

# Enhancement of Administrative Capacity in the area of Family Support Coordination System

L A T V I A



OBSERVATIONS – CONCLUSIONS  
RECOMMENDATIONS & PROPOSALS



**TWINNING LIGHT: LV 2006/SO/02/TWL**



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## Introduction

According to the provisions of Article 65 of the Law on Protection of Children's Rights, the MCFA – **Ministry for Children and Family Affairs** of the Republic of Latvia is in charge of coordinating the collaboration of the local government institutions on issues of protection of children's rights and family rights that are within the framework of their competency, of organizing and coordinating the supervision of adherence to laws and regulations pertaining to the field of children's rights protection and of developing proposals on the amendments to laws and regulations ensuring the protection of children's rights, as well as of overseeing and supervising the work of Orphan's Courts (Parish Courts).

The duty of the **State Inspectors of Children's Rights Protection** is to monitor how the relevant provisions are complying with within a certain administrative territory. The State Inspection Authority for Children's Rights Protection was established on 1 December 2005 based on the Cabinet of Ministers Order No. 755 of 29 November 2005 "On establishment of the institution of direct accountability – The State Inspection Authority for Children's Rights Protection."

In view of the fact that the issues pertaining to the protection of children's rights and family support are handled by several authorities, e.g. MCFA, The State Inspection Authority for Children's Rights Protection, Orphan's Courts (Parish Courts), municipal welfare services, it seems to be of paramount important to set up a unified system to coordinate these authorities.

Article 4 of the **United Nations Convention on the Rights of the Child** (20 November 1989) provides that Member States take all legislative, administrative, and other measures necessary to ensure the exercise of the rights recognized by this Convention. As far as economic, social and cultural rights are considered, Member States take appropriate measures within the framework of maximum resources available to them and, when practicable, within the framework of international cooperation.

In view of the facts mentioned above, to ensure the development of unified systemic approach in addressing the issues of family support and protection of children's rights in our country and to ensure adherence to the Convention on the Rights of the Child, it is necessary to establish family support coordination system (the setting up of a **Family Support Coordination Centre** as a subordinate body to the MCFA) that would ensure efficient coordination between the family support centres', training of specialists resulting in increased work efficiency of institutions dealing with family issues. At the same time, it is imperative to enhance the capacity of the newly established State Inspection Authority for Children's Rights Protection in supervising the handling of children's rights protection issues.

## Description of relevant *acquis communautaire*

➤ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000,

- Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations,
- Chapter 13 on social policy and employment of the European Commission Supervision Report (November 2003),
- Article 4 of the Convention on the Rights of the Child (20 November 1989),
- The prevention of social exclusion is included in the Treaty establishing the European Community (article 136) and is being paid a lot of attention to within the European Union policy, especially with regard to the social exclusion of youth and children,
- The subject is addressed in, amongst other things, the '*Lisbon Strategy*', the Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 14 December 2000 on the social inclusion of young people [Official Journal C 374 of 28.12.2000] and the 'European Commission White Paper of 21 November 2001 on a new impetus for European youth'.

In accordance with the provisions of the '*Accession Partnership*', the Latvian Ministry for Children and Family Affairs, together with the European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities developed the '*Joint memorandum on Social Inclusion of Latvia*' and subsequently formulated several policy documents and action plans. A list of relevant documents reflecting the government policy is presented below:

- Joint memorandum on Social Inclusion of Latvia,
- Action plan For Promotion of Family Type care for Orphans and Children Left without Parental Care and Improvement of the Situation in Children out of Family Care Institutions,
- Latvian State Action Plan for Reduction of Poverty and Social exclusion,
- State program for improving child and family situation for year 2006.

## Methods and Organisation

The methodological approach presented below largely follows the detailed Twinning-light project fiche which is well prepared and is a good basis for the successful project implementation.

The Austrian Short Term experts from the Federal Ministry for Health, Family and Youth, the Federal Ministry of Social Security and Consumer Protection, as well as the Regional Government of Styria are sure that in the scope of the project a successful implementation of all the necessary requirements mentioned within the project fiche can be achieved.

## Project Objectives

The objective of the twinning project is to assist Latvia in enhancing the administrative capacity in the area of family support coordination system with the general aim of improving the performance of the local government institutions in terms of their obligation to protect children's rights in line with the UN Convention of the Right of the Child and the European Convention on Human Rights and to strengthen the ability of families to comply with their parental duties.

The protection of socially marginalized children, as vulnerable groups of society will be of paramount interest.

In order to achieve significant improvements in line with European standards, high quality children's rights protection strategies, standards and structures will be implemented by using know how of European expertise.

To recap:

### **Overall Objectives**

- To enhance the capacity of the Ministry for Children and Family Affairs,
- To establish family support coordination system (the setting up of a Family Support Coordination Centre as a subordinate body to the Ministry) that would ensure efficient coordination between the family support centres', training of specialists, resulting in increased work efficiency of institutions dealing with family issues,
- At the same time, it is imperative to enhance the capacity of the newly established State Inspection Authority for Children's Rights Protection in supervising the handling of children's rights protection issues.

### **Specific objective**

- During the project implementation phase the administrative capacity of Ministry employees working with issues of family support and that of the administrative staff of the State Inspection Authority for Children's Rights Protection will be enhanced,
- To develop a plan for setting up a family support coordination system, ensure the training opportunities for Ministry specialists, increase the knowledge level of experts working in the field of children's rights protection, carry out research on examples of good practice.

## **Family Support Coordination System**

### **Status quo and ways forward**

#### **Introduction – Observations – Findings & Recommendations**

***In Latvia children are just 16% of the population,  
but they are 100 % of Latvia´s future.***

#### **A new beginning**

Following the declaration of independence on 4 May 1990, Latvia has passed through difficult and sometimes painful transformations of the economy and society. After the restoration of independence Latvia did not only have the opportunity to develop their social policy according to her own discretion, but facing a sharp decline in child births, the Latvian society was dramatically confronted with the urgent need to develop a policy that would secure the regeneration of the Latvian population.

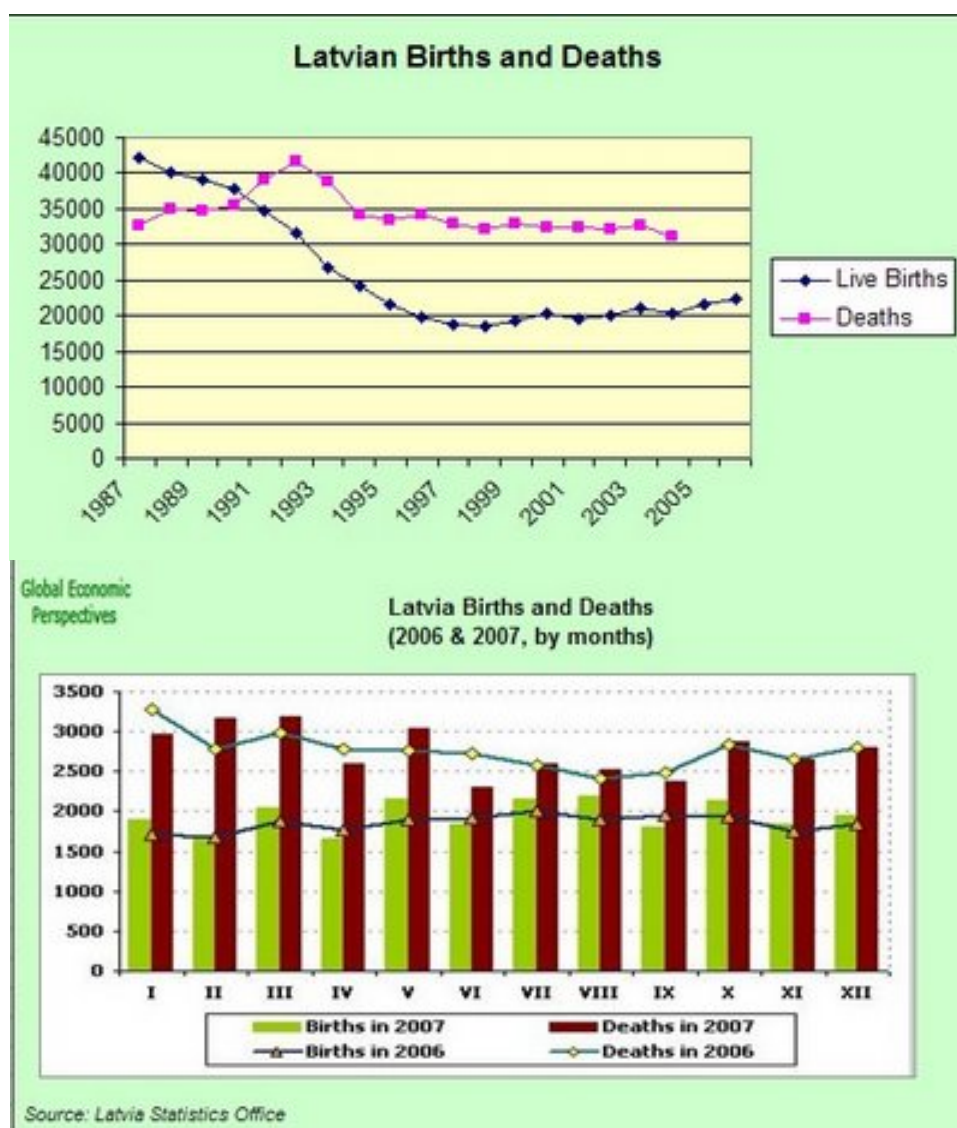
On May 1, 2004 Latvia joined the family of the European Union. With Latvia's admission to the European Union (EU) in 2004 and steady economic progress, the outlook for the country's families and children has improved in recent years. Latvia has already gone a long and successful way of developing a series of programmes, projects and further activities for the enhancement of a coherent family support system. Still, there is a long way ahead to cope with the manifold challenges decision makers in the field of family policy are confronted with today and in the foreseeable future.

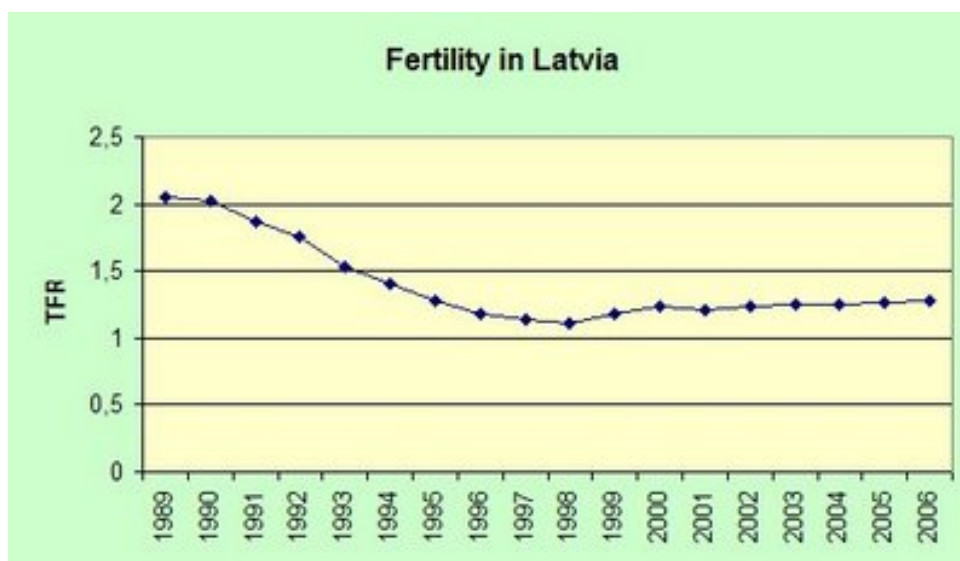
The Recommendations & Proposals of the Austrian Twinning Project partner do not claim to deliver the only true SOLUTIONS to the very wide scope of problems, but

the IDEAS, THOUGHTS and APPROACHES that are laid down in the following pages are designed to complement the existing initiatives of the Latvian policy makers in the field of child protection and family support.

## Demographic Challenge

With a declined **population of 2 284 871** (2007), Latvia has one of the lowest birth rates in Europe; only shortly after Latvia had reached the largest number of births (42 135 children in 1987) the number of births decreased dramatically from 1988 to 1998. The demographic situation in Latvia has reached crisis point, and only gradually does the number of childbirths stabilize at a moderate level.





As a result of the demographic situation, the country has begun to address these changes through such factors as the strengthening of the country's family policies, social security assistance and programs to families with children (Advanced Social and Political Research Institute, 2007).

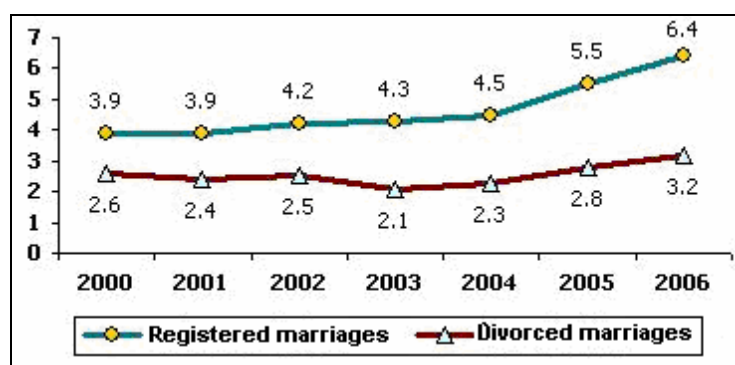
### Family – Marriage rate – Divorce rate – Co-habitation

Due to the United Nations Convention on the Rights of the Child the **Family**, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

*The child should, for the full and harmonious development of his or her personality, grow up in a **family environment**, in an atmosphere of happiness, love and understanding.*



During the first half of the 1990s, when a rapid transition to a market economy took place, the **marriage rate**<sup>1</sup> indicators decreased. In the past years, **co-habitation** in an unregistered marriage is becoming more common.



The number of **children born out of wedlock** has become disproportionate:

- 1990: 17% of all children born;
- 2003: 44% of all births were born out of wedlock.

## Main achievements

Had Latvia lacked any common institutional basis for the country's national family policy until the mid-1990s, **family policy questions** gradually were not merely recognised as political agenda items but furthermore a series of concepts, programmes and action plans as well as an avalanche of laws and regulations related to child protection and family support issues were launched in short time:

- **Constitution of the Republic of Latvia** (1998) clarifies the fundamental objectives and principles of the relations between state and the family: *"The State shall protect and support marriage, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence."*
- **Law on the Protection of the Rights of the Child** (22.07.1998)
- **State Programme for the Improvement of the Situation of Children and Families** (2001-2003) the focus of which alter according to annual prioritizations (e.g. day crisis centres, day work camps for children from low-income families and families at social risk, integration of disabled children in society, efforts to avert violence against children, support of children without parental care etc.).

<sup>1</sup> McIntyre, B., Thesis (2008): Latvian social workers believe that the country's social services do a bad job in helping couples to keep their marriage or in assisting families to stay together; the difficulty in providing resources is due to the regional unevenness within the country (those in the countryside have less access to services).

- **"State Family Policy" – Concept (2002)<sup>2</sup>**
- **Action Plan for the Implementation of the State Family Concept 2004 - 2013**

## **Achievements on the institutional and legal level**

Following the sharp decline in the birth rate the main attention was paid to the establishment of **organisational structures on the State level** taking into account the demographic situation and the need for family support and children's protection:

- ▶ National Center for the Protection of the Rights of the Child (1994)
- ▶ Children's Rights Protection Centre (1995)
- ▶ Law on the Protection of the Rights of the Child (22.07.1998)
- ▶ State Programme for the Improvement of the Situation of Children (2001/2002) and Families (2003)
- ▶ Minister for Special Assignments for Children and Family Affairs (2002)
- ▶ "State Family Policy" – Concept (2002)
- ▶ Reorganisation of the former Centre for the Protection of Children's Rights (2003)
- ▶ Ministry for Children and Family Affairs (MCFA)<sup>3</sup>
- ▶ Maintenance Guarantee Fund (2004)
- ▶ Action Plan for the Implementation of the "State Family Concept"
- ▶ 2004: State Inspectorate for Protection of Children's Rights
- ▶ State Youth Policy resorts to the MCFA
- ▶ State Inspectorate for the Protection of Children's Rights (2005)
- ▶ Latvian Council for Demographic and Family Issues

## **LEGAL SYSTEM**

- CIVIL LAW
- United Nations Convention on the Rights of the Child (adopted 2001)
- Law on Orphan's Courts (2007)
- Regulations for the operation of an orphan's court
- Regulations for Foster Families
- Procedures for Adoption
- Regulations regarding social guarantees for an orphan and a child left without parental care who is in out-of-family care as well as after the termination of out-of-family care

Summarizing, Latvia has enough perfectly good new laws in place, but there are still difficulties implementing them properly and effecticly.

<sup>2</sup> According to the intentions laid down in the concept "State Family Policy" the vast majority of families shall become able to take responsibility for the implementation of family functions by themselves, receiving optimal support from the state, local governments and society in case of necessity.

<sup>3</sup> The MCFA is the leading state administrative institution, coordinating with various other ministries, as well as local governments to ensure child protection through policy and programming.

## CHAPTER II



# CHILD RELATED BENEFITS FOR FAMILIES WITH CHILDREN

The declared aim of Latvia's family policy is the promotion of a decent family life, and one of the measures for the achievement of this aim is the support for families through state benefits.

### **Maternity benefit**

Maternity benefits are granted to socially insured persons and are paid throughout the maternity and childbirth leave period if the woman loses income from her paid work or if a self-employed woman loses income.

The 56 days of maternity leave and 56 days of childbirth leave are aggregated and maternity benefit is granted for 112 calendar days. Women who undergo medical treatment at a preventative health institution in connection with their pregnancy where that treatment began before the 12th week of pregnancy and continues throughout the pregnancy receive maternity benefits for an additional 14 days' leave, which is added to the maternity leave, meaning that benefits are granted for a total of 70 calendar days.

The maternity benefit totals **100 %** of the benefit recipient's average insurance contribution earnings, from income for the six-month (for self-employed persons – 12-month) period for which state social insurance contributions have been made (declared).

### **Paternity benefit**

Paternity benefit is granted and paid to the socially insured father of the child who has been granted leave totalling 10 calendar days in connection with the birth of the child. The paternity benefit totals **80%** of the benefit recipient's average insurance contribution earnings, calculated from income for the six-month (for self-employed persons – 12-month) period for which state social insurance contributions have been made (declared).

## Childbirth payment

The benefit is granted to one of the child's parents or guardians for a child who has been given a personal identity number but no sooner than eight days after the child is born. Childbirth payment may be requested within 12 months of the child's birth or from the establishment of guardianship (if a child has been taken under guardianship before reaching the age of 1 year)

The amount of the **childbirth payment** is **LVL 296** (EUR 423) for every child; the following premium (**supplementary payment**) is paid in addition to the basic amount of childbirth payment:

- ▶ LVL 100 (EUR 143) for the first child
- ▶ LVL 150 (LVL 215) for the second child
- ▶ LVL 200 (EUR 286) for the third and every next child

## Childcare benefit

The benefit is granted to one of the child's parents or a guardian, who has care of the child:

- up to age one, if this person was not employed at the time the benefit was granted;  
Up to age one, if this person was employed at the time the benefit was granted and is on childcare leave;
- up to age one, if this person was employed at the time the benefit was granted (is considered to be an employer or self-employed person in accordance with the State Social Insurance Act) and is employed during the childcare period, but is not on childcare leave;
- from the age one to two years.

The amount of childcare benefit for a person who takes care of an infant aged up to one year, if this person is employed (is deemed as an employee or self-employed person according to the Law On State Social Insurance) and on leave for childcare, is **70 %** of this person's average monthly social insurance payment salary, but **no less than LVL 56** (EUR 78) and **no more than LVL 392** (EUR 558) per month.

An unemployed person who takes care of an infant aged up to one year qualifies for childcare benefit amounting to **LVL 50** (EUR 71) a month, whereas a person who takes care of a child aged from one to two years receives the benefit of **LVL 30** (EUR 43) a month.

## State family benefit

State family benefit is granted to a person who raises a child/children – for each child who

- is not older than 15;
- is older than 15, is studying at a general or professional educational institution and has not entered into marriage.

In this case, the benefit is granted as long as the child attends the educational institution; however, no longer than until the day he/she becomes 20 years old or enters into marriage. If a child who has been in guardianship reaches 18 years of age, the benefit is granted to the child come of lawful age himself/herself.

The amount of state family benefit depends on the number of children in a family:

- ▶ for the first child: **LVL 8** (EUR 11.40) per month,
- ▶ for the second child: **LVL 9.60** (EUR 13.70) per month,
- ▶ for the third child: **LVL 12.80** (EUR 18.3) per month,
- ▶ for the fourth child and the next ones: **LVL 14.40** (EUR 20.60) per month.

### Recommendation # 1

Due to the character of the family state benefit as a universal state benefit the financial capacity of parents to cover (at least partially) the expenses for a child should be improved substantially. One way of expressing the direction and aims of the state policy is the choice of a proper terminology (proposed title of the benefit: State Bene~~fit~~ for Children). The change of the wording “*State Family Benefit*” to “***State Benefit for Children***” is likely to draw the attention to the basic needs of children (e.g. food, living space, goods of consumption etc.).

### Recommendation # 2

In order to tackle the particular risk of poverty for single parents and for large families with three or more children, joint efforts shall be undertaken to alleviate the economic burden by

- a) creating adequate conditions that will provide parents adequate **opportunities to earn an income** enabling them to support themselves and their families;
- b) **compensating for the loss of income** of parents who interrupt their employment in order to fulfill their caretaking duties;
- c) providing the **necessary means for poor families** which allows them to enjoy life as a family in dignity.

### **Recommendation # 3**

Bureaucratic thresholds should be reduced and **(properly equipped) social services** should put their work first into preventative assistance and help for families aiming in order to prevent family problems from becoming serious crises or chronic.

In addition to the State Social Insurance (Maternity and Paternity benefits) and State Social Benefits (child birth grant and state family benefit), the Ministry of Welfare also outlines 'Social Assistance,' which is cash, or in-kind lump sums determined by the local governments in order to assist the lowest income families. The Guaranteed Minimum Income Benefit (GMI) is included within this, which provides cash assistance to families below poverty level.

### **Other child related benefits**

Latvia provides an extra support to a defined group of persons: guardians, foster families and people, who have adopted a child:

#### **Guardian's Allowance for Child's Maintenance**

The guardian's allowance<sup>4</sup> is granted to a person who is nominated as a guardian in accordance with the legal procedure. Allowance shall be granted for each child under the custody. The amount of the allowance is **LVL 32** (€ 47.76).

#### **Payment of Compensation for the Fulfilment of Guardian's Duties**

The payment of the compensation for the fulfilment of guardian's duties<sup>5</sup> is granted to a person who in accordance with the legal procedure is nominated as a guardian.

<sup>4</sup> "Law on State Social Benefits" (into effect as of 01.01.2003) ; Regulations of the Cabinet of Ministers of 15.03.2005 No 183 "Regulations Regarding Procedures for the Granting and Payment of Guardian's Allowance for Child's Maintenance" (into effect as of 19.03.2005).

The compensation - **LVL 38** (€ 56.72) - shall not be granted to direct relatives, if the established custody is based on a decision made by custody court (county court) due to working conditions of the parents that do not allow them to take care of a child.

### **Allowance for the Performance of the Foster Family Duties**

The Allowance for the Performance of the Foster Family Duties<sup>6</sup> is granted to a person or a family who has the status of a foster-parent. The amount of the allowance is **LVL 70** (€ 194.48). In order to receive the allowance, foster-parents have to take care for a child for a period that is longer than a month. The allowance shall be granted to a foster-family regardless the number of fostered children.

### **Adoption Allowance**

Adoptive parents have the right to receive an adoption allowance<sup>7</sup> for every adopted child in the amount of **LVL 1000** (€ 1492).

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<sup>5</sup> Law on State Social Benefits (01.01.2003); Regulations of the Cabinet of Ministers of 15.03.2005 No 183 "Regulations Regarding Procedures for the Granting and Payment of Guardian's Allowance for Child's Maintenance" (into effect as of 19.03.2005).

<sup>6</sup> Law on State Social Benefits" (into effect as of 1.1.2003); Regulations of the Cabinet of Ministers of 01.07.2003 No 365 "Regulations Regarding Amount of Allowance for the Performance of the Foster Family Duties, Review Procedures Thereof and the Procedures for the Granting and Payment of Allowance" (into effect as of 10.07.2003).

<sup>7</sup> Law on State Social Benefits" (into effect as of 01.01.2003); Regulations of the Cabinet of Ministers of 30.03.2004 No 193 Regulations Regarding Amount of Adoption Allowance, Review Procedures Thereof and the Procedures for the Granting and Payment of Allowance (into effect as of 06.04.2004).

## CHILD SUPPORT / MAINTENANCE FOR THE CHILD

### According to Para. 179 of the Civil Law

“Parents, commensurate to their financial state and social standing, have a duty to look after the life and welfare of children under their authority and provide them with maintenance, i.e., give them food, housing, clothing, and care for, raise and educate them. The duty to provide for the children until the time they are able to provide for themselves lies upon the father and the mother, commensurately to their financial state.

If the parents are absent or they are not able to provide for the child, this duty shall lie upon the grandparents. If children have their own property, but that owned by their parents does not suffice to cover the expenditures necessary for the support of the children, then these expenditures may be covered from the income derived from the property of the children; if such income does not suffice, then part of the property of the children may be used, but only with the permission of the relevant orphan's court.”

According to the Regulation No 348 (2003) regarding the Minimum Amount of the Means of Support for a Child which prescribes the amount of the means of support that each of a child's parents is liable to provide for his or her child irrespective of his or her financial circumstances, a parent must provide

- **25%** of the amount of the **minimum** monthly remuneration for each child from 0 - age 7
- **30%** of the minimum **monthly** remuneration for a child from the age of 7 - 18 years.

### Recommendation # 4

Para. 179 of the Civil Law and Regulation No 348 pay the main attention to the **minimum level** of child support / child maintenance specified by the Cabinet (**25% / 30 %** of the amount of the **minimum** monthly remuneration) but the mentioned regulations lack a **calculation key** which allows the parents to get an idea of their child related maintenance obligation.

In order to let a child participate in the living standard of his parents, a child's parent should be liable to provide a **certain percentage of his / her income** graded to the age level of his / her child<sup>8</sup>.

8

Austria: Key for the calculation of child support payment	
Age of the child	Percentage of the monthly net income
0 – 6 years	16 %
6 - 10 years	18 %
10- 15 years	20 %
15 + years	22 %



To make the calculation of the maintenance practicable, the introduction of an easy **formula to calculate the amount** of maintenance payments is recommended (as is practiced e.g. in Austria – <http://www.jugendwohlfahrt.at/unterhaltsrechner.asp> – or Germany) allowing the debtor as well as the receiver of the child support payment to sort out the amount of the due child support on their own initiative.

The enforcement of **absent parent's obligations to provide financial support** for their children needs to be improved through a closer co-operation of the courts, the Orphans' Courts and social services.

## Maintenance Guarantee Fund

One of the successfully implemented measures for the improvement of the financial situation of one of the groups at social exclusion – particularly single parents – is the Maintenance Guarantee Fund, from which the maintenance is allocated to approximately 15 000 children.

The Maintenance Guarantee Fund<sup>9</sup> has been established following good examples in some European countries (e.g. France, Germany, Nordic countries, Austria) providing financial support measures for lone parent families. Through the Maintenance Guarantee Fund, financial support (mostly) for the mother with the child is afforded and at the same time fathers' responsibility and participation in family life is fostered. If one of parents breaches the duty to pay maintenance to the child, it is paid through the Maintenance Guarantee Fund, and the parent has to repay subsequently this sum back in the Fund. The debtor to the Fund can be required to discharge the money lifelong and from any incomes.

The Administration of the Maintenance Guarantee Fund provides child support

- if the implementation of the court decision (court judgement) on the collection of child support payments is declared impossible by the law enforcement officer;
- if the parent who has to pay child support for his/her child as decreed by the court decision (judgement) pays less than the **minimum** child support (not exceeding the amount of payment set by the court decision).

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<sup>9</sup> The Maintenance Guarantee Fund, [www.ugf.gov.lv](http://www.ugf.gov.lv)

The Fund provides for a guaranteed minimum maintenance

- for a child from 0 – 7 the amount of LVL 40 (25 % of the minimum wage);
- for a child from 7 – 18 the amount of LVL 62 (30 % of the minimum wage)

The guaranteed minimum maintenance payment is granted by the Fund independent of the income of the parent who cares for the child.

### **Recommendation # 5**

The subsidiary payments provided by the Maintenance Guarantee pays mainly attention to the minimum level of maintenance to avoid the most extreme forms of poverty of children. In order to allow a single parent to raise a child without the extreme threat of impoverishment, the payments of the Maintenance Guarantee Fund should not be limited to a percentage of the minimum wage but should correlate with the amount of payment set by the court decision.

## Establishment of a budget line for funding Family Support Measures (Family Burden Equalization System)

As inflation gallops and prices rise, today more and more destitute families struggle with the rising cost of living. Although low-income families are entitled to financial assistance from the local governments (e.g. monthly payments to the family to cover living expenses, financial assistance for the rent of the apartment), the minimum level of assistance often does not allow parents to provide adequate living conditions for the child and to fulfil their parental responsibilities.

### Recommendation # 6

The establishment of a **Family Burden Equalization System** – which in Austria has proved to be a successful instrument of stressing the **sense of solidarity** between those who currently do not look after children and towards those who do – should be given thought.

According to this concept, financial family support is based on the principle of the horizontal equalization of family burdens which, in turn, results in a redistribution of state benefits from persons **without** child-care obligations to persons **with** child-care obligations.

The socio-economic objective of the Family Burden Equalization Fund is the compensation for maintenance burdens borne and care given by women and men who take care of children as mothers and fathers.

The primary redistribution function for such burdens and benefits is horizontal in nature: funds are distributed from those who currently do not look after children and towards those who do.

The Family Burden Equalization Fund does not have a separate administration, but it is an earmarked position in the federal budget.

The Family Burden Equalization Fund is financed by the contribution of each employee of a certain percentage of his/her payroll amount.

In return, almost the entire set of financial child support provisions are financed through the Family Burden Equalization Fund.

## CHAPTER III



# FAMILY SUPPORT through child-related SERVICE PROVISION

Although the provision of child related benefits is important for families, there are other additional important factors that contribute to a society of families with children, such as economic security, employment possibilities and a family friendly environment, through which the reconciliation of work and family life and the choice of the employed women to have a child are supported.

### CHILD-RELATED SERVICE PROVISIONS

Although the provision of child related benefits is important for families, it has to be mentioned that this is not the most decisive factor that determines whether families choose to have children and whether parents manage to reconcile their work with family life, because on the one hand, benefits compensate only a rather small part of the foregone income from the paid employment, and on the other hand, parents highly depend on availability of supplementary child care services.

"The Concept of Children and Family Policy" stresses the necessity to promote reconciliation between work and family life by promoting the opportunities to reconcile work and family life.

According to the LATVIAN NATIONAL DEVELOPMENT PLAN 2007 – 2013<sup>10</sup> (see 6.1.3) support to families should also be provided by creating a living and

<sup>10</sup> The Latvian National Development Plan 2007 – 2013 suggests

(1) to increase state aid to families during the child-rearing period in conformity with the needs and the age of the children;  
(2) to encourage development of a network of pre-school educational institutions and alternative child-care services;  
(3) to create a family-friendly working environment and to promote co-operation with social partners – the employers;  
(4) to develop support and social service systems for families with children and to ensure a suitable infrastructure;  
(5) to develop a family-type care system for orphans and children without parental care (foster families, adoption, guardianship);

working environment that enables parents to work providing possibilities to integrate work with their child care obligations.

## Problems identified

Today, women after the maternity leave belong to the most endangered groups at risk of social exclusion due to the following factors:

- ▶ The living standard of the family decreases after the period of maternity leave because during the maternity leave the qualifications and skills of the parent become out-of-date and the employers are concerned, that child raising would diminish the mothers' productivity at work.
- ▶ The risk of being unemployed after the maternity leave is stressed by the fact, that in rural areas the transport infrastructure is underdeveloped.
- ▶ Furthermore, the number of children in the family has a strong impact on the employment, particularly because the existing infrastructure does not provide sufficient possibilities to reconcile work and family life, for example, the possibility to work part-time is limited.
- ▶ Parents are kept from returning to work after the child has reached one year because the **number of kindergartens** does not satisfy the demand since the restoration of independence lead to a major change in Latvia's child care landscape, as almost the entire stock of the child care institutions shut down, which has a negative impact on the availability of child care institutions for pre-school children.
- ▶ As a result of the privatisation of the industry and the real estate sector many locations that had been used for child care purposes are not at hand today and State or Local governments' programmes to re-install child care facilities in Latvia have not yet come to reasonable results.

In the framework of the "**State Programme for Improvement of Children's Situation**" several play development centres have been established allowing parents to entrust their children to trained caretakers for up to 4 hours for a symbolic fee - € 0.71 (LVL 0.50) per hour.

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(6) to create a state support system for promoting accessible housing to families with children.

## **Actions to be taken**

There is no denying that particular attention has to be paid to the necessity to support families with children – not only by the means of social benefits, but also – through a sophisticated set of demand driven **child care services**, thus reducing expenditure on the child care and child raising.

The promotion of reconciliation of work and family life for both parents needs to be facilitated by the further development of **day care centres**, **pre-schools** and alternative **child care** forms (child-minders' service, day groups, kindergartens in the workplace etc.).

### **Recommendation # 7**

Due to the urgent need to avail child care facilities to parents after the child has reached the age of 1 year respectively 2 years of age, a set of flexible out-of-family **child care measures** should be taken on the public & private sector:

- a) Provision of affordable child minding facilities by the local governments and private (NGO) child care service providers
- b) **tax deductible child care**<sup>11</sup>: expenditures for child care shall become tax deductible
- c) cheque system to obtain child care

The "Action Plan for the Implementation of "State Family Concept" for 2004 - 2013" postulates the establishment of a **unified information system** in local governments, containing information about the available services of child-minders. The availability of child-care facilities is today a key factor, and will even become a more decisive factor in the future for families' decision where they will set up their living.

### **Recommendation # 8**

The proposed Website featuring the new BAGAC – BERNU AIZSARDZIBAS un GIMINES ATBALSTA CENTRS ("Child Protection and Family Support Centre" - see Proposal # x") should be implemented as soon as possible in order to allow the formation of a unified information system containing information about the available services of

- child-minding facilities;
- pre-schools (Kindergarten);
- day care centres etc. in every local government.

<sup>11</sup> Germany introduced tax deductible child care in 2007.

## CHAPTER IV



# TAX POLICY

## BUDGET PRIORITIES

### Tax Policy

In 2005, average **disposable income per household** member reached **110 LVL** (included in “disposable income” = wages and social transfers). Income levels vary among different socio-economic groups:

- Entrepreneurs and self-employed **118 LVL / month**
- Paid employees **96 LVL / month**
- Households with no regular income **46 LVL / month**

In 2006, the average gross monthly salary of persons employed in the national economy was 302 LVL, of which 216 LVL was the net salary. The highest income is among child-less couples (**137 LVL / month**), and the lowest level is among single-parent families (**87 LVL / month**).

In the context of the formation of a new Government of Latvia on 9 March 2004, the declaration on the present CM activities in the field of protection of children’s rights included among the priorities the promotion of a healthy and strong family. The declaration provides for development of **tax policy favourable to families** with children, through increasing the non-taxable portion of income in respect of dependants.

Personal income tax is applied at a **flat rate to all taxpayers**. The personal income tax system envisages neither differentiation of rate nor the establishment of special tax regime for some separate category of taxpayers.

One of the most current problems in personal income tax policy is the untaxed minimum that has a very low amount for the proportional rate of 25%. The fact that without an increase in the untaxed minimum the tax burden continuously grows, such a situation creates insufficient motivation to work and is not financially attractive due to high effective tax rates and consequently also an excessively high tax burden on people with low incomes. In this period 1997 – 2004 the total burden of personal income tax and compulsory state social security contributions from average wage payments increased from **18.9% to 28.6%**.

According to the Ministry of Finance the main planned measures for 2005-2008 in the tax policy (Guideline 5 – Improvement of motivation and promote financial attractiveness of jobs) was gradual the increase of the

- untaxed monthly minimum
- allowances for dependent persons.

The untaxed monthly minimum not subjected to personal income tax was increased by **LVL 5** in 2005 (from LVL 21 to LVL 26) while the tax allowance for dependent persons was raised by **LVL 7.50** (from LVL 10.50 to LVL 18). In 2006, the untaxed monthly minimum was fixed at the amount of LVL 32, while the amount of allowance for dependent persons is LVL 22.

In view of the **galopping inflation**<sup>12</sup>, the rise of personal income tax burden and the effect of the untaxed minimum of personal income on people with low incomes, the situation remains unsatisfactory and requires a solution.

### **Recommendation # 9**

A **substantial tax discharge** for families – as announced by the government – deserves prompt implementation. This policy maker can count on the support of wide circles of the population, because according to a survey concerning the "Value Orientation" 69% of Latvians consider it every person's duty to contribute to public welfare by paying taxes.

Given the enormous gap between the relatively small number of rich people and the biggest part of society of poor people, the question of the **share of the increasing prosperity** needs to be addressed in the **public debate** (e.g. introduction of a progressing tax rate; tax exemption for families with children; luxury tax on luxury goods etc. <sup>see the example of France</sup><sup>13</sup>).

Taking into account that people with low income do not benefit from tax discharges and considering that families with three or more children have the highest poverty risk and are particularly prone to the risk of social exclusion, the **increase of the family state benefit**<sup>14</sup> for needy families, particularly for families with single parents and for families with two or more children, is strongly recommended.

<sup>12</sup> Latvia's inflation in the past year has been the highest in the European Union, with average prices up 16.7% amid soaring fuel and food prices (+ 11.6%).

<sup>13</sup> President of France Nicola Sarkozy plans to finance new measures to the reintegration of unemployed people by an additional taxation of the property yields and investment yields.

<sup>14</sup> Due to the fact that the amount of the family benefit payment is extremely low, the effect / contribution to the household income has been depreciated in relation to inflation. Moreover the family benefit hardly is regarded as a "benefit" because the extreme low amount (LVL 8, 12, 15) is "absorbed" by the amount parents pay on taxes for the children's basic consumption of goods of the daily need (Example: parents pay LVL 8 in taxes through the 10 % taxed consumption of basis goods of the daily need, if the amount of child related consumption reaches LVL 80 per child).



## Budget Priorities

Although economic growth reached an impressive 10.2 percent in 2007, Latvia's inflation in the past year has been the highest in the European Union, with average prices up 16.7% amid soaring fuel and food prices (+ 11.6%) and with a 24.8% account deficit of GDP. With **1.5** per cent of the GDP Latvia (compared to an average of 2,1 per cent of all EU Member States) spends limited financial resources of the state budget on **allowances** for families with children. This budget restraint on expenditures for families do not a substantial increase of State family benefits in order to approximate them to the actual needs of low income families with children<sup>15</sup>.

In contrast to the prevailing budget restraints on families, Latvia's defense budget has risen substantially in the past years and has reached 2.0 of GDP in 2007 (FY07). The State Defense Financing Law stated that 2% of the GDP shall be allocated to defense expenditure until the year 2008. Consequently, growth of funds allocated for the defense is directly dependent on dynamics of the national GDP. The total Defense Budget<sup>16</sup> allocated by the government for the year 2008 is 304.75 million Lats (Ls) or 2 % of the GDP. Compared to the Budget 2007, the Defense Budget 2008 has grown by 50.71 million LS or 20%.

When in 2002 the Parliament introduced amendments to the Law on Defense Financing stipulating that the defense budget will be maintained at the level of 2% of GDP for the period up to the year 2008, it stated that ***“Positive and stable macroeconomic developments and macroeconomic affordability provide a solid basis for the sustainability of defense spending for the coming years”***.

### Recommendation # 10

Since **Children and Family** cannot be seen as enjoying the same **budgetary priority in the State Budget** compared to the **Defense Budget**, the Government is well advised to demonstrate the same and explicit **enthusiasm** for the FAMILY as

<sup>15</sup> The authors of the LATVIAN NATIONAL DEVELOPMENT PLAN 2007 – 2013 stated that the small amount of certain state social benefits (for example, the family state benefit) does not provide sufficient support (chapter 6.1.3).

<sup>16</sup> Included in the Defense Budget are provisions for the **Youth Guard Movement** and the expansion of their activities.

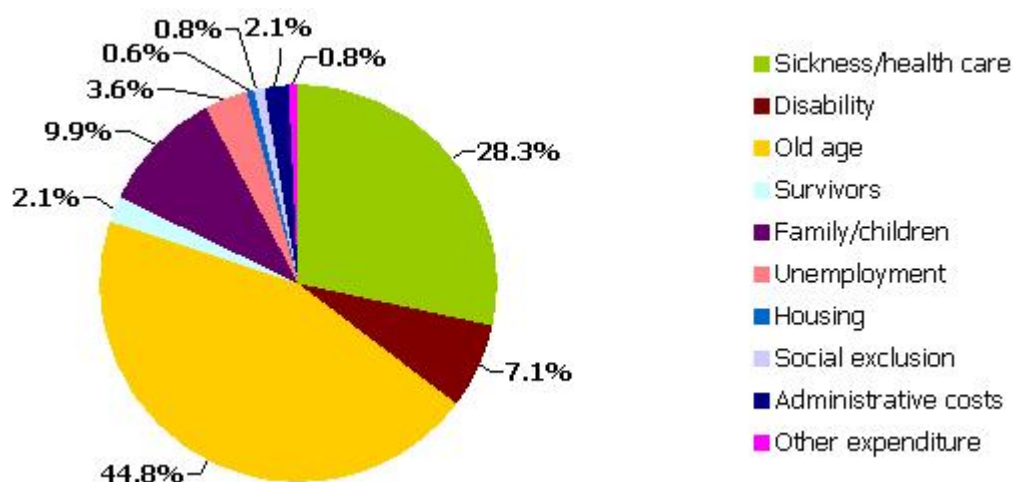
it had demonstrated for the DEFENSE SECTOR (see below)<sup>17</sup> catching up to the same level of 2% of the GDP and improving the ranking in the list of budget priorities<sup>18</sup>.



***"Positive and stable macroeconomic developments and macroeconomic affordability provide a solid basis for the sustainability of investment in Latvian's families and their children for the coming years."***

## Social protection expenditure

Costs for social protection in Latvia in 2006 constituted 1368 mln LV = **12.2% of GDP**. Expenditure for persons at retirement age was LVL 613 mln = 44.8% of total expenditure; expenditure for support of family and children totalled 135 mln LVL = 9.9% of total social protection expenditure.



ESSPROS<sup>19</sup>: Structure of social security expenditure in 2006

<sup>17</sup> The picture shows a man-high shell, decorated as an Easter ornament, in the front yard of an elegant country house in a fashionable suburb of Riga.

<sup>18</sup> Priorities in the central Government budget 2008:

- for the program "State defence, security and integration in NATO" – 110.7 mlj. LVL
- for the territorial reform – 47.8 mlj. LVL
- for allowance payments for parents taking care of child until the age of one year – 36.181 mlj. LVL

<sup>19</sup> European system of integrated social protection statistics

This expenditure includes costs for state benefits for families and children, expenditure for social care institutions for children, local government allowances for families with children, as well as, other child or family related support.

### **Social security costs in Latvia according to ESSPROS classification (mln LVL)**

	2004	2005	2006	Cost increase in 2006 over 2005, %
<b>Costs for social security – total</b>	<b>960.2</b>	<b>1120.3</b>	<b>1368.2</b>	<b>+22.1</b>
Old age	450.8	511.8	613.1	+19.8
Sickness/health care	222.6	279.2	386.8	+38.5
Disability	71.9	80.3	97.0	+20.8
Unemployment	32.0	41.4	49.2	+18.8
Family / children	95.9	118.5	135.2	<b>+14.1</b>
Social exclusion	11.2	10.7	10.7	0.0

### **Financial unevenness within the local governments**

Not only has the portion of the expenditures for family and children risen only in relatively modest measure, the **financial unevenness within the local governments** has also a negative impact on the ability of local governments of poorer regions to provide financial resources to the specific needs of the population.

Due to the fact that financial resources greatly differ within each region and therefore, what one local government is able to financially provide (whether financial or in-kind goods), another is not.

### **Recommendation # 11**

Regarding the way the budget is set up, criteria need to be developed for the funding of the local municipalities improving the ability of local governments to have a better share of financial resources, according to the specific needs of the population and their needs, is improved.

## CHAPTER V



# VALUE ORIENTATION & "FAMILY CONCEPT"

### Values – Identity – Concept of the Family

Researchers, political advisers as well as political decision makers in the past and not but rarely also today often tend to believe in quite mechanical processes and interrelations between political decisions and measures on the one hand side and the outcome on the other (e.g. if the amount of the state benefit is raised, the number of newborns will increase due to this measure).

There is no doubt that behavioural changes in society can be stimulated by financial incentives, but family related policies focussing merely on economic issues will not meet the target.

At present, in the public the “**family**” is mainly debated in connection with

- the **demographic burden** of the country
- the **economic burden** of “family” responsibilities or with
- other **problems of the family**.

Furthermore, changing **family values** can be observed: Not only is marriage postponed, but new forms of family relationships, like cohabitation, are becoming more and more socially acceptable, as are divorce and re-marriage. In the given context it may be questioned whether these **changes in family values** are the result of a **intentional choices** of parents to become single parents or rather a consequence of **family instability** or of a **lacking sense of family bonding**?

On the grounds of this observation it also has to be questioned whether there is anything like a **“family concept”** in the mindset of the Latvian people other than a family concept just opposite to the “pre-independence family”<sup>20</sup>?

### The **“value factor”**

One of the determinative factors which reflect the current state and the social development of a society, and in particular the situation of “the family” and children is the **value orientation** of the people.

The **“Value Orientation Analysis”** of the Latvian Human Development Report<sup>21</sup> concludes that **“A sense of togetherness with one’s people”** and the **“Awareness of belonging to the place of residence”** are two factors that seem to be underdeveloped:

On the one hand side, there is a distinct orientation towards close ties particularly with the family. **“Family”** is one of the most important values among Latvian: 98 % consider family to be very important, 92 % feel close ties with the family and 89 % are content with their families; 86 – 90 % feel that one should care not only for children, but also for parents. Furthermore, 49 % see an orientation towards the family as one of the most important qualities that children should be imbued with.

On the other hand, helpfulness and concern for the well-being of others are directed mainly at a rather **close circle of family and friends**. Colleagues, neighbours and other members of the local community have **only partial access** to this circle. This indicates that a certain degree of **dissociation** from others and a **lack of trust** in others can be observed: 40 % feel that it is better to start a business alone, without partners. This observation is in line with the fact that **not a high number of people** are involved in public organisations, NGO’s, churches, or interest groups.

The reason for this rather reverse behavioural pattern are not just long working hours and a lack of spare time; two important factors are a **lack of civic activity** and –

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<sup>20</sup> According to Soviet sociologist A.G. Kharchev *“Family is a relationship through which and owing to which **human production** and its **social mechanism** are effected”*.

Family was considered as an instituted community formed on the basis of marriage and engendering legal and moral responsibility of husband and wife for the upbringing of their children.

<sup>21</sup> Human Capability in the Regions, 2005/2006

what is even more difficult – **a lack of trust** and an ambiguous posture of **self-confidence**.

This general problem even tightens up if it is about the especially precarious behavioural pattern of families in social edge groups: deep lethargy of the people, 'lazy' and 'unmotivated' families, *"families who do have severe problems but who do not wish to resolve them"* along with *"a very low level of motivation, lacquer of goals and decline of values"*.<sup>22</sup>

## Conclusion

Latvia's past history of oppression and subjugation at the hands of foreign powers has left a lasting mark in the collective consciousness of the people of Latvia and may have fostered a general attitude of distrust. Having realized this legacy, it is important to point out that the so-called **universalistic values**, such as tolerance, trust and concern for the welfare and well-being of others, are – in line with a sense of experience based intuition – the values upon which successful cooperation between people are largely based.

These qualities affect the **development of civil society**, NGO's (e.g. the Young Guards) and public organisations, different forms of partnership, the quality of social life and the general climate of a country

For this reason, social orientation primarily towards a close circle of persons and dissociation from others, or the refusal to establish broader social ties can be seen as a factor that may impede social, political and economic development.

What Latvia needs at the moment in regard to these qualities and values are **public debate** and a search for **positive models** !

A **positive connotation** of **"family life"** may be developed – not so much through the idealisation of "the family" – but rather through

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<sup>22</sup> McIntyre, b., Thesis ... Section II, "Family Involvement and Interdependence"

- a) the demonstration of possible ways for young couples how to cope with the challenges of life and particularly of being a family;
- b) through the implementation of specific measures focussing on the needs of young people, e.g.
  - **job opportunities** which allow people to make a living with children
  - suitable **affordable living space**
  - provision of affordable **child-friendly day care** (pre-school) aimed at the reconciliation of family life and work
  - strengthening **community life**

### Recommendation # 12

The overall situation of the families in Latvia should be improved – and a positive social climate among Latvians of all age groups should be stimulated – not only through the institutional **improvement of the existing family support system** but, quite as – or even more – important, by the following measures:

- **community development / activation of community activities**
  - public recognition / financial support of and systematic co-operation with **informal social support networks**<sup>23</sup> (such as community / neighbourhood organizations, religious communities) that are essential to families' lives
  - **involvement of parents and family representatives** in policy and program development, implementation and evaluation
- a **communication strategy** focussing on
  - the establishment of **higher overall confidence** and
  - a **greater belief by the people in their ability to shape their family life**

### Towards a new “policy development and implementation culture”

A key element of the proposals how to approach any reformatory attempts is that future reforms must not be reduced to questions related to a better plain functioning of institutions and administrative mechanisms. It is of paramount importance that the people who shall be addressed by the proposed measures

- have to be **informed about and invited to (participate in) planned activities**
- should become **involved in the reform process at the earliest stage**
- should become **stakeholders of family policy initiatives** and of a more personalized system of responsibilities of the individual (less institutionalisation).

<sup>23</sup> McIntyre, B., Thesis: “I think we need to pay more attention to child rearing in families and give children opportunities to be active in child organizations and good development such as ‘Maz’ [boy and girl scouts], a large role can be played by them. I think it painful that many regions and local governments put emphasis on youth ‘klubs’ and night life and partying. In every county, children are offered something like ‘Maz.’ This movement must come from the Ministry. Everyone agrees it’s a good thing, but not realized.”

## CHAPTER VI



# LOCAL MUNICIPALITY and ADMINISTRATIVE REFORM in LATVIA

Administrative-territorial division reform has been ongoing since 1992. Latvia today is divided into the **five** electoral and judicial **regions** Kurzeme, Zemgale, Latgale, Vidzeme and Riga region, which, however, do not coincide with the culture regions or the cultural and historical counties because the borders of these constituencies were formed by taking into account the district or parish borders. The regions are comprised of **26 counties** (singular - rajons) and 7 republican cities municipalities\*: Aizkraukles Rajons, Aluksnes Rajons, Balvu Rajons, Bauskas Rajons, Cesu Rajons, Daugavpils\*, Daugavpils Rajons, Dobeles Rajons, Gulbenes Rajons, Jekabpils Rajons, Jelgava\*, Jelgavas Rajons, Jurmala\*, Kraslavas Rajons, Kuldigas Rajons, Liepaja\*, Liepajas Rajons, Limbazu Rajons, Ludzas Rajons, Madonas Rajons, Ogres Rajons, Preilu Rajons, Rezekne\*, Rezeknes Rajons, Riga\*, Rigas Rajons, Saldus Rajons, Talsu Rajons, Tukuma Rajons, Valkas Rajons, Valmieras Rajons, Ventspils\*, Ventspils Rajons.

Today, Latvia's administrative structure consists of **527** municipalities which are divided in:

- 53 town municipalities
- 7 republican cities municipalities
- 35 amalgamated municipalities
- 432 rural municipalities

According to the intentions of the present Government the administrative reform will lead to the formation of **102** amalgamated municipalities in the year **2009**.



## CHAPTER VII

### “ORPHAN’S COURT” / PARISH COURT reform

Orphans’ or Parish Courts – independent guardian institutions established by municipalities<sup>24</sup> – take decisions to secure observance of children rights and interests if parents cannot do it by themselves.

The term “Orphans’ Court” has a historical background dating back to the period of the first independence of Latvia in the early 20<sup>th</sup> century and as a result, the name has been adopted post-independence. The term – which had been re-introduced in 2007 – was debated in the public<sup>25</sup> in the forefront of the (re-)establishment of the Orphans’ Courts.

The name “Orphans’ Court” has caused confusion and has offended parents at times since parents don’t want their children to be seen as orphans. The term “**orphan**” is

<sup>24</sup> Section 2. Establishment of an Orphan’s Court

(1) An Orphan’s court is a guardianship and trusteeship institution established by a county, city or parish local government.

<sup>25</sup> The term “Orphans’ Court” must be viewed as inappropriate also by the fact that the duties of the Orphans’ Court go way beyond the protection of personal and property rights of orphans.

Section 17. General Duties of an Orphan’s Court

An Orphan’s court shall:

- 1) defend the personal and property interests and rights of a child...;
- 2) examine submissions and complaints, including the submissions and complaints regarding the actions of a parent, guardian, trustee or foster family;
- 3) participate in a court hearing and provide a finding if the Law determines or a court acknowledges that the participation of an Orphan’s court in the hearing is necessary;
- 4) co-operate with other Orphan’s courts, long-term social care and social rehabilitation institutions and health care instructional institutions, social service offices and police institutions in order to ensure the protection of rights and interests of a child or another person lacking capacity to act;
- 5) inform a social service office of the local government or other responsible institutions regarding the families, in which the development and upbringing of a child is not ensured sufficiently and which need assistance;
- 6) not disclose information, which might be against the interests of a child or another person lacking capacity to act in any way;
- 7) provide assistance to a child or another person lacking capacity to act, which has requested assistance from an Orphan’s court; and
- 8) act on behalf of a child or another person lacking capacity to act in criminal procedure in the cases specified in the Criminal Procedure Law.

Section 18. Defence of the Personal Interests of a Child

An Orphan’s court, in defending the personal interests of a child in relationship with the parents, guardians and other persons, shall:

- 1) take a decision regarding giving a permission for entering into marriage before reaching 18 years of age, if such permission has not been granted by any of the parents or the guardian;
- 2) take a decision regarding granting of legal age before reaching 18 years of age;
- 3) refer a child to the receipt of a consultation by a family doctor, psychologist or another specialist, if it is necessary for the defence of the interests of the child and the parents or guardian of the child do not consent to the receipt of a consultation;
- 4) take a decision regarding the discontinuation of disbursement of the State social benefits, survivor’s pension and support to children having celiac disease, to whom disability has not been specified, to a person who does not bring up the child, and regarding disbursement thereof to a person, who actually brings up the child;
- 5) take a decision regarding the discontinuation of disbursement of the State social benefits, survivor’s pension and support to children having celiac disease, to whom disability has not been specified, to a person who does not actually bring up the child, and regarding disbursement thereof to the child, if he or she has reached 15 years of age; and
- 6) perform other tasks for the protection of the personal rights of a child specified in regulatory enactments.

used in the Law on the Protection of the Rights of the Child; according to which, “... *an **orphan** is a child whose parents have died or have been declared dead pursuant to procedures prescribed by the Law.*” Parents rightly feel offended if their child, – that obviously is not an orphan – has to appear at the “Orphans’ Court”, e.g. in divorce or separation cases<sup>26</sup> in which the Orphans’ Court must determine which biological parent has the skills to take custody of the child.

### Recommendation # 13

The change of the term **Bāriņtiesa** / *translated term: “Orphans’ Court”* should be reconsidered. The proposed new term for this institution – **“Court for Children and Family Affairs”** – more accurately expresses the basic functions and duties of the court more accurately than the term **“Orphans’ Court”**<sup>27</sup>.

### Structural questions

There is a disproportionate number of **“Orphans’ Courts”** in Latvia (440) for the size of the population with Orphans’ Courts operating in 4 out of 5 municipalities (527) throughout the country. In contrast to the total number of Orphan’s Courts there is only one Orphans’ Court operating for the whole City of Riga where more than half of Latvia's population resides. Not but a few Orphans’ Courts mainly in the rural areas lack of sufficient human, financial and technical resources.

### Recommendation # 14

Corresponding to the **local municipalities and administrative reform** (from **500** -> to the formation of **102** amalgamated municipalities) the structural reform of the **Orphans’ Court system** should be undertaken (from **440** -> to far less than **220** as planned).

In line with the reorganisation of the Orphans’ Court structure the **financial** and **personal equipment** of the Orphans’ Court system needs to be **improved** substantially in order to enable the Court to fulfill its obligations to the full content of the children entrusted to the OC.

<sup>26</sup> The Orphans’ Court cooperates with the District (City) Court in cases of the divorce of parents and custody rights (sole or joint) and visitation rights have to be decided. The Orphans’ Court submits its concluding recommendations to the Court. Moreover, the Orphans’ Court has the competence to decide on the paternity status – an obvious contradiction to the term “Orphans’ Court”.

<sup>27</sup> The terminological confusion may be viewed as a reason to stick with the term “Orphans’ Court”, at the same time, one can also get attached to the idea that an outdated term that has not yet grasped ground may just as well be altered and replaced by a term that is “child friendly” and “family friendly” and even has a more precise meaning.

## CHAPTER VIII

### Role of the Ministry for Children and Family Affairs

Previous to the creation of the Ministry of Children and Family Affairs (MCFA), child rights and the implementation of the Law on the Protection of the Rights of the Child of 1998 were the joint responsibility of the Ministries of Justice, Education, Interior Affairs and Welfare, who compiled separate reports on children rights in the country, creating incongruency between various statistics and factors (Central Statistical Bureau of Latvia, 2000)<sup>28</sup>.

Although the MCFA has limited opportunities to develop and implement family and children's policy due to lack of a legal mechanism to make decisions binding on other ministries and due to limited resources, its establishment and dedication of their staff represents monumental shifts in Latvian family and child welfare; serving the nation as the first Ministry of it's kind<sup>29</sup>.

The Ministry of Family and Children has a particular role as a **co-ordination and supervisory body of the Orphans' Courts**. As the Orphans' Courts are independent bodies of the local governments<sup>30</sup> the ministry has no authority to give orders or directives to the Courts. The Ministry of Family and Children is only entitled to submit proposals / recommendations to the Orphans' Courts with regard to their functional performance ("functional supervision") in general and with regard to the fulfilment of the wide scope of the **Orphans' Courts duties** related to the protection of the rights of the child<sup>31</sup>:

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<sup>28</sup> McIntyre, B., Thesis (2008)

<sup>29</sup> McIntyre, B., Thesis (2008)

<sup>30</sup> LAW ON ORPHAN'S COURTS , Section 2. Establishment of an Orphan's Court

(1) An Orphan's court is a guardianship and trusteeship institution established by a county, city or parish local government.

LAW ON ORPHAN'S COURTS , Section 3. Financing and Legal Employment Relations of an Orphan's Court

(1) The relevant local government council (parish council) shall assign financial resources for the operation of an Orphan's court.

<sup>31</sup> LAW ON ORPHAN'S COURTS, Competence and Duties

- information management relevant for the protection of the rights of a child, e.g. issues related to guardianship, trusteeship, adoption, custody and property rights of a child (including the exchange of information with social service offices of the local government or other responsible institutions regarding the families);
- instigation of an action at court in the interests of a child / submission of applications and complaints regarding the actions of a parent, guardian, trustee or foster family

## **Section 5. Supervision of the Operation of an Orphan's Court**

(1) As regards the fulfilment of the tasks specified in Chapter IV of this Law, Orphan's courts shall be under the **functional supervision** of the **Ministry for Children and Family Affairs**.

(2) The **Ministry of Justice** shall provide Orphan's courts with methodological assistance in the fulfilment of the tasks specified in Chapters VII and VIII of this Law.

(3) The **Minister for Children and Family Affairs** shall approve a sample agenda of an Orphan's court.

Due to the **financial unevenness within the local governments** – as demonstrated in Chapter IV – the professional performance of the Orphans Courts (**440** nationwide) varies tremendously depending on the capacity of the respective local government to invest in human resources and technical equipment<sup>32</sup> for the operation of the Orphans Court.<sup>33</sup>

## **Recommendation # 15**

In the framework of the **Supervision of the Operation of an Orphan's Court** the MCFA shall have the competence to develop and implement **"Minimum Standards for the Operation of an Orphan's Court"** in terms of the OC's infrastructure (office, technical equipment), minimum number and qualifications of the OC's staff.

The MCFA shall have the mandate to ensure **co-operation** of the Orphan's Courts with the relevant national, regional and local bodies working in the field of family support and child protection.

- inspection of the living conditions of a child including the hearing of the child and commission of a psychological examination of the child;
- decisions regarding the permission for entering into marriage before reaching 18 years of age;
- decisions regarding granting of legal age before reaching 18 years of age;
- referring a child to consultation by a family doctor, psychologist
- settlement of / (or decision) on disagreements between parents on issues related to the care and custody of a child
- decision regarding the consent to the recognition of paternity
- decision on the removal of custody
- decision to take a child to a hospital, a foster family, an institution of long-term social care and social rehabilitation;
- decision regarding the recognition of a foster family;
- decision regarding the establishment of guardianship and appointment of a guardian to a child;
- decision regarding the disbursement of a remuneration for the fulfilment of a guardian's duties;
- decision regarding
  - o the recognition of a person as an adopter;
  - o the termination of pre-adoption care for a child;
  - o the separation of brothers and sisters
- decision regarding the placement of an orphan or a child left without parental care in an institution of long-term social care and social rehabilitation
- decision regarding out-of-family care of a child

<sup>32</sup> Co-operation between the MCFA and the OC fails sometimes due to the lack of technical equipment of the OC (e.g. computer, Internet, e-mail)

<sup>33</sup> Today, one or the other Orphans Court is comprised of only one employee working part-time or even on a voluntary basis.

## CHAPTER IX

### PROPOSAL for the establishment of a comprehensive



### “Family Support Co-ordination System”

Latvian’s families – primarily mothers, fathers and children, but also foster parents, guardians and adopters – deserve a modern, well-functioning and comprehensive “Family Support System”, namely a system of services on the State, county and local government level that enables and empowers them to fulfil their tasks and obligations as laid down in national legislation of Latvia as well as in international treaties (e.g. UN-Convention on the Rights of the Child).

The rationale for the necessity of establishing a “**Family Support Coordination Centre**” has been laid down in the Programme “Family Support Coordination Centre”. The proposed key action to be taken, as has been laid down in the Programme “Family Support Coordination Centre”, is the “**Establishment of a new subordinated direct management institution**”, equipped with the following functions, duties and requirements – the institutional “**profile of competencies**”:

- methodical assistance to **professionals** working with families and children (social workers, civil servants of the local governments ....) including methodical guidance of the work of the Orphan’s Courts;
- aggregation and dissemination of knowledge to identify family problems combined with the improvement of competence in problem and conflict resolution among professionals working with families and children;
- provision of medical, psychological and pedagogical assistance to **children** with behavioural impairments, their parents and specialists diagnostics and work on innovative solutions of children issues;
- provision of support measures to **children and families** through psychologist consultations<sup>34</sup> and mediation services;

<sup>34</sup> See also: BY-LAW OF THE STATE INSPECTORATE FOR PROTECTION OF CHILDREN’S RIGHTS

- methodical management of **family support centres**, such as crisis centres ensuring proper service quality and support to municipal child-minder-services;
- a unified information system in local governments containing information about the availability of **services of child-minders**<sup>35</sup>;
- provision of support groups to **foster families, guardians and adoptive parents**;
- provision of training to guardians, adoptive parents and foster families;

## Proposed Structural Changes

Current Latvian family and child services operate on a **linear level**, with responsibilities shared between national branches and local governments. Notwithstanding the remarkable achievements realised in pursuing the overall goal of extending the availability and effectiveness of family support programmes and projects<sup>36</sup> and establishing a family support structure, e.g through enlarging the network of family support centres, the strive for a **more systemic approach** in developing coherent policy instruments and strengthening co-operation with local governments and NGOs has not yet fully done justice to the expectations.

In spite of the urgent need for the establishment of a comprehensive coordination mechanism in the vast and multi-disciplinary “*family support environment*”, the “establishment of a brand new subordinated institution” is just **one way** of getting the project forward and the project goals met.

Rather than putting the focus at the establishment of one more institution **from scratch**, the Austrian TWL – project partner would like to stress the “*co-ordination*” element of the envisaged “**Family Support Coordination Centre**” This approach follows the rationale that the creation and establishment of one more new institution yearns for additional coordination work, whereas the utilization of existing structures

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3.5. provide consultations and psychological support to children in crisis situations;

<sup>35</sup> "Action Plan for the Implementation of "State Family Concept" for 2004 - 2013"

<sup>36</sup> Establishment of new family support and crisis centers, children's playgrounds and facilities for sports activities and recreation, development of counselling services for married couples, parental training on child development and safety for families, teaching materials for the prevention and detection of violence against children; intervention mechanisms; conciliation (mediation) pilot project for spouses; extrajudicial conflict resolution of disputes concerning child rearing, custody rights, child support, determining the place of residence of a child, and division of property; parental education and awareness campaigns for fathers' rights.

– if suited – has the potential to reduce frictions between different stakeholders and increase the efficiency of the coordination efforts.

In line with this idea, an in-depth examination of already existing State administration bodies was undertaken in order to identify ways of how the key objective of the Programme “**Family Support Coordination Centre**” can be implemented without necessarily creating another “new institution” from scratch. The **proposed structural changes** would rather seek to build on existing structures that could serve the overall goal just as well as – or even better than – a totally new organisation.

The key action to be taken – as proposed by the Austrian Twinning project<sup>37</sup> experts – is the establishment of a new ‘**family support sector**’ which would restructure the responsibilities of the **State Inspectorate for the Protection** of Children’s Rights to include a regional Family Support and Child Protection system divided into two separate authorities:

- **Bernu aizsardzibas un gimenes atbalsta centrs – BAGAC**  
 (“Child Protection and Family Support Centers”, [see ANNEX 1])
- **Ombudsman for Children and Youth – OCY** [see ANNEX 2].

The main focal point of the reform of the State Inspectorate is the effort to improve the **operational performance** of regional and local family support services in strengthening, supporting and protecting the family – in the light of child protection – in each region by regional **Bernu aizsardzibas un gimenes atbalsta un** co-ordination **centrs** in the Riga, Latgale, Zemgale, Vidzeme and Kurzeme regions.

The second focal point of the reform is the effort to establish an **Ombudsman for Children and Youth** which primary task is the effective protection and promotion of children’s rights in compliance with the United Nations Convention on the Rights of the Child (198) and the Statutes of the European Network of Ombudspersons for Children (ENOC)<sup>38</sup>.

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<sup>37</sup> Recommendations by the ‘International Child Development Initiatives’ policy exchange with the Netherlands are similar to those by the Austrian Twinning Project Experts including the de-establishment of ‘hierarchical networks’ at both national and local levels and the creation of a child ‘ombudsman’ within the country to act as a advocator and supporter for children as well as adults rights (International Child Development Initiatives, 2007).

<sup>38</sup> <http://www.ombudsnet.org/enoc/index.asp>:

### PROPOSAL # 1

## Restructuring / re-organisation of the STATE INSPECTORATE FOR THE PROTECTION OF CHILDREN'S RIGHTS

### Rationale

There are good reasons for the restructuring of the State Inspectorate for the Protection of Children's Rights – an existing institution – by adapting and expanding its scope of competence, authority and duties. Today, the State Inspectorate<sup>39</sup> for Protection of Children's Rights primarily exercises **control functions** in the interest of children's rights, but the Inspectorate also conducts **operational duties**<sup>40</sup> – as follows:

- ➔ 2.5. to **co-operate** with the officials of the State and local government institutions, as well as non-governmental organisations in the field of the protection of the rights of the child;
- ➔ 3.4. **organise the training** of ..... local government specialists for the protection of the rights of the child;
- ➔ 3.5. provide **consultations** and psychological **support** to children in crisis situations;

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#### Article 4:

The institution is established through legislation approved by parliament, which provides for its independence.

The institution has the function of protecting and promoting children's rights. This function is established through legislation.

There are no provisions in the legislation which limit the institution's ability to set its own agenda in relation to this function, or which prevent it carrying out significant core functions suggested in the Paris Principles and ENOC's Standards.

The institution must include or consist of an identifiable person or persons concerned exclusively with the protection and promotion of children's rights.

Arrangements for appointment of ombudspersons, commissioners and members of a commission must be established by legislation, setting out the term of the mandate and arrangements for renewal, if any.

Institutions may be constituted separately or may form part of an independent national or regional human rights institution. In all cases they must meet the above criteria.

<sup>39</sup> To the term "Inspectorate" and "Inspectors" – at least in the understanding of the translated term – adheres the connotation of an out-fashioned police - like institution of "former times".

<sup>40</sup> See: Functions, Tasks and Rights of the Inspectorate as laid down in the bylaws

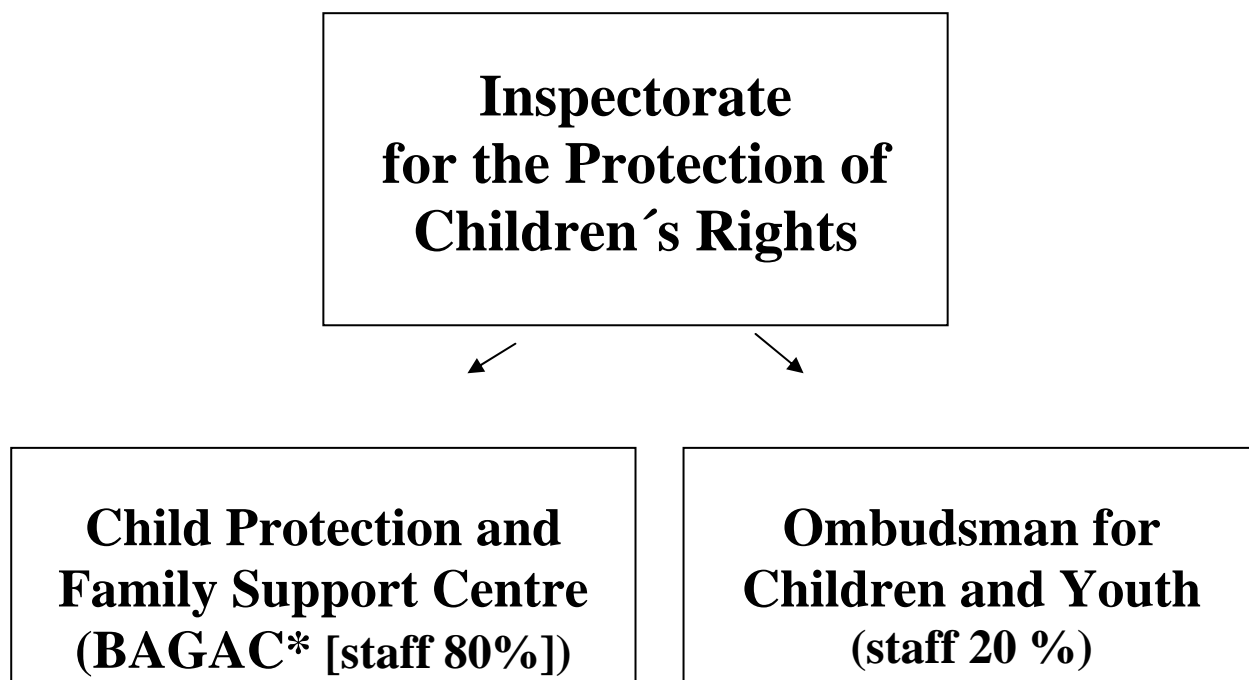


The State Inspectorate for Protection of Children's Rights even today does not restrict itself only to act as an **inspecting / monitoring body**, but the State Inspectorate (also) serves as an **operational administrative unit** offering pro-active, customer-oriented services including in solving child- and family-related activities.

On the grounds of this observation, the Inspectorate should be restructured in two separate organisations:

- **Bernu aizsardzības un ģimenes atbalsta centrs – BAGAC** (see ANNEX 1)
- **Ombudsman for Children and Youth – OCY** (see ANNEX 2)

The Austrian Twinning Partner speaks out expressly for the establishment of an “*Ombudsman for Children and Youth*” – as proposed – and for the co-existence and co-operation of the “*Ombudsman for Children and Youth*” and the *Tiesībsargs - Bērnu tiesību departaments* c/o **Office of the Ombudsman / former Latvian National Human Rights Office (LNHRO)** just because the duties of the institutions mentioned are different and because not every violation of the rights of children are Human Rights Violations according to the European Convention on Human Rights.



The **Bernu Aizsardzibas un Gimenes Atbalsta Centrs – BAGAC** (Child Protection and Family Support Centre) is subordinate to the Ministry for Family and Children Affairs which ensures the coordination of the child protection and family support mechanisms on the State level.

The **BAGAC** runs **regional co-ordination centres** in Riga<sup>41</sup>, Vidzeme, Zemgale, Latgale and Kurzeme which ensures the co-ordination of the child protection and family support administration on the regional and local government level.

With the transformation of the State Inspectorate for Protection of Children's Rights to the **BAGAC** (coordination body for child protection and family support activities) with its headquarters located in the Ministry for Children and Family Affairs (MCFA) and with branches in each region, this “new institution” – as proposed – becomes operational on the State (“BAGAC” Department), regional and local level.

The communication and co-ordination mechanism between the State, regional and local level will be organised by the “**BAGAC – Committee**” – the centrepiece of the new to be established Family Support Coordination Structure – which will by its statutes convene on a quarterly or half a year period at the Riga BAGAC (Headquarter and Riga regional office located in the MCFA).

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<sup>41</sup> Riga BAGAC (Headquarter and Riga regional office)

- Latgale BAGAC
- Zemgale BAGAC
- Vidzeme BAGAC
- Kurzeme BAGAC

The Riga BAGAC is an integral unit of the Headquarters at the MCFA

**LAW OF THE BERNU AIZSARDZIBAS UN  
GIMENES ATBALSTA CENTRS – BAGAC**  
(CHILD PROTECTION AND FAMILY SUPPORT CENTRE)

Republic of Latvia  
Cabinet  
Regulation No xxx

**Adopted xxx**

*Issued pursuant to*

**Section 16, Paragraph one of the  
State Administration Structure Law**

**P r e a m b l e**

Pursuant to the Constitution of the Republic of Latvia, the *State shall protect and support marriage, the family, the rights of parents and rights of the child. Furthermore, the State shall provide special support to disabled children, children left without parental care or who have suffered from violence.*

Due to the **Convention on the Rights of the Child**, the child should, for the full and harmonious development of his or her personality, grow up in a **family environment**, in an atmosphere of happiness, love and understanding. To this aim, the **family**, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

The protection of the child's interest and the promotion of the living conditions of children are connected in an immediate relationship with the capacity and skills of the parents to fulfil their duties and responsibilities towards the child. Because of this, the main objective of this regulation is the support of the family in various ways in order to **empower the families to fulfil their duties in the best interest** of the child.

The overall scope of competence of the **Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC)** – Child Protection and Family Support Centre – is the overall co-ordination of the Latvian child protection and family support system.

## I. General Provision

1. The **Child Protection and Family Support Centre / Bernu Aizsardzibas un Gimenes Atbalsta Centrs** (hereinafter — BAGAC) is an institution of direct administration supervised by the Minister for Children and Family Affairs that has the overall competency of coordination of child protection and family support policies, mechanisms and activities.

## II. Functions, Tasks and Rights of the Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC) Child Protection and Family Support Centre

2. The **Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC)** – Child Protection and Family Support Centre – shall have the following functions:

- 2.1. **co-ordination** of implementation of the Protection of the Rights of the Child Law and other regulatory enactments that regulate the protection of the rights of the child;
- 2.2. **co-ordination** of implementation of regulations in the field of family support;
- 2.3. **co-ordination** of the operation of State and Local Governments institutions and non-governmental service providers working in the field of child protection and family support;

The functions described include

- 2.3.1. methodical assistance to **professionals** working with families and children (social workers, civil servants of the local governments);
- 2.3.2. methodical guidance and supervision of the performance of the **Orphans' Courts** (recommended new term: Children and Family Courts);
- 2.4. **co-ordination** of the provision of child protection and family support services.

The functions described include **methodical management** of counselling services:

- 2.4.1. Maternity Counselling Services
- 2.4.2. Family Counselling Services
- 2.4.3. Parental Education Services
- 2.4.4. Violence Prevention and Violence Detection Services (including investigations of alleged accounts of child abuse and neglect in both the family homes of children, as well as within institutions (i.e. orphanages and schools)
- 2.4.5. Family Social Work Services

- Family visits
- Family Conferences
- Consultation for children and parents in crisis situations
- Psychological support to parents and / or children in crisis situations
- Violence Protection Centres

#### 2.4.6. methodical management **Family Mediation**

#### 2.4.7. methodical management of “**visitation facilities for children and non-custodial parents**”

#### 2.4.8. methodical management of **family support service provisions** such as

- Day care for children
- Pre-school (Kindergarten)
- child-minder-services
- quality management of municipal child care
- development of a unified information system in local governments on the availability of day care, pre-school (Kindergarten) and child-minders<sup>42</sup>;

#### 2.4.9. methodical management of **family replacement** for children left without parental care

2.4.9.1. (short term / long term / pre-adoption) foster family recruitment

2.4.9.2. provision of support groups to **foster families, guardians** and

2.4.9.3. **adoptive parents**;

2.4.9.4. provision of training to guardians, adoptive parents and foster families

#### 2.4.10. methodical management of out-of-family care

- Family type care for children left without parental care
- Homes for children left without parental care

#### 2.5. co-operation with foreign public administration institutions, international and non-governmental organisations

#### 2.6. drafting of recommendations for the improvement of the protection of Children's Rights

#### 2.7. drafting of recommendations for the improvement of the family support service provision

<sup>42</sup> "Action Plan for the Implementation of "State Family Concept" for 2004 - 2013"

2.8. establishing expert councils

### **III. Rights and Duties of the Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC) – Child Protection and Family Support Centre**

3. xxxxxxxxxxxxxxxxx

### **IV. Structure and Administration of the Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC) Child Protection and Family Support Centre**

4.1. The **Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC)** – Child Protection and Family Support Centre – is subordinated to the Ministry of Children and Family Affairs.

4.2. The **Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC)** – Child Protection and Family Support Centre – has its headquarters at the Ministry of Children and Family Affairs.

4.3. The **Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC)** – Child Protection and Family Support Centre – runs regional coordination centres in Riga<sup>43</sup>, Vidzeme, Zemgale, Latgale and Kurzeme.

4.4. The **Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC)** – Child Protection and Family Support Centre – shall perform the functions that are specified in the Stage Administration Structure Law.

4.5. The State Secretary and the Heads of Departments of the Ministry of Children and Family Affairs together with the **Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC)** – Child Protection and Family Support Centre<sup>44</sup> constitute a **Standing Committee on Child Protection and Family Support**.

4.6. The **Standing Committee on Child Protection and Family Support**) in its regular meetings<sup>45</sup> develops and – if necessary adapts – Latvia's child protection and family support policies and strategies.

### **V. Activities and Reporting**

### **VI. Closing Provision**

15. These Regulations come into force on xxxxxxxx

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<sup>43</sup> The Riga BAGAC is an integral unit of the Headquarters at the MCFA

<sup>44</sup> with all regional BAGAC's represented

<sup>45</sup> The "BAGAC – Committee" – the centerpiece of the communication and co-ordination mechanism – conducts obligatory meetings on a quarterly or half a year period at the Riga BAGAC (Headquarter and Riga regional office located in the MCFA).

## **ANNEX 2 (Draft) LAW ON THE OMBUDSMAN for CHILDREN and YOUTH – OCY**

Republic of Latvia

Cabinet  
Regulation No xxx

**Adopted xxx**

*Issued pursuant to  
**Section 16**, Paragraph one  
of the State Administration Structure Law*

### **P r e a m b l e**<sup>46</sup>

Children do not have a lobby and are hardly in a position to represent their rights and interests themselves. Even parents, usually the first advocates of children, are often unable to handle this task on their own. The Ombudsman for Children and Youth - OCY shall serve as contact points for all questions, complaints and problems concerning children and young people, and as an independent forum for the participation, representation and protection of the interests of children and young adolescents.

In line with the United Nations Convention on the Rights of the Child, the Ombudsman for Children and Youth - OCY stands up for observance of the best interest of the child in all actions concerning children and young adolescents.

### **I. General Provision**

(1) The **Ombudsman for Children and Youth - OCY** (hereinafter — **OCY**) is an independent national institution aimed at promoting the observance of the rights of the child and young adolescents. The Ombudsman for Children and Youth - OCY contributes to the development of a society where the fundamental rights and interests of children and young adolescents are respected.

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<sup>46</sup> Not every violation of the rights of children are Human Rights Violations according to the European Convention on Human Rights which observance belongs to the duties of the **Latvian National Human Rights Office**.

(2) The Ombudsman for Children and Youth - OCY is independent in its decisions and activities.

## **II. Functions, powers and duties of the Ombudsman for Children and Youth - OCY**

The Ombudsman for Children and Youth - OCY has the legal duty

*(1) to raise awareness in society on the special situation of children and young adolescents in general and their specific needs and vulnerability in particular;*

*(2) to monitor the compliance of laws and regulations with the United Nations Convention on the Rights of the Child;*

*(3) publicly represent the idea of non-violent education;*

*(4) to serve as a contact point for suggestions and complaints of children and young people and/or their parents / legal guardians regarding alleged violations of children's and young people's rights;*

*(5) to counsel minors, parents and legal guardians of a child in all matters relating to the position of the minor and the tasks of the person legally responsible for the child;*

*(6) to mediate cases of disagreement and dispute about care and upbringing*

*(7) to publicly promote a child-friendly society;*

*(8) to ensure the operation of a telephone hotline in the field of the protection of the rights of the child*

*(9) to make recommendations how to improve the living conditions of children and young people*

## **III. Activities of the Ombudsman for Children and Youth - OCY**

(1) The Ombudsman for Children and Youth - OCY studies the situation of children and young adolescents in the country as a whole and especially in areas concerning the vulnerable groups of society (e.g. children exposed to violence; children at risk, children with special needs, etc.).

(2) The Ombudsman for Children and Youth - OCY analyses the compatibility of Latvian legislation and administrative measures with international obligations of Latvia related to children and young adolescents (impact statement).

(3) The Ombudsman for Children and Youth - OCY undertakes research in co-operation with university institutions.



(4) The Ombudsman for Children and Youth - OCY encourages the co-operation of State and Local Government institutions, particularly with the Ministry for Children and Family Affairs, and non-governmental organisations in the field of the protection of the rights and interests of children and young adolescents.

(5) The Ombudsman for Children and Youth - OCY is granted the right of inspection and is authorized to inspect files and participate in administrative proceedings with regard to the rights and interests of children and young adolescents.

(6) The Ombudsman for Children and Youth - OCY, upon his own initiative or upon request, mediates disagreements and disputes between state authorities, local governments, NGO's and the private sector including child care providers, if the rights of children or young adolescents are infringed.

(7) The Ombudsman for Children and Youth - OCY regularly informs the Saeima (Parliament) and the Cabinet of Ministers of its activities, provides reports on children's rights issues in Latvia and prepares recommendations on the improvement of the situation of children and young adolescents in Latvia.

#### **IV. Organisation of the Ombudsman for Children and Youth - OCY**

(1) The Headquarters of the Ombudsman for Children and Youth - OCY is located in Riga.

(2) The Ombudsman for Children and Youth - OCY is represented in the regions Kurzeme, Vidzeme, Latgale and Zemgale by Ombudsman Deputies.

(3) The Ombudsman for Children and Youth - OCY is responsible for the co-ordination of the *Youth Centres* with the local governments.

## CHAPTER XI: BAGAC – Web Platform

The construction of a BAGAC web platform is of eminent importance for the (further) development of a coherent **family support coordination** system.

The BAGAC – web platform has a **vertical structure** relating to the

- state
- regional (Riga Region - Zemgale Region - Kurzeme Region - Vidzeme Region - Latgale Region)
- local / municipal level.

On the **horizontal level** of the BAGAC – web platform structure a holistic picture of the entire range of **family support services** on the different administrative levels (State – regional – local level) will be presented including accredited NGO's.

Once the BAGAC platform is launched, the platform will serve as the **central information exchange** and **communication tool**<sup>47</sup> not only for the use of the public administration sector (share point, e.g. register of all foster families) and the public and private **family support service providers** but also for the **general public**.

### Administration of the BAGAC – web platform

The BAGAC – web platform will be **co-ordinated** by a central administrator in terms of setting up a **homogenous framework** for the representation of the family support service providers on the State, regional and local level. The **content** of the web platform will be administered by each partner autonomously which means that each partner will have a Web **sub-page** in the framework of the BAGAC web platform to administer autonomously.

The BAGAC – web platform can become operational notwithstanding new legislation entering into force.





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<sup>47</sup> The BAGAC web platform will serve as a compilation of information on the various local governments, Orphan's Courts, family crisis centres and other bodies; The BAGAC web platform can help to eliminate so much time and energy of the workers within the MCFA and other institutions as they spend priceless portions of their work day answering questions which could be conveniently displayed on a website.

# Proposal # 2: BAGAC – Website [WWW.BAGAC.LV](http://WWW.BAGAC.LV)

featuring the new [www.Bernu-aizsardzibas-un-gimenes-atbalsta-centrs.lv](http://www.Bernu-aizsardzibas-un-gimenes-atbalsta-centrs.lv) in Latvia

“Child Protection and Family Support Centre”

BAGAC – BERNU AIZSARDZIBAS un GMINES ATBALSTA CENTRS					<a href="#">contact</a>
					
					
BAGAC <u>Zemgale</u>	BAGAC <u>Kurzeme</u>	BAGAC <u>Rīga</u>	BAGAC <u>Vidzeme</u>	BAGAC <u>Latgale</u>	
<div>Ministry of Children and Family Affairs</div> <div>Local Government Family Support</div> <div>Children and Family Courts</div> <div>Family Counselling</div> <div>Ombudsman for Children and Youth</div> <div>Pre-schools (Kindergarten)</div> <div>Day Care Centres</div> <div>Crisis Centres</div> <div>Youth Centres</div> <div>List of issues</div> <div>Adoption</div> <div>Birth grant</div> <div>Baby Care</div> <div>Child Care</div> <div>Children without Parental Care</div> <div>Allowance</div> <div>Child Protection</div> <div>Day Care</div> <div>Domestic Violence</div> <div>Family Benefit</div> <div>Foster Care</div> <div>Foster Families</div> <div>Guaranteed Maintenance</div> <div>Housing</div> <div>Kindergarten</div> <div>Maintenance</div> <div>Taxation</div> <div>Violence</div>					<div>County district Kuldiga</div> <div></div> <div>Municipalities</div> <div>Alsunga</div> <div>Edole</div> <div>Kabile</div> <div>Kuldiga</div> <div>Lenas</div> <div>Pelci</div> <div>Renda</div> <div>Rudbarzi</div> <div>Skrunda</div> <div>Valtaiki</div> <div>Veckuldiga</div>
<div>Maintenance</div> <div>Civil Law 179. Parents, commensurate to their financial state and social standing, have a duty to look after the life and welfare of children under their authority and provide them with maintenance, i.e., give them food, housing, clothing, and care for, raise and educate them. The duty to provide for the children until the time they are able to provide for themselves lies upon the father and the mother, commensurately to their financial state.</div> <div>If the parents are absent or they are not able to provide for the child, this duty shall lie upon the grandparents.</div> <div>If children have their own property, but that owned by their parents does not suffice to cover the expenditures necessary for the support of the children, then these expenditures may be covered from the income derived from the property of the children; if such income does not suffice, then part of the property of the children may be used, but only with the permission of the relevant orphan's court.</div> <div>Maintenance calculator</div> <div><a href="http://www.jugendwohlfahrt.at/unterhaltsrechner.asp">http://www.jugendwohlfahrt.at/unterhaltsrechner.asp</a></div> <div>Maintenance Guarantee Fund</div>					

## CHAPTER XII

### **MARRIAGE LAW: Notification of an intended remarriage; removal of custody in the case of failure**

According to Para. 202 of the Civil Law *“a parent who intends to remarry, has a duty to notify an orphans’ court before then of the intended marriage; for the non-fulfilment of this duty he or she may be subject to being deprived of parental authority.*

*If the interests of the children so require, the orphan's court shall take the necessary supervisory measures and, in the most compelling cases, shall appoint a guardian for the children.”*

#### **Recommendation 16:**

Para. 202 of the Civil Law – an outdated regulation – should be removed.

There is no logical justification for the removal of parental rights only because of a mere formality, i.e. because a parent does not notify the Orphans’ Court of the intended remarriage !

Para. 202 of the Civil Law contradicts to Article 8 and 12 of the European Convention on Human Rights and therefore should be removed.

## CHAPTER XIII



# FAMILY COUNSELLING FAMILY SOCIAL WORK

### Outset

It seems to be an uncontradicted fact, that planning of measures targeted at the group of high-risk families is complicated (not only) by the fact that there are no explicit data about the situation of these families where children are at risk. It is also true, that working with this group involves solving a whole series of problems simultaneously.

Now, if the State and local governments claim to be committed to contribute to the social needs of children and families, it is preconditional for decision makers as well as for the ones in charge of the family support system to get a holistic picture of the difficult conditions in numerous families with children caused by social problems, limited incomes and other circumstances.

There is no other way of getting in touch with Latvian's families and building a relationship of mutual responsibility between families on the one hand side than through contacting and visiting mothers & fathers of a newborn child – both sides pursuing the same objective: ***The well-being of the child !***

### Recommendation # 17:

The introduction of a **systematic mechanism** aiming at the establishment of a basic relationship between families and the community through e.g. **hospital social workers**<sup>48</sup>

<sup>48</sup> McIntyre, B., Thesis (2008)

or – alternatively / subsequently – **family visits**<sup>49</sup> can be one first step to achieve the following goals:

1. “Checking up” on the family’s condition and
2. Establishing a trust relationship serving an ongoing mutual communication process between families and the family support system;
3. Assessing the situation of families with a newborn child and identifying the individual needs of the family and the child;
  - the information gathered serves as a basis for supportive interventions;
  - the information gathered will become part of a nation wide data base;
  - the parents, having received information on issues related to the upbringing of the child (brochures etc.), are encouraged to make use of the family support services, e.g. family counselling services, Maintenance Guarantee Fund etc.

A **hospital social worker** – a position that should be established within medical facilities throughout the country<sup>50</sup> – could service as an unobtrusive **support to the mother and the family** while the delivery process is happening in the hospital (perhaps less objection of the family to having an “outsider” in their business, since the family itself is within the facility from where the hospital worker operates) and then continued interaction between that worker and the family can be established once the family and newborn is back at home as resources are made known to the families (i.e. do these families have knowledge of the Maintenance Guarantee Fund? do they have any idea about the child birth grant and other benefits?)<sup>51</sup>.

These interactions between the hospital social worker and the family can collect valuable data which may prove to the local authorities the scope of need so that appropriate funding and measures can be established in the local governments to best meet the needs. Additionally, the family has the opportunity to choose the continued involvement between themselves and the social worker / provided services on an optional basis (unless there exists safety concerns). Providing this type of social worker within the hospital setting may eliminate any negative relationship and interaction between the family and the social worker who may conduct a ‘**family visit**’ at the home, due to the fact that it will not be **initially** conducted at the home.

<sup>49</sup> “Family visitors” may be students / retired teachers, student social workers / retired social workers, medical students / retired medical people, nurses who receive special training. “Family visitors” who carry out 24 000 “family visits” per year with a maximum of one hour duration receive an additional 200 Ls / month on top of their wage.

<sup>50</sup> The duties of the „hospital social worker“ should complement the work of the Rural Family doctors

<sup>51</sup> McIntyre, B., Thesis (2008): “There are some issues for service provision for families living at the outskirts of the regional centers and the countryside,” but there are not enough services and centers. “Families are so overwhelmed by problems and social services get involved so little, they are not interested about information and then wrong impressions are formed about one another.”

## Family Counselling Services

Networks of Family Counselling Services play a crucial role in society providing relevant information related to the upbringing of children as well as expert assistance in child guidance and family matters, including also social and psychological examinations and treatment to promote the positive development of children.

Family counselling services are ordinarily run by not-for-profit, family service organizations receiving public funds from the State and/or local governments for the services provided for the benefit of couples and families:

- individual, marital and family counselling
- counselling for pregnant women
- parental education
- crisis intervention
- counselling for children at risk
- counselling for women (and their children) who have experienced violence
- counselling for couples including family relationships, conciliation or divorce
- telephone hotline

One aim of family counselling services is to guide parents in their parental role in order to **promote** the positive development of the relationship with their children; another aim is to **help families** in cases where the parents' relationship is in crisis. In a divorce process, the aim is to sort out problems on matters concerning care for the child, visiting rights and maintenance with a view to finding solutions to the problems in question and safeguarding the best interests of the child.

### **Recommendation # 18:**

All municipalities should be required by law to offer family counselling either through the municipality itself or through not-for-profit, family service organizations.

Family counselling has to be provided free of charge; professional standards for family counsellors (qualified social workers with advanced training in relational matters) have to be developed and implemented.

Family counselling services have to be made accessible<sup>52</sup> to anyone who wishes to make use of the services; family counselling sessions are subject to strict confidentiality rules.

<sup>52</sup> Ideally, family counselling services dealing with issues related to the upbringing of children should be located in the near proximity to Orphan's Courts whereas family counselling services dealing with disputes between spouses should be located in the near proximity to the Civil Courts.

## CHAPTER XIV

### Social Work

The duties of a social worker are defined in the Law on Social Services and Social Assistance. A **“social work specialist”** is defined as *“a person having statutory education and performing the professional duties of a social worker, social carer and social rehabilitator or social assistance organizer”*.

Due to scarce resources on the level of local governments the set goal of one social worker per 1,000 inhabitants is far from being met and the wages paid for social workers are anything else but attracting young people to choose this profession.

Work within the country for social workers spans the entirety of Latvian social services and includes national level (such as the Ministry for Children and Family Affairs, the Ministry of Welfare, the State Inspectorate), various local governmental bodies (such as the local governments themselves, the Orphan's Court), children's homes and various non-profit organizations.

The establishment of social work education post-soviet times is predominately carried out by three social work programs:

- ‘Sociālā darba un sociālās pedagoģijas augstskola’
- “Attīstība” (social work and social welfare school [1995])
- Social work program of the Latvia University and Liepaja Pedagogic University

Social workers have great difficulty working with the psychologists due to their **differing standards** to professional work, as well as the psychologist have differing standards in work with each other (various standards existing among almost a dozen different psychological organizations)!

Furthermore, **family social work** lacks of specialisation of social workers in the field.



### **Recommendation # 19**

1. In order to promote the congruency between the **education of psychologists** and the **social workers' education** within Latvia and to produce more homogeneity in work with families, the education of psychologists and the social work education should be harmonised.
2. The MCFA shall have the competence to develop and implement **"Standards for Family and Children's Social Work"** within the social workers' education.
3. Sugestions for the **improvement of the social workers' education** may include:
  - a) *Major attention should be paid to the vast need that exists to better recruit, education and train its social workers.!*
  - b) More advanced opportunities to complete internships during their education within places such as the MCFA, State Inspectorate, OCs and local authorities.
  - c). Better training and utilization of Supervisors, during the educational experience as well as within professional agencies. This is IMPARITIVE!
  - d) *Having specialization better incorporated into the social workers' education, i.e., while there is training for social workers in general, one may also receive specialized training to be a family social worker, a child protection social worker, a school social worker, social worker for the elderly, international social worker, hospital social worker ect.*
  - e) *Common ethical standards regarding social work need to be developed, implemented and made visible.*

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<sup>53</sup> McIntyre, B: *Social workers commented on the lack of social workers within the country as well as the lack of EDUCATION and experience of social workers! More public funds should be used towards social work education, since the family social workers are the ones having the direct experiences within the families! If the social workers do not know what they are doing, Latvia 'pays' in the long run if a family is servicing improperly (i.e. whether in a case where a child is placed in a home or foster home due to ill-assessment on the part of the social worker, or a family is not supervised well-enough on a social worker's case load and winds up in a state of crisis, necessitating the usage of a local government's monies ...*

## CHAPTER XV



# CHILDREN LEFT WITHOUT PARENTAL CARE

According to the **Law on the Protection of the Rights of the Child** a child, whose parents are not known, are missing, or due to a long-term illness are not able to exercise protection or whose parents have had the right of care or protection taken away, is defined ***“a child left without parental care”***

Based on the fact that neglected children and children left without parental care are most vulnerable to abuse, neglect and exploitation and they belong to a population segment that is most exposed to poverty, exclusion and discrimination, international treaties call for the commitment to respect, protect and fulfil the rights of the child:

- UN Convention on the Rights of the Child<sup>54</sup>
- Millennium Development Goals
- European Convention on Human Rights
- European Charter of Fundamental Rights

Children without parental care have to be given the chance to shape their future in order to become (self-) responsible, self-sufficient and participating members of society, through living in a supportive, protective and caring environment, which promotes their full potential.

Extra-familial care is – according to **the Law on the Protection of the Rights of the Child** – out-of-family-care, which is ensured with a guardian, foster family, childcare institution for orphans and children who have been left without parental care.

In the year 2007, 23 400 children were born in Latvia. For not but a few newborn children, even today, their future prospects are not that certain, as severe social problems and poverty remain quite constant factors in the country, as a subsequence

<sup>54</sup> “United Nations Guidelines for the Protection of Children without Parental Care”

of such factors like social and financial difficulties, some parents are still forced to place their children temporarily under the care of the State<sup>55</sup>.

This fact does not stand in harmony with the **Convention on the Rights of the Child** according to which the child should, for the full and harmonious development of his or here personality, **grow up in a family environment**<sup>56</sup>, in atmosphere of happiness, love and understanding.

Due to scarce financial resources spent for the social service sector families who are most vulnerable to breakdown and have the fewest resources do not receive the support needed, particularly in economically struggling regions.

### **Recommendation # 20:**

In an ambitious modern Latvian society it should be guaranteed that no child is forced to be placed under the care of the State solely because the parents do not have the capacity to **cover the expenses** for a child.

Due to the Convention on the Rights of the Child the State / local governments are obliged to afforded the family, as the fundamental group of the society and the natural environment for the growth and well-being of all its members and particularly children, the necessary **assistance and protection** so that it can fully assume its responsibilities within the community.

The demand for out-of-family placements may be reduced by investing adequate resources in family support programs<sup>57</sup> that allow to safely and effectively keep children with their natural parents.

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<sup>55</sup> NUMBER OF CHILDREN PLACED IN INSTITUTIONS

	Total	Age 0-2 years			Age 3 - 4 years			Age 5 - 6 years		
		Total	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls
Year	<b>2003</b>	2003	2003	2003	2003	2003	2003	2003	2003	2003
Republic cities:	608	269	135	134	66	36	30	40	24	16
Regions:	375	69	35	35	68	38	30	53	26	27
Total:	<b>983</b>	338	169	169	134	74	60	93	50	43
Year	<b>2004</b>	2004	2004	2004	2004	2004	2004	2004	2004	2004
Republic cities:	618	273	144	129	78	37	41	38	20	18
Regions:	548	82	41	41	91	44	47	87	49	38
Total:	<b>1166</b>	355	185	170	169	81	88	125	69	56

<sup>56</sup> According to the Law on the Protection of the Rights of the Child, Section 26 (1) "The family is the natural environment for the development and growth of a child and every child has the inalienable right to grow up in a family. The State and local governments shall support the family and provide assistance to it."

<sup>57</sup> McIntyre, B.: "If there was more money for family training, there would be no need to take the kid out of the family."

## Guardianship

Currently, 1300 Latvian children are under guardianship.

A **Guardian** is a person, who is assigned or endorsed in order prescribed in Civil law to ensure the protection of child's rights and best interests. A Guardian for his dependant substitutes the child's parents and represents the child in his / her private and property relations. Guardians receive a fee of 50 LVL for the fulfilment of their duties.

According to para. 223 of the Civil Law a father and mother already are, on the basis of parental authority, the **natural guardians** of their minor children.

When one of the parents dies, guardianship passes to the **other parent without** confirmation from an orphan's court (225). When both parents are deceased, one of the **grandparents** shall be appointed as a guardian with corresponding parental rights (228).

Both parents shall have the right to appoint guardians in their will for their children, both for existing as well as anticipated children (229).

The definitely and indisputably evidenced intention of the father and the mother to appoint certain persons as guardians for their children has the same effect as a testamentary appointment.

According to Para. 223 of the Civil Law *"Guardians appointed in the will of parents or grandparents are permitted to perform their duties as guardians **without the confirmation** of an orphan's court."*

If one guardian has been appointed in a will, an orphan's court may, contrary to the volition of such guardian appoint a joint guardian **only when this does not directly contradict the will**, but also in the latter case may appoint a joint guardian if, in not doing so, significant losses would be foreseeable for the minor (317). The right of an orphan's court to dismiss a guardian applies to all guardians, not excepting those appointed in a will or even the parents of the minor themselves (346).

**Conclusion # 5:** Para. 223 ff of the Civil Law contradicts the principles laid down in the Convention of the Rights of the Child, because guardianship can be passed from one parent to the other parent or to the grandparents by the will of parents **without the confirmation of an orphan's court** and therefore without a preceding examination if the appointment of the guardian is in the **"best interest of the child"**.

The wording of para. 228 of the Civil Law – which entitles the grandparents to guardianship of a child left without parental care **without confirmation of an orphans' court** – should be revoked due to concerns of continued abuse and neglect if the child remains in the same family as their biological parents (grandparents).

Since abandoning parents often live together with their parents and the causes for the difficulties often lie in the family system (e.g. alcoholism), relatives of the parents whose custody rights have been removed shall – in contrast to the Civil Law – not be able to become legal guardians of the child without confirmation of the competent authorities; the OC should exercise an examination of each case on an individual basis.

<b>The more resources, the more options of alternatives to institutional child care</b>
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If parents do – by whatever reason – not have the capacity to fulfill their parental duties and obligations, the officer of the Orphans' Court (being the “advocate of the child”) has during the entire assessment and decision-making process to explore all resources of a) other family members, b) the next of kin or c) support family services which may allow the child to **stay in the same “family environment”**.

In order to utilize the **full potential** of the “family environment”, the social worker in charge / officer of the Orphans' Court – OC (in the future: Child Protection and Family Court - CPFC) shall call in all family members, including the next of kin and the relatives of the child (“*Family Conference*”) as well as neighbours or friends of the family to explore – ideally with the help of a family counsellor or family mediator – scenarios concerning the “future” of a child.

In the framework of such a *Family Conference* resources are assessed related to the recruitment of persons who might potentially take personal responsibility for the child that is otherwise endangered of becoming “institutionalized”.

**Conclusion # 1:** The more resources are at hand at early stages of family problems, the more options come up which may **avoid out-of-family (environment) placement!**

## Foster Care – Foster Family Care

Currently, only a marginal number of Latvian children are in foster care. The out-of-family placement of children who had been removed from their parents, particularly the recruitment of foster families in the city of Riga, where there is a particularly high demand for foster families, remains a very difficult task. Despite of the tremendous efforts made, it is still almost impossible to recruit foster families (for a short term stay 3–6 months) in the City of Riga (even) for a new born child that has been abandoned.

Although the idea of foster families is promoted through the media, in schools etc., there is still only a shortage of foster families compared to the high number of children. To date, the competent authorities managed to recruit only a dozen foster families in Riga. In contrast to the city of Riga encouraging improvements have been made in the recruitment of foster families in rural areas resulting but in just a gradually higher number of foster families outside Riga who are willing to take children without parental care into their homes.

The dilemma still remains that despite the efforts undertaken to encourage families to participate in a fledgling foster care system, which should allow more children to leave institutional settings, the number of infants placed in state care<sup>(see FN 55)</sup> continues to increase.

A frequent scenario which can be observed is that a newborn child that has been abandoned in the hospital by birth parents – this may include poor, low-income families having moved to Riga from the country side who are not able to financially provide for their family and therefore leave their new born baby in the hospital – either remains in the hospital (if the child – because it is disabled – needs immediate crisis treatment) or the child is placed in an institution until the child is free for adoption.

Even in the case when parents give away their parental rights and the six weeks period within which they can change their mind has passed, the procedure concerning the removal of parental rights still takes quite some time.

In practical terms, abandoned children often are first placed in an institution due to the complex process which must be undergone: the custody rights of the biological parents are revoked by the OC, potential adoptive parents need to be found, their ability to comply with the legal requirements must be ensured and the matching process between the adoptive parents and the child must be successful. As a result, the child is often not simply adopted from the hospital but placed in a foster or adoptive home for a typical length of one half of a year to one year or more.

## **Legal framework**

The fact that the **Civil Law** does not contain any regulations regarding “foster care”, may be seen as an indicator for a lack of tradition of this out-of-family child care alternative and subsequently also for the prevailing difficulties in developing a “foster care culture” that may (hopefully) sooner or later substitute the prevailing institutional child care dilemma.

According to the **Law on the Protection of the Rights of the Child** a foster family is considered a family or a person, who ensures care for a child who temporally or permanently has been removed from his or her family environment or in whose interests is not permitted to remain in his or her family until the moment when the child may return to his or her family or, if that is not possible, is adopted, guardianship has been established or the child has been placed in a child care institution.

**According to the Regulations for Foster Families<sup>58</sup>** a child may be placed into a foster family by an Orphan’s Court decision in the following cases:

1. the child’s parents have died
2. the child is found;
3. the child’s parents by judgment of court have had their custody rights removed;
4. the child’s parents have had their child care rights removed;
5. the child is found in conditions hazardous to the life or health of the child;
6. a conflict situation has developed between the child and parents or guardian;
7. prolonged illness of the child’s parents.

## **How to solve this complex set of difficulties?**

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<sup>58</sup> Cabinet Regulation No. 1036, adopted 19 December 2006

In view of the complexity of the problem in dealing with the children who have been abandoned by their parent it must be conceded that there is not **one** solution for those manifold questions, but attempts will be made below to identify clues which may reveal a glimpse of a perspective of success to improve the current situation:

**A.** The character of “foster care” as used in Latvia differs from the perception of foster relationships of most countries. Foster care is designed as a “**short term placement**”: The placement of a child in a foster family is usually **limited** to a short term stay of 3 – 6 months or for a maximum time period of 1 – 1 ½ years following the idea that the child may return to his biological family or that the child will be adopted.

In many countries foster care is not by nature limited to a certain period of time but quite often, e.g. if the likelihood for returning to the natural parents or for being adopted is low, the child is allowed to stay in his / her foster family until adulthood.

Because of this, a differentiation between **short term** and a **long term placement** in a foster family should be considered.

#### **Recommendation # 21:** Amendment of the Regulation for Foster Families

##### **Short term placement in a foster family**

**(new)** 25. **a)** A child shall be placed into a foster family **for a period of time** until the child can return to his or her family or, if this is not possible, until adoption of the child or the establishment of guardianship. On taking a decision regarding the placing of a child into a short term foster family the Orphan's Court shall indicate the period of time for which a child shall be placed into a foster family. The Orphan's Court in the interests of a child **may extend the period of time** of a child's care in a foster family, by taking a new decision.

##### **Long term placement in a foster family**

**(new)** 25. **b)** A child shall be placed into a foster family **for an unlimited period of time** if there are good reasons to assume that the return of the child to his or her family, or the adoption of the child ~~or the establishment of guardianship~~ is not likely to happen in the foreseeable future.

On taking a decision regarding the placing of a child into a **long term foster family** the Orphan's Court shall indicate the period of time when the “Child Protection and Family Support Agency” has to report about the endeavours undertaken for the adoption of the child or the establishment of guardianship.



**B.** The potential of **applicants for the adoption of a child** to act as (pre-adoption) foster parents for newborns left without parental care is not sufficiently exploited. Instead of placing an abandoned newborn child in an institution, the child should preferably be taken care by a pre-adoption family until the adoption procedure is finalized.

In the case that the Court decides that the child is to be adopted by the pre-adoption (foster) family, the child is successfully safed from the detrimental effects institutional care can cause to the child.

In the case that the Court does not give permission to the pre-adoption (foster) family to adopt the child, the child is also successfully safed from the detrimental effects institutional care can cause. In contrast to the child that may suffer incurable psychological damage through his/her institutionalisation, the (pre-adoption) foster family – as a prospective future adoption family – should by nature be equipped with the mental strength<sup>59</sup> to cope with the fact that the respective child that had been entrusted to them for foster care would not stay in the family.

## **Recommendation # 22:**

### **Placement of a child in a pre-adoption family**

**(new)** 25. **c)** A child shall be placed into a family who has successfully applied to become an adoptive family if the child is left without parental care because

1. both parents of the child have died, or
2. because the child has been abandoned by his / her parent(s) under specific circumstances that make any prospects unlikely that the child may be reunited with his parents, or
3. if the parents have waived their parental rights not merely on reasons that are not in the parent/s personal responsibility.

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<sup>59</sup> Khalil Gibran's poem "On Children" declared the principle that children are not possessed neither by their natural parents nor by foster or adoptive parents: "*And though **they are with you** yet **they belong not to you.***"

**B.** Spouses who wish to apply for an adoption shall be given an incentive to apply for foster care while on the waiting list, granting them the **priority right** to become the adopters of the child if the child gets free for adoption.

**Recommendation # 23:**

Spouses that have performed the duties of a **foster family** have the **priority right** to become the adopters or guardians of a child if the Orphan's Court has not declared any of the nearest kin of a child as suitable according to Section 235 of the Civil Law.

**C.** The MFCA administrates a **list of foster families**; but due to the fact that each Orphans' Court is run by its own local government<sup>60</sup> and there is no overarching force that they must submit this information to, there exists no extensive **list of all children** that need to be placed out of his/her natural family. The information on the number, age and the particular circumstance of a child that needs an out-of-family placement is scattered among multiple sources: institutions, hospitals and such information is submitted to the OC only upon request.

**Recommendation # 24:**

The regional **Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC)** should become the overarching force that hospitals or other child related institutions must submit information on the number, age and the particular circumstance of a child that needs an out-of-family placement.

This information has to be collected in an extensive **list of all children** that need to be placed out of his/her natural family.

**D.** The recruitment of foster families to provide care for the growing number of children in foster care has continued to pose a key challenge. Success in retaining current foster families and recruiting new families is greatly facilitated by investments in services and supports (such as adequate subsidies, quality training, and respite care) that make it possible for foster families to provide the care that children need. Local governments financially benefit from placing a child in a foster family (the wording "foster family" is to be used preferably instead of "foster home") over that of an institution, as the cost of a child's monthly stay at an institution is 400 LVL

<sup>60</sup> The Orphans' Court of Riga for example signs contracts with local governments with regard to the recruitment of foster families, placement of children and supervision of the foster families.

compared to the 150 LVL that is paid to foster families for the fulfilment of their duties (compare: the minimum wage is 160 LVL, the average monthly income is 280 LVL).

#### **Recommendation # 25:**

In order to ease the problem of the large number of children placed (first) in institutions due to the shortage of available foster families the increase in the amount of the foster care allowance should be considered to an extent that is sufficient to cover the foster child related expenses entirely.

**E.** The potential of (**short term**) foster parents for newborns left without parental care is not sufficiently exploited; specific initiatives should be taken for the recruitment of short term foster parents among particular target groups (e.g. retired social workers, nurses, retired crisis doctors; retired teachers or nurse students; social worker students; student pedagogues etc.).

#### **Recommendation # 26**

Apart from the urgently necessary expansion of financial provisions for foster families efforts should be taken revaluing the image of foster homes and raising the idealistic value and attraction of being a foster family through public awareness raising activities.

#### **F. Additional living space for foster families**

Assuming that the shortage of living space is one more reason for the difficulty to find foster homes for children, an obligation to provide flats for „**Micro Homes for Children left without Parental Care**“ in the Public Housing Sector should be considered in the framework of **a new social housing policy**.

#### **G. Training for foster families**

Training for foster families is imperative.<sup>61</sup>

<sup>61</sup> B. McIntyre: In the US there are services both at the local governmental level and also contracted to the local government by NGOs which are provided by social workers and assist families to get adjusted to a new child within the home. This can also be done in a child's birth home when reunification occurs. These services come mainly in the form of a once a week or twice a week meetings in which the social worker acts as a counsellor as well as case manager to hear the needs to the family and attempt to provide emotional support, as well as connect them to resources within the community (i.e. the new child in the home is having some problems adjusting to the foster family, however, has an interest in basketball. The social worker may be aware of a sports league which the child can engage in, thus assisting in assimilation within that community and family). Therefore, the author would maybe even recommend the implementation of family services, conducted by social workers, to assist the foster children and their families to develop relationship with one another and with their community.

## CHAPTER XVI

### STANDARDS FOR OUT-OF-FAMILY CHILDCARE

As a matter of principle, social workers should be mandated to make **all ‘reasonable efforts’** to provide all possible resources to a family before the decision is made to remove the child.

Correspondingly, standards for out-of-family childcare need to be developed and implemented in order to safeguard that only in a case when it becomes apparent that the child’s safety or well-being cannot be guaranteed – even through the application of additional resources supporting the family – an **out-of-family placement** has to be considered, giving serious consideration to the child’s ethnic, social, religious and medical background.

Among various options and alternatives a thorough investigation of the possible courses of action has to be made by professional decision makers (team decision) weighing the **intensity of change for the child** caused by the form of treatment / placement against the **risk of the child** and the determining facts / factors for the decision taken must be documented.

#### Case management

The person in **charge of “the case”** respectively the person of a family support or care organisation **responsible for the child** has the obligation to make a conscious effort to ensure that the placement matches the child’s needs, life situation and original social environment.

**Conclusion # 2:** Conflicting goals between the parent of the child and the child have to be sorted out according to the following principles:

- the placement causes as little disruption as possible to the child and his/her family of origin
- the placement causes least negative effect on the relationship between the child and parent
- the placement causes maximum protection of the child

## Participatory approach

In case when it has become apparent that the child's safety and /or well-being cannot be guaranteed other than an **out-of-family placement** of the child, the social worker / officer of the OC / CPFC ensures that the decision regarding the new placement is **not just imposed** on the child, but the child is involved in the placement recruitment process to the maximum extent enabling the child, ideally speaking, to obtain a position that allows him / her to (co-)decide on his / her **caregivers and living environment**.

**Conclusion # 3:** The more the child realises that he / she is not just seen as an object of the court procedure but he / she is involved in the whole process to the vastest extent, and the child is treated as a co-decision maker, the less is the risk that the child feels at fault or victimized by the new situation.

## Recruitment of an “out-of-family care” placement

There are two main approaches authorities or organizations in charge of the placement arrangement for a child may take:

- the **“fire fighter approach”** means that the competent authority becomes active to recruit an alternative care opportunity / (long term) foster family / guardian (family) **“on demand”** -> action is taken only when an urgent need has come up to place a child out of his / her family;
- the **“squirrel approach”** means that the competent authority takes all efforts to recruit alternative care opportunities / (long term) foster families / guardian (family) **in advance** and – ideally – administers a list of foster families that are available on demand.

Placing a child in a foster home is often a lengthy process as a family must be identified according to the specifics of the child (age, gender) as well as the needs of the child (disabled, severely abused..) The matching process of the child with the (short / long term) foster family must not be reduced to the mere **“availability factor”** but should be expanded towards a **“choice factor”**: this is because there is a vaster

likelihood that the placement matches the child's needs, if the competent authority / care organisation, the social worker – and also the child – have the privilege to choose among a certain number of placements.

**Conclusion # 4:** It is a matter of course that the chance to explore and arrange the **best possible placement for the child** in accordance with his/her needs corresponds directly to the fact whether the competent authority is in a position

- to have a **choice** among several social environments that may be suitable for the child; or
- whether the authority can only **react upon an urgency** to find a suitable social environment for the child.

Among other factors, the **geographical distance** between the child's community and the new placement may be regarded as one of the criteria indicating the "best placement" if it allows the child to foster or preserve a sense of attachment and belonging to his / her original social environment and (at least) a minimum bonding to his / her natural family.

**Conclusion # 5:** The regional **Bernu Aizsardzibas un Gimenes Atbalsta Centrs (BAGAC)** should become the overarching force that coordinate with the Orphans' Courts and contract with local governments in order to place children in foster or adoptive homes.

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## CHAPTER XVII

### Adoption

**According to Para. 162 of the Civil Law** *"Adoption of a minor shall be permitted if it is in the interests of the child and if there are grounds to consider that as a result of the adoption there will be a **true parent and child relationship** between the adopter and the adoptee."*

**see: Recommendation # 23:**

## CHAPTER XVIII

### INSTITUTIONAL CHILD CARE

The **Civil Law** states that if a child is deprived of his/her family or is not under the custody and care of his/her parents, other means must be found to guarantee the well-being of the child. This can happen by placing the child in a foster family, appointing a guardian, placing the child in a children's shelter, family orphanage (smaller in size and trying to maintain a family rather than institutional environment) or organising adoption.

According to the **Law on the Protection of the Rights of the Child** a child care institution is an institution in which social care and social rehabilitation for orphans and children left without parental care, as well as children for whom social rehabilitation is necessary or special care due to their state of health, is ensured.

The number of Latvian infants placed in state care<sup>(see FN 55)</sup> is one of the highest in Europe, and continues to increase and the efforts of the MCFA to encourage families to participate in a fledgling foster care system, which should allow more children to leave institutional settings, have not yet brought about the strongly desired results. Furthermore, despite of the obligations signed in international treaties, such as the UN-Convention on the Rights of the Child, the problem of institutionalization of children remains unsolved in the vast majority of cases when a child cannot be placed in a family environment.

Pilot projects<sup>62</sup> of the MFCA aiming at placing abandoned children in a **children's shelter** or in a **“family orphanage”** (smaller in size and trying to maintain a family rather than institutional environment) have prompted encouraging results and have turned out to be valuable efforts to enable children left without parental care to better develop and to acquire skills for an independent life, as well as to improve the quality of out-of-family care.

Major progress has also been made in endeavouring to integrate children left without parental care in a family environment and in society, by establishing **“youth apartments”** for children<sup>63</sup> who have **reached the age of 16**<sup>64</sup>, who with the support of an educator shall acquire skills necessary for independent life.

<sup>62</sup> e.g. the “Zīluku” Pilot project defined in the framework of State Program for Children and Family Condition Improvement  
□ “Zīluku” pilot project

Still, no matter how attractive child care institutions may seem, **institutional child care cannot meet the individual developmental needs of children and youth !**

Moreover, the tremendous efforts taken by strongly committed directors of institutions – as could be observed – to **create a family environment** for left alone children in out-of-family care institutions<sup>65</sup> – primarily orphanages<sup>66</sup> – must not delude the fact that institutionalized children are – by nature – **deprived of a family (type) life experience**<sup>67</sup>. Children left without parental care receive “institutional care” but they are deprived of the feeling of belonging to and being part of a family type interrelationship.

Even more, there is a risk that efforts to create a family environment in out-of-family care institutions occasionally put a haze on the fact that insufficient efforts are undertaken to create real family (type) relationships, e.g. by establishing a functioning system of **foster homes** or a system of **“family type apartments”** for children left without parental care who share the apartment with skilled educators as overall parents’ substitutes in everyday life as if they were a family.

## **Mentorship**

With the introduction of a ‘mentorship relationship’ the gap of ‘family life’ and relationship which is not offered within a child institution can possibly be eased. If the state and NGOs were able to contribute a bit of money, or recruit volunteers to work as mentors once or twice a week, children may be able to receive more individual attention and care<sup>68</sup>.

The mentorship model could also be a way for **social work students to obtain additional credit** in school !

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<sup>64</sup> It has to be questioned why parents’ substitute relationships are not fostered also for children **below the age of 16**, who deserve the experience of a personal relationship of caring and trust even more?

<sup>65</sup> as laid down in the framework of State Program for Children and Family Condition Improvement

<sup>66</sup> In order to reduce the stigmatising effect of living in an orphanage, these institutions are called „Little homes“

<sup>67</sup> It is **not just a matter of principle** whether precious resources are diverted into the construction, maintenance, and staffing of such facilities; if the institutionalization of children left without parental care is to be pushed back categorically<sup>67</sup>, a change in paradigms must occur towards investments in helping families stay together and in supports and services that attract and sustain caring **foster families** for children who cannot remain with their birth families.

<sup>68</sup> With the application of a fine-meshed safety net it must be made sure that children are protected against any form of exploitation, in particular from sexual exploitation.



## CHAPTER XIX

### The orphanage system – an outdated institution!

Orphanages were established to house children who were orphaned or abandoned or whose parents were permanently unable to care for them because of illness or poverty. Today, the negative developmental, psychological and social effects of orphanages on children are commonly understood:

- young children in institutional care are extremely vulnerable to crisis and psychological problems;
- institutionalization in early childhood increases the likelihood that children will grow into psychologically impaired and economically unproductive adults;
- children reared in institutions (compared to children reared by families) have been found to have difficulties forming and maintaining relationships with others; and poor self-esteem;
- institutionalized youth consider themselves (when compared to youth in foster family care) less loved, less looked after, less trusted, and less wanted.
- even in small, well-run institutional settings, children develop a range of negative behaviors, including aggression and indiscriminate affection toward adults;
- individuals placed in orphanages early in their lives are at greater risk when they reach adulthood of living in poverty, developing psychiatric disorders, having difficulties in interpersonal relationships, and having serious problems parenting their own children. The lack of opportunities for close, consistent, and caring relationships with adults in institutional settings has a significant impact on children into adulthood.
- a child in an orphanage has, on average, 10 caregivers a day -- owing to staff shift changes throughout the day. At the same time, the caregivers themselves frequently change as a result of high staff turnover -- with serious implications for children's growth and development.
- Unlike family foster care, orphanages **do not place emphasis on children's connections with their parents** and members of their extended families.
- Orphanages do not work to reunite children with their birth families or find other families for children through adoption. Orphanages, in fact, see themselves as substitutes for children's birth families. That "family" role, however, lasts only until children are discharged from the facility – at which

time, they are left to fend for themselves with no family to support them as they attempt to transition into adulthood and independence.

Recognizing the detrimental effects institutional child care can cause to children, and realising that orphanages are actually far more expensive than family foster care – costing between 3 and 7 times the cost of caring for a child in a family environment, alternative ways of caring for children – direct supports and services for families, foster care, “youth apartments” and adoption – came into the focus of legislative reforms and aiming – on the long run – at the replacement of orphanages.

### **Recommendation # 27**

In order to minimize stigmatisation of children left without parents one of the issues that should be addressed is the avoidance of the terminological **“classification”** not only throughout the entire legislation, but also throughout the entire administration on State and Local Government level.

Moreover, in order to overcome the stigmatisation of orphans, a phenomenon that prevails throughout history, the replacement of the term **“orphan”** by the more appropriate term **“child without parental care”**.

Consequently, the replacement of the term **“orphanage”** by the more appropriate term **“home for children without parental care”** should be reconsidered in line with the planned re-organisation of the Orphans’ Court System.

### **Recommendation # 28**

**The substitution of the term “orphan” by the more appropriate term “Child without parental care” should be reconsidered.**

Moreover, in order to **overcome the stigmatisation of orphans**, a phenomenon that prevails throughout history, the change of term **“orphan”** by the term **“child without parental care”** should be reconsidered in line with the re-organisation of the Orphans’ Court System in 2009.

## CHAPTER XX



# MEDIATION PROJECT & FAMILY COUNSELLING AT COURT

Family breakups and divorce are major changes in family relationships are processes that extend over time and require continuing support and attention.

**Divorce Mediation** still feels like a new idea in some parts of Europe, but it's increasingly well-known and widely accepted, and with the **European Directive on Certain Aspects of Mediation in Civil and Commercial Matters (2008/52/EG)** entering into force on **10 June 2008** for all EU – Member States (except Denmark), a new chapter has been opened in dealing – inter alia – with family disputes.

The European Mediation Directive is an attempt by the European Union to encourage the use of mediation as an effective alternative to civil litigation in cross-border civil and commercial disputes. With the adoption of the Directive the European Parliament stresses the advantages that ADR and mediation in particular has to offer and wants to see greater use of it as a dispute resolution tool in Europe.

The Directive restricts its applicability to **cross-border disputes**, where one party is domiciled in a Member State other than that of the other party. However, Member States are strongly encouraged, if they want, to apply the provisions of the Directive to internal mediation processes.

### Family Mediation

Each individual member state has its own rules about separation, divorce, maintenance of spouses and children, custody and guardianship and other family law matters. The European Mediation Directive though applies to civil matters which include divorce matters, problems related to parental responsibility, maintenance, custody, access rights, child abduction etc.

According to the Civil Law, CHAPTER 1, Para. 78, *“A court may, for the purpose of reconciling the spouses, adjourn the adjudication of the matter for a period of between three and six months, except in the cases set out in Sections 71, 73, 74 and 76.”*

In this context it should be emphasised that **“mediation”** is not to be equated with **“reconciliation”**. FAMILY MEDIATION primarily aims at the (re-)organization of family relationships *after* separation or divorce; still, there is a chance that – if the conflict between the spouses gets settled – the couple reconciles and continues their relationship (see Appendix “Implementation Directive on Family Mediation” - Austria).

As divorce makes enormously heavy demands on the persons concerned, and as in most cases not only a large number of legal questions arise in the case of a divorce, daily life must also be completely reorganised.

For counselling to be effective, it must contain both precise legal information, and relate to the entire social and psychological situation of the help-seeking person.

For mediation to be effective, it is of paramount importance that a mediation process should, in principle, be preceded by counselling of the persons ready for mediation (mediation clients) through a recognized counselling facility, preferably through "family counselling in court" or through a family counselling service.

Since counselling in family and divorce matters is fundamentally different from the legal information provided by judges three distinctive features need to be pointed out:

### **Recommendation # 29**

The services to be offered therefore should focus on three neuralgic areas:

1. legal and psychological counselling prior to court proceedings (**family counselling at court**),
2. counselling and guidance regarding the "rules of the game" of the separation and the subsequent phase (**family mediation**), and
3. psychological support of children as the victims of a divorce or separation (psychological **support for children**).
4. Amendment of the Civil Law, CHAPTER 1, Para. 78, *“A court may, for the purpose of reconciling the spouses or **attempting a settlement of the dispute through mediation**, adjourn the adjudication of the matter for a period of between three and six months, except in the cases set out in Sections 71, 73, 74 and 76.”*

## **Draft MEDIATION REGULATION**

### *PREAMBLE*

The aim of this regulation is the institutionalization of professional standards in accordance with the European Mediation Directive ".

### **SECTION 1**

#### **BASIC PRINCIPLES and IMPLEMENTATION PROCEDURES**

##### **Article 1**

##### **Area of Application of the Regulation**

- 1) This regulation shall generally be used for mediation in conflicts in the Civil Law.
- 2) Subject in particular to the provisions of this regulation shall be mediation activities in divorce and separation and connected disputes concerning custody cases which were arranged through recommendation of the court or through recommendation of a family counselling service (preferably set up in court).

##### **Article 2**

##### **General Requirements**

Organisations offering mediation services must prove that the mediators attributed to them meet the standards of quality defined in detail in this regulation in respect of their basic qualification and special qualifications for mediation, including further and additional training in accordance with the state of knowledge and the state of the art.

## **Article 3**

### **Aims and Principles of Mediation**

By means of mediation practised in accordance with the state of the art, efforts shall be made towards the self-determined definition of rules in the form of a mediation agreement complying with the wishes of the clients and in accordance with the aims and content defined jointly with the mediators, and within the framework of dispositive law, intended to maintain a balance of interests and with a clearly defined scope.

## **Article 4**

### **Self-determination - Protection and Participation of Children and Adolescents**

1) The mediation of conflicts is intended to increase the capability of persons wishing to separate or divorce to solve their conflicts, above all within the context of their parental responsibility, to such an extent as to render them competent to take workable, (self-)responsible decisions on the reorganization of their lives in connection with a separation or divorce and, in particular, to support their capabilities of upholding their parental responsibility in a way appropriate for the well-being of an affected child.

2) Within the framework of mediation it shall be seen to, on the one hand, that children and adolescents are protected from negative influences of the parental conflict and, on the other, that children and adolescents, especially in those areas of mutual interest, can take part in the mediation process in a manner appropriate to their age.

## **§ 5**

### **Voluntary Nature of Mediation**

1) In conformity with the nature of mediation, it is intended that persons wishing to separate or divorce can take part in mediation through self-motivation or on the basis of a recommendation of the court, in the latter case completely voluntarily, i.e. without any risk of disadvantage.

2) It shall not be possible for mediation to take place against the will of even a single party.

4) Mediation shall take place only if the participation of the clients is completely voluntary, however, within the ambit of the law. In particular, every mediation client shall be completely free to choose a suitable mediator.

5) Restrictions to this freedom shall be prohibited. The recommendation of the court that mediation be applied for shall not restrict the principle of voluntariness.

6) It shall be possible for a mediation process to be interrupted or terminated by any client at any time. It shall also be possible for the mediator to end the mediation process at any time; in such a case the mediator shall protect justified interests of the mediation clients.

## Article 6

### Impartiality, Objectiveness and Neutrality of the Mediator

A mediation process shall not be started (or must be ended) by a mediator if, for his part, the personal, technical or practical requirements do not exist (or have ceased to exist). This shall be the case, in particular, if the mediator has a legal or de facto relationship with one of the clients, as a result of which his **impartiality, objectiveness or neutrality** can be placed in doubt; especially if the mediator occupies or occupied an **advisory, caring or therapeutic function** towards one client. In cases of doubt the factual situation must be declared by the mediator and, after a joint discussion, a decision made as to the start, continuation or ending of the mediation.

## Article 7

### Suitability of Clients for Mediation - Existence of a Violent Situation

- 1) A mediation process must not be started or continued if the necessary personal or objective requirements do not (or no longer) exist on the part of one of the clients.
- 2) The mediators shall have the task of checking for the existence of these requirements and, if necessary, of referring the (prospective) mediation clients to relevant institutions on objective grounds.

## Article 8

### Preceding (and Accompanying) Counselling

- 1) Even before the start of the mediation process, mediation shall, in principle, be preceded by counselling of the persons ready for mediation through a recognized counselling facility.
- 2) A mediator who provides counselling in a specific conflict shall not be permitted to act as a mediator in the same case.

## Article 9

### Scope of Mediation

- 1) Persons interested in mediation shall be informed during an information meeting before the start of mediation that although there is no compulsion to engage a lawyer, they are free at any time to take legal advice or to enlist legal representation.
- 2) Mediation shall be a closed procedure between the mediation clients, under the direction of mediators.
- 3) A lawyer or notary public active as a mediator shall not be permitted to advise, represent or act in a similar way for one mediation client against other persons who were involved in the mediation case, either in the mediation process itself or in an issue connected with it.

## Article 10

### Mediation Agreement

Mediation shall be established solely on the basis of a written agreement between the persons making use of mediation on the one hand and the mediator on the other (constitutive Mediation Agreement).

## Article 11

### Discretion

The mediators shall be obligated to **maintain discretion** about the facts which are told to them or become known to them during the meetings aimed at reaching an amicable **agreement** or from written documents on which these are based or other sources of information.

## Article 12

### Conclusion of the Mediation

- 1) Mediation shall be ended through:
  - a) a written draft agreement or Mediation (Partial) Agreement between the mediation clients;



- b) the express termination of mediation either by the mediation clients or by the mediators.
- 2) The mediators shall generally inform the mediation clients that before the end of mediation they are free to enlist outside counselling or examination of the results of mediation, to be integrated into the mediation process. If particular specialist competence appears necessary in connection with the result of the mediation, the mediators shall recommend the enlistment of such.
  - 3) If the mediation clients reach (complete or partial) agreement on the items to be regulated through mediation and the manner of their regulation, this can be performed by way of a written **draft agreement** clearly setting out these items to be regulated and the manner of their regulation.
  - 4) If the mediation clients reach such an agreement and wish that the items to be regulated and the manner of their regulation be set down in writing in an **agreement** (Mediation Agreement), this shall take place with involvement of the judicial mediator.
  - 6) The written version of the draft agreement and the agreement reached between the mediation clients shall be part and conclusion of the mediation.

### Article 13

#### Liability Conditions - Liability Insurance

Organization offering mediation shall be responsible for ensuring that every mediator submits evidence of adequate liability insurance before the start of any mediation activity.

## **SECTION 2**

### **BASIC QUALIFICATIONS - MEDIATION QUALIFICATIONS**

### Article 14

#### Professional Qualification

- 1) Institutions offering mediation shall guarantee that a mediator provides mediation services within this regulation.

- 2) The basic qualifications shall be demonstrated by completion of a relevant course of training and the exercise of a relevant source profession.

## **SECTION 3**

### **General Part**

#### **TRAINING IN MEDIATION**

#### **General Preliminary Remarks on Mediation Competence**

The core element of professional mediation activity - as a special form of the professional forming of relationships, above all by means of communication - is reflection on the chosen intervention in the context of the basic assumptions underlying this (for example the specific problems of the mediation clients and the origins of their conflict), ones own hypotheses and ones own mental models, which control ones own perception and the interpretations and evaluations based upon it (*double-loop learning*).

In this sense, professional mediation is performed by

- the conscious formation of the relationship with the mediation clients themselves, with outside professionals (for example outside lawyers, social workers, tax consultants or commercial trustees, etc.),
- the examination of the process and the result of the attempts at formation, and (if necessary)
- the modification of ones own method of proceeding and of the underlying assumptions or explanatory models on which this is based.

Special competence in family mediation is acquired through thorough training in family mediation, based on an existing qualification in a relevant source profession.

#### **Aim and Structure of the Training**

The aim of training in mediation is the acquisition of those particular mediation skills.

In addition to the communication of a foundation of theoretical knowledge on mediation and on mediation technique and the practical exercise of mediation skills, appropriate forms of learning must be offered for the purpose of promoting the ability to reflect as a central capability of the mediator and for

revealing the respective mental models, in particular through reflection on personal acquired knowledge, ones own experiences and actions.

Starting from an orientation meeting before the beginning of a course of training, the core areas of mediation (essentials) are taught in a basis seminar and a supervision seminar; these contain, in particular, theoretical knowledge about the structure and course of mediation, basic assumptions associated with mediation, basic psychological assumptions about conflict, communication and cooperation, further methods and techniques of mediation, and legal and ethical aspects of mediation.

Specific complementary seminars for the source profession are intended to extend the respective source professional competence ("tools of the trade").

Special importance must be attached to learning through self-awareness and learning by doing, whereby in addition to the communication of high-level theoretical knowledge, account must also be taken of high standards in practical aspects.

### **Methodical Elements**

In addition to the technical components, the training in mediation must also include, in particular, the following methodical elements:

The teaching and learning of social skills which are essential for professional mediation work is an element of a course of training in mediation which is based on the technical skills of the respective source profession, but which also extends beyond this.

The structurally provided possibility for participative cooperation by the participants as a "form of social organization" is intended to shape its model role as an ideal function for the mediative element of relationship structures.

Courses in mediation must always conclude with an assessment; candidates for training should have the possibility during a course of training to submit written feedback to the trainers. If a candidate has the impression that his concerns made known to the trainers through feedback are not being taken into account, it should be possible for him to state his concerns in writing in the course protocol and to have these dealt with by the training institution before the end of the course of training.

### **Freedom of Method**

The training material presented below claims to be neither exclusive nor complete, but serves nonetheless as orientation for training candidates in respect of the basic structure and the essential basic content of a course of training as a mediator.

## CHAPTER XXI

### Protection Against Violence

**Corporal punishment** is the deliberate infliction of pain and suffering intended to change the child's behaviour or to just punish the child.

According to **Article 19** of the Convention on the Rights of the Child

*1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child **from all forms of physical or mental violence**, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

*2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*

The United Convention on the Rights of the Child calls for a ban on corporal punishment and encourages State parties to develop measures to raise awareness on the harmful effects of corporal punishment and to promote alternative forms of discipline in families to be administered in a manner consistent with the child's dignity and in conformity with the Convention<sup>69</sup>.

Today, in modern societies it is commonly recognized that any form of violence, in particular corporal punishment which involves slaps or blows to the head, is harmful to the development of a child and therefore has to be prohibited.<sup>[3]</sup>

By the year 2008 corporal punishment has been banned in 23 countries: Austria, Bulgaria, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Iceland, Israel, **Latvia**, Norway, Poland, Romania, Sweden, the Netherlands, and Ukraine.

Despite of the legal ban on corporal punishment in the mentioned countries one can observe that violations of this principle are sometimes played down by parents, guardians or teachers by "justifying" the force which is used **"by way of correction"** (sober, reasoned use of force that address the actual behaviour of the child and are designed to restrain, control or express some symbolic disapproval of his or her behaviour).

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<sup>69</sup> The UN Study on Violence against Children sets a target date of 2009 for universal prohibition of all kinds of violence.

According to the Constitution of the Republic of Latvia **"The State shall protect and support marriage, the family, the rights of parents and the rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence."**

Para. 200. of the Civil Law states:

*If parents **exercise their parental authority meanly and treat the children especially badly**, a court may deprive the parent who is at fault of parental authority and place the children under the authority of the other, and may also appoint a guardian for the children if the authority exercised by the other parent does not adequately protect the children against the harmful influence of the parent at fault, or if both the parents are at fault.*

Section 24 of the **Law on the Protection of the Rights of the Child** defines the **Duties of Parents towards the Child**:

(1) In conformity with the provisions of The Civil Law, parents have a duty to care for a child and his or her property and to represent the child in his or her personal and property relations.

(2) It is the duty of the parents of a child to prepare him or her for an independent life in society, as far as possible respecting the individuality of the child and observing the abilities and wishes of the child.

(3) Parents are the natural guardians (lawful representatives) of a child. It is their duty to defend the rights and interests of the child protected by law.

(4) Parents shall be held liable as determined by law for not fulfilling their parental duties and **for abuse of protection rights, physical punishment or cruel treatment of a child**.

Although Latvia has enacted a solid legal basis for combating violence against children, minor amendments of the law are recommended which should explicitly address the unlawfulness of violence against children and impose the threat of sanctions against **parents who offend against the ban of corporal punishment**.

### **Recommendation # 30**

Amendment of Section 200 of the Civil Law:

*(1) The use of force, the application of violence and the infliction of physical or mental harm are **unlawful**.*

*(2) If parents **exercise their parental authority meanly and treat the children especially badly**, a court may deprive the parent who is at fault of parental authority and place the children under the authority of the other, and may also appoint a guardian for the children if the authority exercised by the other parent does not adequately protect the children against the harmful influence of the parent at fault, or if both the parents are at fault.*

## State Inspectorate for Protection of Children's Rights<sup>70</sup>

According to the **Functions, Tasks and Rights of the Inspectorate** described in the bylaws, the observance of violations, such as corporal punishment or cruel treatment of children, is included in the general scope of duties of the inspectorates "observance and control of the protection of the Rights of the Child", but Inspectorates are **not** explicitly **authorised** nor **obliged** to intervene and enforce the ban on violence as indicated in Section 24 of the Law on the Protection of the Rights of the Child.

## Orphan's Courts

According to Section 17 of the Law on Orphan's Courts, the Orphan's Courts are also **not** explicitly **authorised** nor **obliged** to intervene and enforce the ban on violence as indicated in Section 24 of the Law on the Protection of the Rights of the Child.

### **Recommendation # 31: Establishment of an "Ombudsman for the Protection of Children's Rights"**

#### **Tasks and Rights of the "Ombudsman for the Protection of Children's Rights":**

In line with the introduction of the principle of non-violent upbringing of children, an **"Ombudsman for the Protection of Children's Rights"** system [encompassing one ombudsman in **every region**] should be established with the following tasks: *to serve as a contact point for complaints or suggestions of children and young people regarding alleged violations of their rights.*

- ▶ *to publicly promote a child-friendly society;*
- ▶ *to publicly represent the idea of **non-violent education**;*
- ▶ *to collaborate with public and private child protection organisations*

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<sup>70</sup> Cabinet Regulation No 898, adopted 29 November 2005

## CHAPTER XXII

### YOUTH POLICY

Modern **Youth Policy** aims at strengthening the role of young people in society and empowering young people to live a responsible, independent and autonomous life. Young people need to feel respected and belonging to a community. They expect being admitted – or rather – invited to join into the world of the grown-ups.

Although the desire of young people for leisure time activities is well recognised, there may be even more urgent needs among the young generation of Latvians attention should be paid to. Therefore, Youth Policy **must not** as a matter of fact limit itself to the provision of distractions<sup>71</sup> for young people as a way to spend their leisure time. Given the scarce means available for young people it seems to be quite difficult to justify the allocation of vast public funds primarily for youth leisure activities, and not for the improvement of the real living conditions of young people.

If **Youth Policy** is supposed to aim at utilizing the potential to create value to young people, **opportunities must be provided** for young people to **create values** for themselves as young individuals and their peers. Youth Policy is all about opportunities for young people to gain **educational** and **personal skills** including:

- **life skills**, e.g. through a climate of respect (especially for young kids who have not experienced much of mutual respect, peaceful communication, a sense of mutual responsibility and care for others)
- **quality informal education**, e.g. for young kids who have failed in the formal educational sector;
- **practical help**: search for a job, search for a flat and renovation of the flat

Responsible Youth Policy does not serve “receivers”, but highlights the co-responsibility of young people in expanding their capability. A source of human capability is the activity of individuals, but the activities of the State, local governments and non-governmental organisations are pre-conditions for the expansion of that capability. Individual initiative in the fields of economics, politics and culture is both an expression of capability and the main condition for creating opportunities for action for other people.

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<sup>71</sup> McIntyre, B., Thesis: Citation of a social worker: “*I think it painful that many regions and local governments put emphasis on youth ‘klubs’ and night life and partying. In every county, children are offered something like ‘Maz.’ This movement must come from the Ministry. Everyone agrees it’s a good thing, but not realized.*”

## Youth centers

Considering that the young people (particularly in rural areas) are confronted with **serious problems** of various kinds, Youth Centres can play a central role in assisting to promote their future prospects.

- Youth centers can assist to foster more **community development** by raising awareness for young people and knowledge on community development issues.
- Youth centers should be designed as social meeting places – not exclusively for young people who wish to “party” but – for young people of all age groups and with different needs.
- Youth centers should be established as **multi-functional meeting points** for
  - young people who just wish to socialise with their peers
  - young kids who need to be taken care of after-school (day care)
  - young mothers and fathers with their children
  - young kids who seek a safe environment

The multifunctional design of Youth centers together with the involvement of experienced social works shall allow young people to have fun, but beyond that, young people’s needs shall be taken into account and their problems / challenges tackled.

## Participation

Youth Policy has a vital role in **bridging the gap** from childhood / adolescence to adulthood through the active involvement of the young people in community live.

Participation is about taking responsibilities, mutual respect as well as mutual commitment.

- ➔ Participation requires policy makers – not only politicians, but even more social workers, civil servants and NGO’s working in this field – to actively consult and seek out the opinions of young people on various policy issues;
- ➔ Participation allows young people to “own” decisions made about their lives, increases confidence and skills and empowers and educates young people about their *communities and inspires them to **become involved***.
- ➔ Participation requires adequate funding of Youth Organisations and youth projects.

By encouraging active participation and involvement of young people in decision making processes, a positive, empowering perception of the young people and the individual in particular can be promoted. Furthermore, active participation and



involvement of young people helps to shape a sense of togetherness and to create a feeling of identity among young people !

### **Non-Governmental Organisations**

- Particular attention should be paid to give young people opportunities to be active in child organizations and good development such as 'Maz' [boy and girl scouts] or in youth organizations which service children through providing summer camps, as well as sports camps in which to realize their own strengths and talents.
- Youth organisations such as the "Young Guards Movement" are initiators of valuable leisure activities for young people; the "Young Guards" though should expand their agenda also to help young people in setting up a bases of their existence, for example, with the procurement of living space, the setting up of small enterprises or with the construction of an infrastructure in the rural space, so that staying in rural areas of the country becomes more attractive for young people;
- NGO's should be entitled to receive grants if they stimulate young people's activities in the implementation of local-level initiatives; by stimulating young people's activities they acquire valuable skills and experience in this process, which may also be further utilised in other fields, for example, to start entrepreneurial activities or for broader political participation.
- Architecture students should have the possibility to develop their skills (for example, to the establishment of affordable houses - „Latvian Family Home“) by competitions.
- Mentorship programs should be developed in which an older male, or female teenager, or an adult volunteers their services to be like a 'big brother or sister' to a younger child, helping them to achieve self worth and stay away from self-destructive behaviour, encourage them to stay in school etc. (these are initiatives that can be taken over by perhaps a 'school social worker' or 'community development social worker

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