice due to the national legal system, which is often not suited to their conditions, and to the institutional response, which is often inadequate.

As literature confirms, the disclosure of what happened, and also the activation of the subsequent judicial procedures, represents for survivors a fundamental opportunity for healing: the chance to be heard and believed; to see a correct allocation of responsibilities and to receive the multi-level support that they need.

### We propose the adoption of a Transitional Justice approach

a specific action to prevent and counteracting the phenomenon of institutional abuse and also to take care of the survivors of child abuse in institutional settings happened during their childhood.

Transitional justice consists of judicial and non-judicial measures to remedy the serious consequences of human rights violations: criminal proceedings, the setting-up of commissions to bring out the truth, remedial programs and various types of institutional reforms aimed at recognizing responsibilities, recognizing the victims and their rights to compensation.

It must be considered important both on the individual and on the collective plan.

### On individual plan we recommend that:

- adult survivors of institutional abuse must be considered as vulnerable victims, and in this respect they must have access to a protected listening, legal information and therapeutic paths;
- compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished, because the proved crime is not anymore prosecutable and the offender might not be found any more or for other reasons cannot be prosecuted;

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2) 56. “Some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. It is possible that such a risk derives from the personal characteristics of the victim or the type, nature or circumstances of the crime. Only through individual assessments, carried out at the earliest opportunity, can such a risk be effectively identified. Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimisation, of intimidation and of retaliation and what special protection measures they require.

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- in case of all crimes against a child in institutional care and all requests of children for material and moral compensation, the liability limitation term should run as of the date the victim left the protection system, if this right was not enforced before;
- certain ceilings should be established regarding compensations;
- the legal actions targeting the granting of material and moral compensations initiated by the adult who left the protection system should be exempted from the payment of court fees;
- regarding the settling of legal complaint with the above mentioned subjects, special procedural rules should be at place, like:
  - the liability limitation term for filing a preliminary complaint in order to initiate legal actions should run as of the date when the victim leaves the protection system, if the preliminary complaint wasn't submitted previously;
  - a larger and more permissive taking of evidence than stipulated by general provisions; the term of settlement should be short;
  - as victims have to rely on childhood memory and finding witnesses events that happened years ago are difficult tasks, experts should be involved in the procedure to assist the victims and investigate (psychologists, social worker etc.).
- Member States should be invited to consider economic compensation together with the establishment of a welfare system of compensation which should give a response to the long term effect of abuse that quite often is the cause of social vulnerability of the victim. The welfare scheme should include social assistance, free access to therapeutic support, access to social housing, support for finding jobs, support for completing studies.

### On the collective plan we recommend that:

- If the crime is not prosecutable, the State should consider also how to deal with persons who are recognised as responsible of a crime but there are not anymore the terms for judicial proceedings to break the cycle of violence. In case of child abuse in institutional settings they may be teachers, social workers, educators in residential care, doctors, nurses. They are persons that due to their profession work at close contact with children and other potential victims.
- The institutional abuse is a crime which depends also by the collusion of an entire institutional system and in some cases it happens as effect of lack of supervision or control or insufficient number of staff. We propose to the EU authorities to take into consideration also the case in which someone in a leading position fails to supervise or check on an employee or agent of the institution, thus enabling him/her to commit offences. The lack of control and supervision by public officers (child protection services, Juvenile Court, or other) is sometimes one of the factor facilitating the occurrence of violence against children in institutional settings.
- It is crucial to stress the requirement of a public assumption of institutional and professional responsibility for counteracting the phenomenon and to denounce it.  
Institutional responsibility means, among the others: identification of high quality standards; provision of high-level quality services for societal growth and developing individual and social well-being; monitoring on the respect of the standards; imposing rules and laws that prevent illegal and unethical behaviours that harms individuals as well as institutions.  
Professional responsibility means: ensure the honour of the profession; the individual professional must take responsibility for possible consequences of his/her actions, and does not transfer these consequences on somebody else.

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In recent years, the Commission has targeted funding under the rights of the child priority (Rights, Equality and Citizenship Programme 2014-2020) at capacity-building for judicial and other practitioners (such as child protection professionals) and professionals on child-friendly justice and children's rights in alternative care. When designing funding priorities, international standards are referenced to ensure that EU funding serves to better implement standards in Europe. In this regards **we propose to EU Commission to put a more explicitly focus also on the issues of institutional child abuse in order to:**

- encourage States to take measures to prevent this phenomenon
- respond to the need of the child victim
- responded to the need of adult survivors
- improve the responsibility of the professionals
- improve the participation of interested parties, that means that Social workers must assess periodically the situation of the child in care, she/he must meet the child, the child must be considered as an active part of his/her protection.
- encourage the relevant sectors (public services and third sector - which has usually the management of residential care for children) to participate in the elaboration and implementation of policies to prevent institutional child abuse and to adopt internal norms through self-regulation or co-regulation.