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Child protection and EU cooperation between Eastern Partnership countries during 2018, with a focus on Armenia, Georgia and Ukraine

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Abstract: *This is a brief overview of progress and challenges in three Eastern Partnership (EaP) countries during 2018. The first part of the article analyses the commitments and obligations of three EaP countries under the international and regional frameworks, emphasising the relevant mechanisms and checks and balances. In this part the United Nations and Council of Europe mechanisms are considered. The cooperation framework between the European Union (EU) and the EaP countries is considered separately. Considering the fact that human rights protection has always been one of the key preconditions in developing political and economic cooperation between the EU and partner countries and the fact that the EU proclaims itself as a global actor, human rights and child protection are considered separate cooperation dimensions. In the second part the bilateral and multilateral cooperation with the EaP countries is categorised into three clauses. The clauses are built on the announced strategies and agendas of cooperation emphasising the slight deviations from the initial plans. Furthermore, the overview of selected achievements and perplexing challenges in human rights with the focus on child protection are described in Armenia, Georgia and Ukraine. Although some comparisons are drawn between the three countries, the contribution encourages the idea of considering each country individually bearing in mind the recent changes in political transformation both in domestic and international relations, economic declines and social transformations caused by the aftermath of the conflicts with Russia, as well as the advancements in fulfilling the bilateral agendas. The research shows that the announced targets and the EU's commitments and actions in developing national judiciary, human rights protection and social systems in Armenia, Georgia and Ukraine are slow. Nevertheless, the delayed achievements in human rights and child protection do not hinder the nature of cooperation between the EU and EaP countries, displaying the weak connection of human rights conditionality in the external policy of the EU with its neighbours.*

Key words: *human rights; child protection; European Union; Eastern Partnership; partnership clauses*

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1 Introduction

This article is built on three main questions: What are the challenges and what progress has been made during 2018 in the Eastern Partnership (EaP) countries, namely, Armenia, Georgia and Ukraine? What are the commitments of the European Union (EU) to human rights protection in these countries? What, more specifically, is its contribution to the field of child protection? The research objectives derive from the legal documents (partnership agreements, action plans and support frameworks concluded between the EU and Armenia, Georgia and Ukraine) and from the studies of children's rights conducted and evaluated by national and international non-governmental organisations (NGOs). The article considers the human rights commitments of the EU in general, and its interests, strategies and scope of engagement as a global actor in promotion and protection of children's rights. Furthermore, the landscape of child protection issues in the three countries is briefly elaborated upon, amplified by the EU's support in each country in that regard. The bilateral cooperation concluded between the EU and EaP countries is categorised on the basis of the country experiences with these partnership clauses, described here as 'muddling through' clauses, the 'outlier' clauses and the 'unconditional love' clauses. These agreements demonstrate that although a unified framework initially regulated the EU's cooperation with EaP countries, recent developments in respect of political, social and economic transformation in the three countries demanded an individual approach for each. Therefore, although some comparative analysis is undertaken, based on the Soviet legacy shared by Armenia, Georgia and Ukraine, the research is largely country-specific since there are relatively few similarities in the political systems and obligations derived from the international treaties to which the three countries are party.

2 International and regional frameworks on human rights and child protection

The international institution for the protection of children's rights constitutes a system of principles and norms that determines the rights and freedoms of children. It establishes the duties of states to secure and implement them, and also defines an array of international monitoring measures to secure proper implementation of the obligations under the treaties to which these states are party. Notwithstanding challenges such as poverty and a low level of development of states parties, their governments are obliged to create or reinforce the existing national or local judicial, institutional or systemic environment and to protect children against any form of exploitation and violence, abuse or harmful labour, and prevent children from being separated from their families against their will.

2.1 International standards

The Convention on the Rights of the Child (CRC) remains the most comprehensive international treaty on the rights of children, their protection and the corresponding obligations of state parties. The rights of the child may be categorised into three groups, namely (i) survival and development rights (for instance, parental guidance, survival and development, rights on registration, name, nationality, care, and

preservation of identity) (CRC arts 4-10, 14, 18, 20, 22-31); (ii) participation rights (CRC arts 12-15 on respect of the views of the child, freedom of expression, thought, conscience, religion and association); and (iii) protection rights. Article 4 of CRC provides that governments must undertake 'all appropriate measures' available at the state level for respect for, the protection and fulfilment of children's rights. 'All appropriate measures' in this regard are considered to be the social, legal, health and educational services, as well as the systems of their review and assessment, for implementing the minimum standards of child protection, further elaborated in the Optional Protocols to CRC.[1]

ILO Convention 182 of 1999 lists the 'worst forms of labour' such as slavery, the sale and trafficking of children, child prostitution and the recruitment of children into harmful activities such as drug dealing, the production of pornography, and compulsory enrolment as child soldier (ILO Convention 182: art 3). Sexual exploitation, child prostitution and pornography have been augmented in the Second Optional Protocol to CRC. This Protocol recognises the importance and promotes the implementation of the principles, commitment and the agenda for actions adopted at the World Congress against Commercial Sexual Exploitation of Children, held in 1996 (UNGA 2002). The ILO Convention condemns children's exploitation for remuneration, the transfer of organs, child prostitution and the engagement of children in forced labour (arts 2 & 3(c)).

The protection of the child's interests through family law is also provided for in the International Covenant on Civil and Political Rights (ICCPR). Among these clauses are limitations on a court to publicise proceedings concerning 'matrimonial disputes or the guardianship of the children' (art 14(1)); 'the respect for liberty of parents and legal guardians for undertaking religious and moral education' (art 18(4)); protection of children in case of divorce (art 23(4)); as well as the right of the child to be protected as 'a part of a family, society and the state', and to be 'registered at the time of birth and acquire nationality' (art 24). Other social rights of children are mentioned in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (arts 5(b), 9(2), 11 & 16).

Some non-legally-binding international standards for the protection of children from poverty, hunger and the provision of good health conditions and quality education are stipulated in the UN 2030 Agenda for Sustainable Development (UNGA 2015). The entitlement to do so, particularly financing aspects for development, was stated in the Addis Ababa Action Agenda (UN Addis Ababa Action Agenda 2015).

2.2 Council of Europe standards

Child protection is not considered a fundamental value of the Council of Europe (CoE), but instead is mentioned as one of the key areas of its work in its campaigns, projects and legal documents. The comprehensive

1 There are three Optional Protocols to the Convention: the Optional Protocol (1) on the Sale of Children, Child Prostitution and Child Pornography; (2) on the Involvement of Children in Armed Conflict; and (3) on the Communication Procedure. The latter has only 29 state parties whereas the first (173 countries) and the second (165 countries) protocols are more integrated.

approach to child protection standards is conveyed in the 1950 European Convention on Human Rights and Fundamental Freedoms (European Convention), which defines the human rights standards, freedoms and obligations of state parties. Most of the Convention provisions target the human being as a bearer of stipulated rights, thus adhering also to the rights and freedoms of children: the rights to respect private and family life; fair trial; liberty and security; prohibition of torture; and freedom of thought, conscience and religion. The European Convention establishes the European Court of Human Rights (European Court) as the only regional judicial remedy for individuals whose human rights have been violated. Based on its case law, the European Court made a distinction between 'procedural' and 'substantive' state obligations (Kombe 2007: 18).

The Convention mentions 'child', 'minor' or 'juvenile' only in three articles: deprivation of the liberty by detaining with the 'educational supervision or with the purpose to bring the minor in front of a competent legal authority' (art 51(d)); the 'right to a fair trial' defining the right of everyone to a fair and public hearing, pronouncing the judgment concerning juveniles is a limitation to the court art 6(1)). There is no specific provision on child protection in the ECHR, but it provides for the rights of general applicability such as the prohibition of slavery and forced labour, torture, rights to a fair trial and an effective remedy and other social and political rights.

The European Social Charter (Charter) was a revival of the social and protection rights and a contribution to the child protection framework within the Council. Among the contributions of the Charter, there are the rights to 'protection from sexual harassment in the workplace' and other forms of harassment (art 26); the right of workers with family responsibilities to 'equal opportunities and equal treatment' (art 27); and the right to 'protection against poverty and social inclusion' (art 30).

For the development of national strategies, the Council established Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence (Council of Europe Policy Guidelines 2009). It proposes a holistic multidisciplinary and systematic framework to be adopted by member states to eradicate and respond to all acts of violence towards children. The third CoE strategy of 2016 on children's rights proposes a systematic and measurable approach based on the impact and outcome principle, evaluated once every three years. The CoE Strategy for the Rights of the Child (2016-2021) highlights five priority areas (Council of Europe Strategy for the Rights of the Child 2006): equal opportunities; participation of children; a life free from violence; child-friendly justice; and children's rights in the digital environment.

The CoE inherited the international principles on child protection mainly from the Universal Declaration of Human Rights (Universal Declaration) and CRC. The added value in the principles and standards are those relating to a more specific target group, for instance children as victims of domestic violence. However, the CoE contribution is paramount in proposing measures and tools for developing domestic and national mechanisms for child protection areas. Although the Convention and the Social Charter are legally binding, unlike the EU, the CoE lacks political conditionality, resulting in limits to its ability to efficiently and promptly leverage implementation and monitoring.

2.3 European Union standards

The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) in several clauses refer to human rights. Nevertheless, the Charter of Fundamental Rights of the European Union adopted by the proclamation of Nice European Council in 2000 is the main source of human rights within the EU. The Charter became binding after nine years with slight amendments brought about by the Lisbon Treaty. In 2000 the document was not perceived as part of the EU legal order; but was viewed as a catalogue of fundamental rights supplementing the *acquis* of the EU legal order. Article 6(1) of the TEU 'recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union' (EU 'Lisbon' 2016: art 6(1)) TEU). Article 6(2) links the Union with the European Convention within the competences of the EU stated in the Treaties (EU 'Lisbon' 2016: art 6(2) TEU).

Human rights as a principle of the EU was especially pivotal in the 2004 and 2007 enlargements, when the new member states that joined the EU were radically different from the conventional member states of the Community. Such a transformation of the EU with the normative convergence of post-Communist states was supposed to be safeguarded by various monitoring and observance tools harnessed by the European Commission. Respect for human rights later on became one of the key priority areas in multilateral and bilateral relations between the EU and its neighbours and partners.

The TEU, the TFEU and the Charter refer to the rights of children through general and specific aspects. Article 3(5) of the TEU mentions the protection of human rights, and particularly the rights of the child, among the EU's general goals to promote human rights values in relation to the wider world (EU 'Lisbon' 2016: art 3(1) TEU). In the TFEU, children are considered in the framework of the provisions devoted to citizenship (EU 'Lisbon' 2016: art 83(1) TEU), in measures to combat trafficking in women and children (EU 'Lisbon' 2016: art 79(2)(d) TEU), and in cross-border crimes (EU 'Lisbon' 2016: art 83(1) TEU). Only the Charter, in article 24 on 'The Right of the Child', refers to children as separate rights holders. It highlights the importance of deliberating the best interests of the child primarily in 'all actions related to children' (EU Charter 2016: art 24(2)), and considers the issue of the child's personal relations with parents, with certain limitations (EU Charter 2016: art 24(3)).

Three main documents, adopted by the EU, are important in operationalising child rights: the EU Strategy on the Rights of the Child (2006); the EU Agenda for the Rights of the Child (2011); and the EU Guidelines for the Promotion and Protection of the Rights of the Child (2007 and 2017). The last document suggests practical approaches for promoting, protecting and fulfilling children's rights in the EU's external actions. Among the operational tools, the EU promotes political dialogue, demarches, bi- and multi-lateral cooperation and partnership with international stakeholders to intensify coordination of concerted efforts in the field.

The UN Sustainable Development Goals 2030, a consequence of the refugee crisis of 2015 causing massive children's rights violations, coupled with the EU's commitment 'to leave no child behind' (EU Guidelines 2017: 3), fostered the EU's engagement in protection of children's rights. Particularly, in October 2016 the EU delegation to the UN announced, on behalf of the EU and its member states, that the EU was planning to become a major player in and contributor to the promotion and protection of the rights of children (EU Statement 2016). The Statement was followed by the updated EU Child Protection Guidelines, published in February 2017. The updated Guidelines intensify the rights-based approach and promote the concept of a 'system strengthening approach' (CRC General Comment 5).

3 The European Union human rights frameworks with European neighbourhood countries

One of the reasons for the EU not initially considering human rights its primary responsibility was the fact that a human rights-based regional organisation already existed in Europe. Human rights were considered as falling in the remit of the CoE rather than the EU, which instead was perceived as achieving political and economic objectives. Some member states such as Germany considered fundamental human rights as part of the 'general principles of community law', thus European Community law was not supposed to prevail over the fundamental guarantees of the German basic law (Craig & De Burca 2003: 269).

As mentioned, the culture of fundamental rights in the EU was adopted with the proclamation of the Charter of Fundamental Rights and the vitality of the Charter was affirmed in the law and policy making of the EU institutions. Although 'the Parliament, the Commission and the Council [should] jointly and formally recognise the existence of positive obligations to protect and promote human rights as a part of EU law' (European Commission 2012), there is no clear guidance about aligning domestic laws and policies with the Charter. Such an institutional guidance is provided by the European Union Agency for Fundamental Rights (FRA) and the European Ombudsman.

Within the bilateral track, cooperation in the field of human rights was enforced through particular instruments after the launch of the European Neighbourhood Policy (ENP) in 2004 and the Eastern Partnership in 2009.

With the extension of the ENP into the EaP of South Caucasus, the partner governments agreed on mentioning the priorities and setting the agenda in the Action Plans. The ENP includes conditionality, joint ownership, regional cooperation and deeper integration. The policy was based on the values and criteria suggested in 1993 to those willing to become member of the European Community. Both the European Neighbourhood Policy and the Copenhagen criteria restated the mandatory need of states to demonstrate political stability through institutions, guaranteeing democracy, the rule of law and human rights as prerequisites for joining the EC. The EaP is based on mutual commitment to the rule of law, good governance, respect for human rights, respect for

the protection of minorities and the principle of market economy and sustainable development.

The EU and its eastern neighbours cooperate through the establishment of multi- and bilateral tracks and various tools and projects. The bilateral track consists of Association Agreements (AA) and Deep and Comprehensive Free Trade Agreements (DCFTAs). The DCFTAs provide for convergence with the EU laws and standards of positive effects of the trade, investment liberalisation and energy security. The multilateral dimension added two more platforms, namely, (i) democracy, good governance and stability; and (ii) contact between people. Despite this framework, the question is whether the EU's political and economic interests in the region overshadows its commitment to human rights protection in the neighbourhood. Questions remain as the extent to which the EU remains vigilant to human rights advocacy in a context in which many other imperatives are at play. While the EU aims to achieve deeper and more comprehensive collaboration with EaP countries, the question arises why human rights are often neglected despite the framework for cooperation being so clearly based on human rights.

Part of the answer lies in the direct connection of these eastern countries with Russia. The EU's priority to forge a common bond based on mutual interest and stronger economic partnership with EaP countries has to a large extent overridden concern for human rights issues.

Regardless the universality of human rights promoted by UN throughout the world, the EU's interest and involvement in human rights protection is directly proportionate to the foreign policy of the countries. Over time, the European Council's agenda embraced more than economic unity, and shifted towards more political objectives. Human rights and democracy were for example included in the Common Foreign and Security Policy (CFSP). The Council's Resolution of November 1991 remains central in this policy area. It provides for financial resources to stimulate respect for human rights ('carrot'-provisions), and restrictive measures for the violation of human rights ('stick'-provisions). Different formulas have been adopted based on the communications of the Commission upon the agreements, differing from country to country in respect of the degree of harshness and flexibility. The following formulas are central while considering the EUs engagement with and interest in the human rights field of countries in this region: (i) 'democratic principle' clause – the list of concerns applied first to Latin American countries entailed the respect of democratic principles and human rights; (ii) 'essential element clause' – suggesting the insertion of a suspension mechanism with necessary legal bases provided by the Vienna Convention; (iii) the previously 'suspension' or 'Baltic clause' for suspending the agreement wholly or in part; and (iv) 'non-performance' or 'non-execution' clause.

These clauses were applied in relation to democratic and human rights principles to countries that are became members of the EU. The development of partnerships took the same path and entailed some of these clauses at the preliminary stage. Human rights protection was considered as a central issue with partners. However, in this article, the impact of three other clauses – the 'muddling through', 'outlier' and 'unconditional love' clauses – are also considered.

'Muddling through' clause: This kind of clause refers to the comprehensiveness and limitlessness of the EU partnership and foreign policy tools. Association agreements are the main legal tools to secure partnership with neighbours. Their content is quite comprehensive and is based on shared values and principles, in particular democracy, the rule of law, respect for human rights and fundamental freedoms, good governance market economy and sustainable development. As for the global strategy of the EU's foreign and security policy, it concentrates on security issues exercised in broader partnership, values, variety of stakeholders and partners involved. Conversion from partnering into a joint union, which supposes its participation in shaping agenda, represents the unit as a partnership both with states and individual units, private and civil sectors, as well as for the UN and other regional organisations. Such representation is possible if the understanding of values and goals of the unit are clear and admissible for the members of the unit themselves.

'Outlier' clause: These clauses mainly refer to EaP countries – Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Agreements with Belarus and Azerbaijan do not contain free trade agreements, as they are not members of the WTO. The main goals of these clauses are to accelerate political association and further economic integration between the EU and the EaP through DCFTAs as part of broader political AAs. The process was hampered by political crises. The EaP Summit in Vilnius in November 2013 was supposed to be the venue for signing AAs including the DCFT, with Ukraine, and for initiating similar agreements with Armenia, Georgia and Moldova. However, this attempt at EU penetration in the region provoked turmoil in the Kremlin. The Eurasian Customs Union (now the Eurasian Economic Union) was initially composed of Russia, Belarus and Kazakhstan, thus excluding Armenia, Georgia or Ukraine. In November 2013, facing strong Russian pressure, Ukrainian President Yanukovych decided to suspend preparations for the signing of the EU-Ukraine Association Agreement. In September 2013, Armenia decided to join the Russian-led initiative, thus declining the signing of its Association Agreement with the EU. In 2015, Armenia formally became part of the Eurasian Economic Union.

'Unconditional love' clause: One of the driving forces of the ENP launch was to resolve instability in the region and to provide an economic vision, for instance, for energy security the EU planned to open a direct route to Central Asia. Even if promoting European democratic values was quite central for the EU, it bent backwards to accommodate partners who were central to realise this vision. In some partnership countries such as Belarus and Azerbaijan, its 'unconditional love' appears from the dominance of the 'carrot' above the 'stick'-approach despite the existence of notable human rights violations.

With the EU's 'new response to a changing neighbourhood', the ENP countries were bound by the new approach. According to these commitments the EU will support building democracy to ensure the fulfilment of basic political, social and human rights, support inclusive economic development and the strengthening of more consistent regional initiatives in certain areas covering the EaP and the Southern

Mediterranean, as well as mechanisms and instruments for implementing these objectives.[2]

4 Child protection in Eastern Partnership countries

4.1 Armenia

Armenia ratified CRC in 1993. In 2005 Armenia ratified two Optional Protocols to CRC, namely, ILO Convention 182 and the Hague Convention on Protection of Children and the Cooperation in Respect of Intercountry Adoption. Among state obligations underlying in the treaties there is an obligation to amend legislation and policy towards the improvement of child protection in Armenia. In 1996 through the Law of the Republic of Armenia on Child's Rights,[3] Armenia adopted regulations pertaining to the public sector and determined the priority of the international law over domestic laws.

The Criminal Code envisages clauses related to the violation of certain standards of child protection, such as kidnapping (Armenian Criminal Code art 131(1)), any enrolment of the child into antisocial activities (Armenian Criminal Code art 166(1)), and child trafficking (Armenian Criminal Code art 168). There are certain discrepancies between the Law on the Child's Rights and the Criminal Code. For example, the Criminal Code provides for mitigated punishment in respect of children under 14 years of age (Armenian Criminal Code art 62(1)(4)), while the Law on the Child's Rights defines a 'child' as anyone under the age of 18. There is therefore some uncertainty about the punishment of persons 15 to 18 years old.

The Permanent Body in Parliament, the office of the Ombudsman and the Commission on the Protection of the Child's Rights are tasked with the implementation of relevant policies and laws. The Commission also secures the enrolment of the civil society representatives in the drafting and implementation of national policies.

The first Strategic Plan of 2004-2015 on the Protection of the Rights of the Child established a three-tier child protection system.[4] The system distributes obligations of the state into national, regional and community levels. However, the Government Decree determining the functions and obligations of authorities at each level, later superseded by another decree, does not provide solid grounds for efficient protection.[5]

2 EUR-Lex, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new repose to a changing Neighborhood/*COM/2011/0303 final*/, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52011DC0303 (last visited 1 April 2017).

3 National Assembly of Republic of Armenia, The Law of the Republic of Armenia on the Child's Rights, May 29, 1996, non-official translation, available at http://www.ombuds.am/resources/ombudsman/uploads/files/agreements/2d25331b2ad440a56d9e450a307813f3.pdf (last visited 30 March 2017).

4 Government of Republic of Armenia, Decree 1745 of 18 December 2003 on Adopting Child Protection National Plan of 2004-2015, Yerevan, 2003, Ch II, art 4.

5 Government of Republic of Armenia, Decree 1694 of 27 December 2012 on Protection of the Child Rights Strategic Plan of 2013-2016 and Approval of the Agenda of 2013-2016 Strategic Plan and Recognising the Decree N1745 of December 18 Invalid, Yerevan, 2012.

The absence of efficient data recruitment and database backup for children at risk or child cases by any of the institutions from three-tier protection constitutes another challenge.[6] The integrated social services, first launched in 2012 and extended in 2014, were considered to address the gaps in the previous systems. The system is defined 'as 'a complex of tasks (responsibilities) and events performed by state and local government bodies, organisations and individuals performed within the social support framework'.[7]

The Child Protection Strategy of 2017-2021 highlights the necessity of improved principles and criteria of providing alternative care (implementation and increase of fostering families), capacity-building events for social workers within the implementation of the integrated social service system.[8] It emphasises the necessity of enforcing the child protection system through a comprehensive child protection database, to create specialised services and mechanisms for preventing violence against children, operative and coordinated mechanisms for fulfilling the needs of child victims of armed conflicts, and children living in extremely difficult conditions and refugee children.[9]

Thus, although the legal framework and the systemic approach to the protection of the rights of the child are established, Armenia remains behind with the implementation of its announced strategy. According to the Child Labour National Study of 2016, among the interviewed 453 000 children of ages five to 17 years, 11,5 per cent were engaged in labour (52 000 children) and 9 per cent (39 300 children) were engaged in labour that posed physical, social and moral hazards to children.[10] According to the Child Protection Index 2016, compared to the eight other countries reviewed, Armenia performs well at the law and policy level, but has the lowest scores on the indicator of economic exploitation and violence against children.[11]

The Armenian Ombudsman in the 2018 *Ad Hoc* Public Report on the Status of Commitments under the CRC and Its Optional Protocols reviewed the implementation period from January 2013 to December 2017. It considers the need to review the Armenian strategy on child

6 Government of Republic of Armenia, Decree 1273 of the Government of the RA on Amendments in Decree 1694 of the Government of RA, Yerevan, November 2014, art 18.

7 RA, the Law of the RA on Social Support, adopted 17 December of 2014, Chapter 7 System of Social Support Services, Social Cooperation and Local Social Projects, Yerevan, 2014, art 33(1).

8 Government of Republic of Armenia, Draft of the RA Decree on Child Protection Strategy of 2017-2021 ad Action Plan of Child Protection Strategy 2017-2021, Ch VII, available at http://www.mlsa.am/forum/forum.php?sec=conference (last visited 30 March 2017).

9 Ch IX, art 30.

10 State Statistics Service of Republic of Armenia, Child Labour State Study 2015 12, available at http://www.armstat.am/file/doc/99499668.pdf (last visited 2 April 2017).

11 Child Protection Network (CPN) with the national coordination in nine countries evaluates the child protection systems to improve the protection and well-being of children. It is designed to encourage regional cooperation, stimulate better implementation of the UNCRC, and serve as a policy analysis tool for civil society governments and donors. Armenian Child Protection Network, Child Protection Index Armenia 2016, available at http://2016.childprotectionindex.org/country/armenia (last visited 15 February 2017).

protection and the effectiveness of its implementing mechanisms.[12] It found that there were no progress in health and education allocations since 2013, where the threshold on health was 1,5 per cent and 2,34 per cent of the gross domestic product (GDP) on education.[13]

Armenia announced the National Programme to attempt improving the quality of children's lives. The bold priorities are children who live in families; children who receive adequate health, education and protection services. However, in the process of creating such systems, 'even the services intended to secure equal rights and opportunities for children in difficult situations, are mostly guided by the needs rather than the best interest of children'.[14] Many of the strategic directions and approved child protection mechanisms have deficiencies and some of them, including the monitoring of child abuse in institutional settings, are not monitored effectively.

In the Annual Report of the Ombudsman,[15] the fact is highlighted that child poverty remains the reason of institutionalisation. This is considered to be a result of non-proportional coverage of the services. Restating the fact that community-based services have been improved, it indicates that 2 400 children remain institutionalised, even where the majority of these children have at least one parents. Among the negative issues mentioned in the report were child marriages and limited access to alternative services. Although the funds allocated to the improvement of children's lives as far as education, health care and legal protection are concerned remain limited, there still is a need for improving the institutional capacities of child protection bodies.

The PCA between the EU (EC) and Armenia, signed in 1999, mentions respect of human rights as part of the Agreement.[16] It also envisages respect and promotion of human rights through political dialogue.[17] Although the language of the Action Plans is neutral and not explicit, in comparison with some fields indicating certain measures of improvement, child protection, and generally the protection of the rights of the child, is mentioned in a broad formulation.[18]

12 *Ad Hoc* Public Report, Armenia: Status of Commitments under the Convention on the Rights of the Child and Its Optional Protocols, 2018, Yerevan 9-10, available at www.ombuds.am (last visited 15 February 2017).

13 *Ad Hoc* Public Report (n 12) 13. In 2018 to 2020 Medium-Term Public Expenditure Framework the fields will be reduced to 1,06 per cent for health and 1,85 per cent for education.

14 *Ad Hoc* Public Report 24.

15 Annual Communiqué on the Activities of the Human Rights Defender of the Republic of Armenia and the State of Protection of human rights and Freedoms during the Year 2017, Yerevan, 2018, available at http://www.ombuds.am/resources/ombudsman/uploads/files/publications/b738f4eb767ab62bedef29f766fa9ea0.pdf (last visited 15 February 2017).

16 European Communities 'Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part', Official Journal of the European Communities L 239/3, 9.9.1999, art 2.

17 European Communities (n 16) art 5 para 3.

18 European Communities (n 16) Priority Area 3.

The only programme reported in 2018, entitled 'EU4Citizens', which focused on the support in human rights, was the organisation of National Assembly elections and the improvements of respect for fundamental rights.[19]

Another cornerstone in the EU cooperation with Armenia was put in place with the launch of the Comprehensive and Enhanced Partnership Agreement between the European Union and the Republic of Armenia (CEPA) in 2017. In the Agreement the general provisions and principles commit the parties to work on the improvement of the human rights situation in Armenia. In this regard the explicitly mentioned targets are 'the rights of persons belonging to minorities'. The only area where children were mentioned as a specific target group is respect of the development of judiciary cooperation in civil and commercial matters.[20]

Armenia is the only country in the EaP to which a tailor-made agreement was offered, in the aftermath of its sudden membership to the Eurasian Economic Union. Considering the fact that the old government (the Republican Party) chose the Eurasian vector of external economy preference and that the new government has not yet positioned any changes in external policies, the EU remains loyal to its announced commitments within EaP. In this regard, Armenia stopped belonging to the 'outlier clause' category country. The discrepancy between the political dynamics in Armenia and the EU's reluctance of cooperation with the neighbours of this category, come to prove that the outlier clause does not support the EU's aspirations of becoming a global power. The human rights agenda for the EU and Armenia has not contributed much in the field of child protection. However, the CEPA agreement includes provisions that may inspire future changes.

4.2 Georgia

Georgia ratified CRC in 1994, and its two Optional Protocols in 2005 and 2010. Moreover, by ratifying the Vienna Convention on the Law of Treaties, Georgia undertook to give priority to international law over any conflicting national legislation. CRC principles have also been fully incorporated into national law.[21] Although there is no comprehensive data on Georgian court decisions, studies show that courts have on occasion explicitly referred to the principle of the 'best interests of the child', as contained in the CRC.[22]

Among the child protection documents, Georgia has a separate Law on Juvenile Justice Code. Moreover, in February 2019 the draft Code on the Rights of the Child was presented to the public to invite discussions on its content. The Law covers all the rights and freedoms of the child, describe the mechanisms of their protection and implementation, target the equity

19 Commission Implementing Decision of 26 November 2018 on annual programme in favour of the Republic of Armenia for 2018 (6) 2.

20 Comprehensive and Enhanced Partnership Agreement between the European Union and the Republic of Armenia in 2017, art 20.

21 Law of Georgia on International Treaties, art 6, available at https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=33442 (last visited 10 March 2019).

22 (CRIN), Access to Justice for Children: Georgia, January 2015, available at https://archive.crin.org/sites/default/files/georgia_access_to_justice_0.pdf (last visited 10 March 2019).

gaps in the realisation of their rights and strengthens the public mechanisms of accountability in realising the full protection of children.[23] This draft was adopted to address the state's low score on the 2016 Child Protection Index, with a ranking in the ninth position among nine countries (Child Rights International Network 2015). Currently Georgia has neither a coordination mechanism between central and local government for monitoring and assessing policy implementation, nor a national-level consultation mechanism to engage civil society or children directly in respect of the policy development and implementation (Child Pact, World Vision, Child Protection Index: Georgia, Measuring the Fulfilment of the Child's Right).[24] No parliamentary body has as yet been created to assess and solve child protection issues. However, the significant role of the human rights defender is mentioned. Among the positive results, Georgia is one of the front-runners in foster care, with almost 64 per cent of children separated from their families living with foster care families.[25]

As determined by the Asian Development Bank, there are four major reasons of poverty in Georgia: 'lack of economic opportunity; isolation; insufficient skills, capabilities, and assets; income shocks due to health events or disasters' (Asian Development Bank, Poverty Analysis: Georgia).[26] Poverty has a predominantly rural character (with 25 per cent of the rural population being poor), and has increased since 2003.[27]

Child poverty was reported to be one of the main issues since the war in Abkhazia and South Ossetia. After the deterioration of the Georgian economy in 2015 and 2016, the subsequent two years displayed significant progress. Although child poverty in the country is low, it has increased by 2 per cent between 2015 and 2017.[28] The welfare studies in Georgia show that children are more likely to be poorer than the general population or pensioners.[29]

Apart from the successful implementation of the Partnership and Cooperation Agreement, Georgia was ahead of Ukraine in concluding the Association Agreement with the EU in June 2014. Apart from the general statements and commitments of Georgia for the betterment of democracy, the rule of law and human rights, the Agreement stipulates the enforcement of the rights of persons belonging to minorities among its priority areas.[30] The effective abolition of child labour,[31] the

23 UNICEF Georgia The Draft Code on the Rights of the Child presented to the public in Georgia, available at https://www.unicef.org/georgia/press-releases/draft-code-rights-child-presented-public-georgia (last visited 10 March 2019).

24 Child Pact, World Vision, Child Protection Index: Georgia, Measuring the Fulfilment of the Child's Rights, available at http://www.childpact.org/wp-content/uploads/2015/06/Child-Protection-Index-Georgia.pdf (last visited 10 March 2019).

25 Child Pact, World Vision, Child Protection Index (n 24) 15.

26 Asian Development Bank, Poverty Analysis: Georgia, available at https://www.adb.org/sites/default/files/linked-documents/cps-geo-2014-2018-pa.pdf (last visited 10 March 2019).

27 As above.

28 'The share of households and the population below the relative poverty line increased from 20,7% to 22,5% and from 23,1% to 31,6%. The percentage of children living in poor households increased from 26,8% to 31,6%. UNICEF Analysis of the Georgia Welfare Mentoring Survey Data, 2017, available at https://www.unicef.org/georgia/reports/wellbeing-children-and-their-families-georgia-fifth-stage-2017 (last visited 10 February 2019).

29 UNICEF (n 28) 134.

modernisation of education[32] and judicial cooperation for protection of children[33] are inseparable parts of the Agreement. Some of these areas were also stipulated in the Action Plan of Georgia, including the commitment to reduce child poverty through social security reforms and full implementation of international obligations related to child labour and abduction.

Moreover, the Association Agenda specified a special guidance in improving child protection in the country. In particular, the Agenda urges Georgia to address children's poverty, continue juvenile justice reforms, include child rights into the National Human Rights Strategy and Action Plan, as well as to provide adequate resources for the Public Defender for undertaking ombudsmen work for children and focus measures to protect children from all sorts of violence.

Human rights were one of the pivotal points mentioned in the Association Agreement Report of January 2019. Georgia was observed to have made significant progress in upgrading the national legislation with regard to the violence against women, fighting torture, inhuman and degrading treatments in detention facilities, and in country mechanisms related to the effective human rights protection in the breakaway region of Abkhazia and South Ossetia and bordering communities. The EU remains concerned about the infant mortality rate, which is significantly higher than in Europe. It also highlighted the high rates of children who live in poor families, unregulated child protection mechanisms, and the slow-down in deinstitutionalization processes (Association agreement between EU and Georgia p 9).[34]

As reported, human rights protection in Georgia was funded by EU MFA with the first instalment of €20 million (€15 million in loans and €5 million in grants) by the end of 2018 and a second earmarked for 2019.[35] The financial contributions of the EU for the improvement of human rights are also directed from the European Instrument for Democracy and Human Rights, as part of the European Neighbourhood Instrument. Georgia remains the only state among the EaP countries that has signed the DCFTA and was the first to benefit from the visa liberalisation decision of the EU. However, despite the fact that so far Georgia has been most responsive to the EU's agenda, it remains in the 'muddling through' phase. The EU has no further mechanisms of appreciating Georgia's progress in benchmarked areas, whereas the 'everything but membership' clause is still applicable for EaP countries.

Compared to Armenia and Ukraine, the cooperation between the EU and Georgia has gone further. The EU's contribution in human right reforms in the country is significant. However, the analysis of the county's human rights and child protection reforms are motivated more by

30 Association Agreement between EU and Georgia, art 3, Aims of Political Dialogue (h).
31 Association Agreement (n 30) art 229 para 2(c).
32 Association Agreement (n 30) art 359(b).
33 Association Agreement (n 30) art 21.
34 Association Agreement (n 30) 6.
35 EEAS Association Agreement Report 2019, Georgia, available at https://eeas.europa.eu/sites/eeas/files/2019_association_implementation_report_georgia.pdf (last visited 10 March 2019).

imperatives for domestic implementation than the EU's commitment to human rights and child protection.

4.3 Ukraine

Ukraine ratified the CRC in 1991. The CRC is incorporated into national law, is directly enforceable, and has a status superior to national law. Article 9 of the Constitution of Ukraine provides for the integration of an array of treaties into national legislation as mandated by the Parliament of Ukraine.[36] Among the key domestic legislation and regulations are the Civil Code and Family Code of Ukraine (which both entered into force in 2004, thereby implementing the conclusions and recommendation of the UNCRC), the Laws of Ukraine on Provision of Organisational and Legal Conditions for Social Protection of Orphans and Children without Parental Care, and on the Main Principles of Social Protection of Homeless Persons and Street Children adopted in 2005.

The judicial system of Ukraine also provides that a child of any age can report a criminal offence to an investigator or a prosecutor. Children are also allowed to appeal to the Human Rights Commission of the Ukrainian Parliament and request judicial review by the Constitutional Court (Child Rights International Network 2014). However, there are no family or children's courts in Ukraine, and disputes are handled by the local courts of general jurisdiction.

As of September 2015, there were 99 915 children living in 663 institutions in Ukraine. The data does not include the number of institutions and children in areas over which Russia and Ukraine have ongoing disputes (Hope and Homes for Children 2015). There are 33 types of institutions which are managed by three different public authorities: 38 infant homes that function under the Ministry of Health; 50 children's care homes that are managed by the Ministry of Social Policy; and 575 residential facilities of different types that are supervised by the Ministry of Education and Science of Ukraine (Hope and Homes for Children 2015: 9). Of these institutions, 45 per cent were established in the period from 1951 to 1970. Most of the buildings are located in remote and inaccessible parts of cities.

The National Human Rights Strategy of Ukraine of 2015-2020 highlights child protection as one of its strategic areas. The goals of the strategic area are 'to create a favourable environment for the upbringing, education and development of children and set up an efficient system of the rights of the child' and 'to improve state mechanisms of observing the right of the child'.[37] Highlights within the defined Action Plan are the enhancement of child protection systems (including the juvenile justice system, provision of temporary settlements); of institutions; of the living conditions of children in the family and special facilities; and to ensure the minimal standards of security and well-being of the child.[38]

36 The list includes the Optional Protocols to CRC, conventions of the Council of Europe and Hague Conferences, cooperation agreements with CIS member states and several others.

37 Decree of the President of Ukraine 501/2015 on Approval of the National Human Rights Strategy of Ukraine, August 2015 14.

38 As above.

The priority areas of the Ukrainian child protection policies have changed after the war with Russia, with the focus falling on the social rights of children in conflict situations. According to the available resources most of the children from the contact line regions lack access to education, availability of the health facilities and there are poor mechanisms for monitoring the management of child protection issues at grassroots level. Because of the high militarisation along the Eastern Ukrainian borders, children are being engaged in the military activities, with girls above the age of 14 years often engaged in sexual relations with the military, leading to child pregnancy and a high incidence in HIV infection.

After the erupted war in the Eastern Ukraine, the human rights monitoring missions monitored human rights violations in these regions. The periodic reports state that there are massive human rights violations in conflict-affected areas, emanating in civilian casualties and economic and social deprivation. According to the Office of the United Nations High Commissioner for Human Rights the human rights violations are on-going in the conflicting areas.[39] The report points out the violations of international humanitarian law, limitations of freedoms of opinion and expression, peaceful assembly and religion/belief. According to the findings of the report of 2018, 435 individuals were deported and forcibly removed from Crimea, among them 231 Ukrainian nationals. These people were considered foreigners under Russian Federation law.[40] The entry to the peninsula is limited to journalists. No specific cases concerning particularly children's rights in these areas are mentioned in the report. However, the civilians bearing the consequences of war have limited access to fair trials, the justice system and basic needs such as water facilities.[41] The evolved situation speaks loudly about the insecure environment that undermines the best interests of children. Children and their families continue to experience significant disruption to their daily lives after more than four years of regular conflict and clashes between government-controlled areas and non-government controlled areas.

In 2017 UNICEF Ukraine initiated Country Programme 2018-2022. The main areas of importance are the adolescent mobilisation, their participation in decision making and the attention to age-responsive healthcare services.[42] Social protection was included in the EU's Single Support Framework for Ukraine 2018-2020 on assisting the social protection 'for conflict affected communities, internally displaced persons in the context of the ongoing decentralisation reform'.[43]

The Association Agreement between the EU and Ukraine was signed in 2014. Among the aims of the agreement it is mentioned 'to enhance cooperation in the field of justice, freedom and security with the aim of reinforcing the rule of law and respect for human rights and fundamental

39 Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine 16 November 2018 to 15 February 2019, available at https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019.pdf (last visited 10 April 2019).
40 OHCHR (n 40)(d)30.
41 OHCHR (n 40)(c)34.
42 UNICEF Annual Report 2017, Ukraine, available at https://www.unicef.org/about/annualreport/files/Ukraine_2017_COAR.pdf (last visited 10 February 2019).
43 UNICEF (n 43) 8.

freedoms'.[44] Among the narrower human rights cooperation directions, the main areas defined are the cooperation on migration, asylum and border management, cooperation in fighting terrorism, trafficking protection of personal data and other reforms concerning the betterment of the rule of law and justice system. The 2018 Report on Implementation of the Association Agreement between Ukraine and the EU assessed the implementation of the scheduled activities under the Agreement as having been performed at 52 per cent.[45]

In 2017 the EU Instrument for Democracy and Human Rights allocated approximately €25 million for five recurring 'human rights lots' of the period 2014-2017. These included the human rights of indigenous people, extra-judicial killings, labour rights and slavery, the rights of persons with disabilities and support to freedom of religion and belief. The announced priority areas under the 2018 call were human rights protection agencies. The three key areas announced were '(i) to enable human rights defenders at risk (individuals, groups and organisations) to carry out their work; (ii) to enhance temporary relocation and shelter capacities; and (iii) to strengthen the coordination and synergy with other actors'.[46]

The EU's 2017-2018 agenda to promote and fulfil human rights is quite extensive. In 2017 a-two-year project to support the Ukrainian administration for setting up an early intervention and rehabilitation for children with disabilities was launched, allocating €1,3 million. A significant number of projects have been directed to the war-affected areas and internally displaced people. Among these are projects of capacity building for human rights defenders in Ukraine and Crimea (€300k, 2018); supporting recovery and Sustainable Solutions for Internally Displace Persons and Conflict-Affected Population in Ukraine (with IOM, completed in June 2018, €4 million); strengthening the capacities of CSOs and other services for improved integration of internally displaced children, completed by February 2018, €280k) and several others.[47] The EU's allocation of funds and support to a human rights sector demonstrates the political feel, competence and available resources of the EU to intervene in the EaP regions in cases of demand and cooperation with the CSOs.

Ukraine plays a pivotal role in the EU's external policy and relations with Russia. However, the slow pace of reforms and of the fight against corrupt political systems, and low indicators of human rights protection, give more incentive for the EU to further liberalise visa regimes and expand economic partnerships. In this regard, Ukraine is an example of an 'unconditional love' clause.

44 Association Agreement between the European Union and its member states, of the one part, and Ukraine, of the other part, art 1, Objectives, 2(e) 2014.

45 Association Agreement Implementation Report 2018, available at http://www.3dcftas.eu/system/tdf/association-agreement-implementation-report-2018-english.pdf?file=1&type=node&id=552 (last visited 10 March 2019).

46 European Instrument for Democracy and Human Rights (EIDHR), Reviewing the European Union Human Rights Defenders Mechanism, Guidelines for grant applicants, Restricted Call for Proposals 2018.

47 EU delegation in Ukraine, Projects, available at https://eeas.europa.eu/delegations/ukraine/area/projects_en?page=3 (last visited 10 March 2019).

5 Conclusion

The selected achievements and perplexing issues arising during 2018 in three EaP countries demonstrate that the region is in need of developing better child protection policies. These countries should strive for the eradication of poverty among children and their families, to minimise the negative consequences of conflicts on the enjoyment of childhood, and to strengthen domestic child protection mechanisms. Since the establishment of the ENP and the launch of the EaP, the EU positioned itself to be another guarantor of human rights promotion, protection and fulfilment in Armenia, Georgia and Ukraine. Despite the enthusiasm and manifold cooperative endeavours within the EU, human rights and child protection remains left behind. The demonstrated backslides from the child rights agenda should be tackled within extensive investment. Above all, the cooperation of international and regional organisations should consolidate efforts to combat child rights violations in each of the countries.

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