



**RIGA
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Children's rights system in the Republic of Latvia

in compliance with international law regarding out-of-family care system

MASTER'S THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my work and that all references to, or quotations from, the work of others are entirely and correctly cited.

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Abstract

Children rights have been defined in international and domestic legal systems. Despite the ongoing development of children's rights, it is still a relatively new legal subset of human rights. So far, under the United Nation Convention on the Rights of the Child, there has been the establishment of international and regional legal acts concerning the rights of the child. As a party to different international and regional legal acts, the Republic of Latvia has to undertake obligations to respect and ensure children's rights in its jurisdiction. However, the necessity to examine international law before domestic legal acts of the Republic of Latvia is to allege full comprehension of a sense of responsibility regarding children's rights. Two hypotheses of the Republic of Latvia children's rights system is developed and analysed. However, first, this research examines and conceptualises the characteristics of children's rights and conducts a legal analysis of international law. Legal acts are characterized by their level/hierarchy, the sophistication of autonomy, and functions those provide. Eventually, the legal analysis does not find conflict between legal norms or legal acts. Although the children rights are regulated in various legal acts and different legal systems, the hypotheses have not been approved. Nevertheless, the analysis of children rights in out-of-family care raises some inconsistencies.

List of abbreviations

EU	European Union
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
HR	Human Rights
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
CoE	Council of Europe
....	

Summary

The Universal Declaration of Human Rights is the basis for all international legal treaties for children's rights today. Several conventions and laws address children's rights around the world. Many current and historical documents affect those rights, including the Declaration of the Rights of the Child,¹ drafted by Eglantyne Jebb in 1923², endorsed by the League of Nations in 1924. A slightly expanded version was adopted by the United Nations in 1946, followed by a much-expanded version adopted by the General Assembly in 1959. It later served as the basis for the United Nations Convention on the Rights of the Child (UNCRC).³

The legal system which protects and ensures children's rights has developed throughout the years in international and domestic level; however, it is a relatively new area of law and still is growing. The United Nations adopted the UNCRC on 20 November 1989. While declarations relating to children and their rights had preceded the UNCRC, this was the first comprehensive children's rights treaty.⁴ Member states of UNCRC have agreed to recognise children as one of the social groups which endorse the special care and rights protection. Nowadays, obligations for States to ensure children rights protection are regulated in the international, the regional and the domestic legal instruments. Out of UNCRC came a fundamental idea that is both simple and profound: All children in all countries have the same fundamental rights from the wealthiest to the poorest, these rights do not change.⁵

At the centre of this document is a critical component that most of the other rights are built upon: That every child has the right to live with a family who loves and cares for them. It was and is a powerful statement that flies in the face of orphanage culture that still exists in many parts of the world today.

The Republic of Latvia as a party to UNCRC since 1992 and as a party to other international treaties, as well as a member state of European Union, has agreed upon several obligations to protect and ensure children's rights. Thirty years later, in December of 2019, the UN met again to review progress on these rights and took it a step further, stating that

¹Geneva Declaration of the Rights of the Child. (26 September 1924). Available on: http://cpd.org.rs/wp-content/uploads/2017/11/01_-_Declaration_of_Geneva_1924.pdf. Accessed April 20, 2020.

²The Advocates for Human Rights. USA, Minneapolis. Available on: https://www.theadvocatesforhumanrights.org/uploads/rights_of_the_child_fact_sheet_4.pdf. Accessed June 7, 2020.

³Convention on the Rights of the Child. (2 September 1990). Available on: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. Accessed April 20, 2020.

⁴Children's Rights Alliance for England. Children's Rights in the Courts. Using the convention of the rights of the child in legal proceedings affecting children. Available on: <http://www.crae.org.uk/media/26279/childrens-rights-in-the-courts.pdf>. Accessed June 7, 2020.

⁵Child Rights. Miracle Foundation's 12 Rights Of An Orphan. Available on: <https://www.miraclefoundation.org/our-work/rights-of-the-child/>. Accessed April 20, 2000.

we—as nations of the world—are no longer going to tolerate our children being raised in institutions.⁶ The time has come for change. Therefore, the research question of this thesis asks: *In how far are the out-of-family care children's rights system in the Republic of Latvia in compliance with international law, and how do we determine that?*

To determine the Republic of Latvia children's rights and all its international obligations, one has to examine international legal acts relating to children's rights; which it is a party to. Including international treaties and/ or conventions, regional international treaties and/ or conventions, also, as the Republic of Latvia is a Member State of European Union - the European Union regulations and directives and lastly, the domestic law of the Republic of Latvia. All these legal acts are a part of the legal system and can be arranged into different legal system levels: the international legal system, the regional legal system, the European Union legal system, and the national legal system.

After the review of existing literature on children's rights and legal acts in the international and domestic arena two hypotheses are established. On the one hand, the legal acts which Republic of Latvia is a party to harmonizes and insures children's rights; on the other hand, the legal acts from different legal systems cause a conflict between legal norms. Does international legal acts have been incorporated into the Republic of Latvia children's rights legal system, and whether material norms within international treaties and domestic law together with domestic legal proceedings has created a complex and fragmented children's rights system.

Firstly, in the legal analysis, international human rights law (IHR) and other legal instruments are analysed in compliance with each other. The legal framework which in the Vienna Convention of Law of Treaties⁷ Article 26 states that “Every treaty in force is binding upon the parties to it and must be performed in good faith.” and Article 30 determines how to resolve conflicts arising from successive treaties, i.e., an earlier and a later treaty, both of which are in force. Article 30 extends in its scope beyond the notion of conflicts and incompatibility by addressing more generally the rights and obligations of States to successive treaties relating to the same subject-matter and in particular the priority among them.⁸

⁶ Status of the Convention on the Rights of the Child. (26 July 2019), Available on: <https://undocs.org/en/A/74/231>. Accessed April 20, 2020. Accessed April 20, 2020.

⁷Vienna Convention on the law of treaties. (23 May 1969). Available on: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>. Accessed April 20, 2020.

⁸ Mark E. Villiger. Commentary on the 1969 Vienna Convention on the Law of Treaties. Boston, 2009. Available on: <https://books.google.lv/books?id=bEhmVmrJN1oC&pg=PA402&lpg=PA402&dq=bl&ots=U>. Accessed April 20, 2020.

Secondly, I will examine the international act compliance with the regional legal acts, in this case, the European law system. European children's rights law is largely based on the United Nation Convention on the Rights of the Child (UNCRC). To identify the European regional children's rights law it's necessary to analyse the European Court of Human Rights (ECHR) decisions⁹ in matters relating to children. Furthermore, the fact that all European Union (EU) member states are parties to UNCRC gives the UNCRC significant standing at the European level. It effectively imposes common legal obligations on European nations with a knock-on effect on the way European institutions develop and apply children's rights.¹⁰

Lastly, examination of the national legal system. After analysing international legal systems and international legal acts and their interaction, how does children's rights arising from international legal acts are incorporated in Republic of Latvia's domestic legal acts, observing the international legal acts status and enforcement in Republic of Latvia. The examination of children's right enforcement will be viewed in regard to out-of-family care narrative.

⁹ See for example *Shannon v. Latvia*. ECtHR. (24 November 2009) Available on: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-108225%22%5D%7D>. Accessed April 20, 2020.

¹⁰ Handbook on European law relating to the rights of the child. European Union Agency for Fundamental Rights and Council of Europe, 2017. Available on : https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf. Accessed on 15 April 2020.

Table of Contents

SUMMARY	3
1. INTRODUCTION.....	7
1.1. THE ISSUES WITH THE OUT-OF-FAMILY CARE SYSTEM.....	7
1.2. RESEARCH QUESTION.....	8
2. CHILDREN RIGHTS AND INTERNATIONAL LAW	9
2.1. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD	9
3. CHILDREN RIGHTS IN EUROPE.....	12
3.1. EUROPEAN CHILDREN’S RIGHTS AND THE UN CONVENTION ON THE RIGHTS OF THE CHILD.	12
3.2. CHILDREN’S RIGHTS IN THE EUROPEAN UNION.....	14
3.3. EUROPEAN COURT OF HUMAN RIGHTS AND THE ENFORCEMENT OF CHILDREN’S RIGHTS.	17
4. CHILDREN’S RIGHTS IN THE REPUBLIC OF LATVIA	21
4.1. THE APPLIANCE OF INTERNATIONAL LAW IN THE REPUBLIC OF LATVIA.....	21
5. DOMESTIC LAW AND REGULATORY FRAMEWORK OF THE OUT-OF-FAMILY CARE SYSTEM.....	24
5.1. DOMESTIC LAW AND A GENERAL UNDERSTANDING OF OUT-OF-FAMILY CARE	24
5.2. THE FRAMEWORK OF INSTITUTIONS WHICH ENSURES CHILDREN RIGHTS PROTECTION SYSTEM IN OUT-OF-FAMILY CARE	27
5.3. ANALYSIS REGARDING OUT-OF-FAMILY CARE CHILDREN’S RIGHTS ENFORCEMENT MECHANISMS	32
6. OUT-OF-FAMILY CARE CHILDREN’S RIGHTS TO FAMILY.....	39
6.1. ADOPTION	39
6.2. INTERNATIONAL ADOPTION BAN	41
6.1. DEINSTITUTIONALISATION PLAN.....	44
FINAL CONCLUSIONS	46
BIBLIOGRAPHY	50
PRIMARY SOURCES:	50
SECONDARY SOURCES:.....	53
ANNEX NO 1.....	58
ANNEX NO 2.....	60

1. Introduction

1.1. The issues with the out-of-family care system

The out-of-family care system in the Republic of Latvia can be traced almost 100 years ago, after the first world war. Due to the second world war and radical changes of the state power, the documents¹¹ or testimonies from that time out-of-family care did not survive. However, there can be found some life stories and life memories of the things experienced and seen in those times.¹²

At the time of the restoration of the national independence of the Republic of Latvia slowly, the out-of-family care institutional system changed as most of the state institutions at that time. Since 1991 the Republic of Latvia has signed international treaties such as the European Human Convention on Human Rights, the United Nations Convention on the Rights of the Child, Hague Adoption Convention (etc.). It has become a party to the European Union. Upon becoming a member state and contractual party to international agreements and organisations; the Republic of Latvia must ensure the fulfilment of all obligations.

Today, out-of-family care institutions, their competence, and obligations are regulated by the Republic of Latvia's domestic law. These institutions to protect, ensure and respect the children's rights and interests. Thus, to analyse out-of-family children's rights, one must examine all children's rights. Children's rights as a sub-branch to human rights are regulated in many legal acts, and different legal systems.

Latvia became a party to the United Nations Convention on the Rights of the Child by 14th May 1992. This international treaty is the basis of all children's rights in contracting states and as the Republic of Latvia is a party to it, its bases of children's rights too. As the out-of-family care children are persons expressly subordinated to the institution¹³, it is the institution that can create these children's rights protection and a system where these rights can be ensured. There is a notion that state institutions, public bodies, and running an available service under government control institutions or institutions who are participating in the exercise of governmental powers, cannot bring an application to ECtHR. That sets even higher conditions to out-of-family care institutions to respect the children's rights of those who are subordinated to them.

¹¹Latvijas Valsts Arhīvs (The State Archives of the Republic of Latvia). Available on: <http://www.archiv.org.lv/index3.php?id=9009&kods=300109819&vien=2>. Accessed June 9, 2020.

¹²Bērnu nami pirms 100 gadiem (Orphanages 100 years ago). (15. decembrī, 2018). Available on: <https://pecalasitava.lv/barenu-nami-pirms-100-gadiem/>. Accessed June 9, 2020.

¹³Administrative Procedure Law. (1 February 2004). Section 1 part 3. Available on: <https://likumi.lv/ta/en/en/id/55567>. Accessed June 9, 2020.

1.2. Research question

Since the Republic of Latvia is a party to international children's rights treaties, it is its duty that its state institutional system created according to the law. This thesis examines the possible conflict of norms that might exist between legal acts that the Republic of Latvia follows and is bound to and conflict of the agenda which might exist between national institutions and those set by the international organisations. The first part of the question must be answered in the previous step before the more specific part of the research question can be answered. Therefore, the research question reads as follows:

In how far are the out-of-family care children's rights systems in the Republic of Latvia in compliance with international law, and how do we determine that?

On the way ahead, this thesis consists of six chapters in total. Following this introduction to the topic of the underlying research, the second chapter of preparatory work follows, which consists of the legal theory of international treaties and a methodological approach. In this section, the analyses answers where international children's rights law can be found at the international level. This is followed by the chapter of regional law systems as European children's rights law and European Union law analyses. In this section, the hypotheses are constructed in order to answer the overarching research question. The first part of this section is the analysis of whether there is a collision between international and European children's rights law norms. After that, the methodology will follow. In the methodological part, the approach of legal analysis, which is used as a research design, is elaborated. Further follows the European Union's as international organisations' role examination in respect to creating the political agenda of children's rights and children's role in the European Union. Lastly, in this section, the out-of-family care children's rights protection in the European Court of Human Rights. The fourth chapter consists of the analysis of the appliance of international law in the Republic of Latvia. In this section, the teleological and systematic method of interpretation is used as well as an analogy. The following part of this research is in chapter five when the compliance of international norms is viewed regarding the out-of-family care institutional system, regulatory framework, and children's rights enforcement mechanisms. Lastly, the research concludes with the sixth chapter. This chapter includes a critical reflection on the implementation of the children's rights to family and its analysis in this research and a final conclusion about out-of-family care children's rights and especially the state institution's compliance with international obligations.

2. Children Rights and International Law

2.1. United Nations Convention on the Rights of the Child

The United Nations (UN) adopted the Convention on the Rights of the Child (UNCRC) on 20 November 1989 when the Polish Government proposed the idea for an international children's rights treaty. Work began on the treaty in 1979, which was constituted by the UN as the International Year of the Child.¹⁴ This was the first specific children's rights treaty while declaration relating to children and their rights had preceded the UNCRC.

The UNCRC has 54 articles, Article 1 defines a child as every human being below the age of 18 years.¹⁵ Articles 2- 42 gives substantive rights to children. Remaining articles establish the reporting procedure, the Committee on the Rights of the Child and other technical matters.

The UNCR distributes with the full range of economic, social and cultural and civil and political rights for children, and it has been described as the Children's Magna Carta.¹⁶ Even within the children's civil and political rights, the UNCRC goes much further in the determination of children rights than the European Convention on Human Rights (ECHR), because its provisions have been tailor-made for them. For example:

1. Article 6 protects the child's rights to life and maximum development;¹⁷
2. Article 3 requires that the child's best interests be a primary consideration in all actions concerning the child;¹⁸
3. Article 18(1) requires that the best interests of their children will be parents "basic concern";
4. Article 2(2) protects the child from discrimination or punishment connected to the status or actions of their parents or other family members;
5. Article 7 grants the child the right to, as far as possible, know and be cared for by both parents;

¹⁴ Children's Rights Alliance for England. Children's Rights in the Courts, Using the convention of the rights of the child in legal proceedings affecting children, March 2012. Available on: <http://www.crae.org.uk/media/26279/childrens-rights-in-the-courts.pdf>. Accessed on April 17, 2020.

¹⁵ Ibid.

¹⁶ James P. Grand. U.N. Assembly adopts doctrine outlining children's basic rights. New York Times. (21 November 1989) Available on: <https://www.nytimes.com/1989/11/21/world/un-assembly-adopts-doctrine-outlining-children-s-basic-rights.html>. Accessed on April 20, 2020.

¹⁷ This Article applies to all rights in the Convention, including economic, social and cultural.

¹⁸ Ibid.

6. Article 12 grants all children the right to express their views freely in matters affecting them, and for those views to be given due weight in accordance with the child's age and maturity;
7. Article 9(2) requires that the child's views be known in any proceedings relating to separation from one or both parents;
8. Article 19 protects children from all forms of mental and physical violence
9. Article 28(2) requires that school discipline be administered in a manner consistent with the child's human dignity;
10. Article 25 entitles every child placed away from his or her parents care, protection or treatment to periodic review of his or her treatment;
11. Article 40(1) requires that the children in conflict with the law be treated in a manner consistent with the promotion of the child's sense of dignity and worth;
12. Article 40(2)(b)(vii) requires that the child's privacy be upheld at all stages of criminal proceedings.¹⁹

Latvia acquired the UNCRC on 14th May 1992. Only two states – the United States of America and Somalia- have not yet ratified it, and both have signed the Convention, signifying an intention to ratify. The Republic of Latvia is required under international law to fully implement the UNCRC, to ensure that all children in its jurisdiction enjoy all the rights safeguarded by it. However, **is the UNCRC has been incorporated into the domestic law, or is it directly enforceable: can children- their legal guardians directly petition courts using the UNCRC?** Nevertheless, it should be consistently referred to by courts, public bodies and decision-makers when considering matters relating to children.

National courts should seek to interpret domestic legislation consistently with the UNCRC. Even when international treaties have not been incorporated into the domestic law, there is no doubt that “domestic legislation has to be construed as far as possible to comply with international obligations”.²⁰ Furthermore, the obligation to comply with international obligations is set in Article 26 of the Vienna Convention on the Law of Treaties²¹ which sets out the fundamental principle “Pacta sunt servanda”. The principle “Pacta sunt servanda” means that “every treaty in force is binding upon the parties to it and must be performed by them in

¹⁹ Children's Rights Alliance for England. Children's Rights in the Courts, Using the convention of the rights of the child in legal proceedings affecting children, March 2012. Available on: <http://www.crae.org.uk/media/26279/childrens-rights-in-the-courts.pdf>. Accessed on April 17, 2020.

²⁰ *Smith v Secretary of State for Work and Pensions*. UKHL. (12 July 2006, unreported). Available on: <https://publications.parliament.uk/pa/ld200506/ldjudgmt/jd060712/smith.pdf>. Accessed on April 20, 2020.

²¹ Vienna Convention on the Law of Treaties. (23 May 1969). United Nations, Treaty Series, vol. 1155, p. 331, available on: <https://www.refworld.org/docid/3ae6b3a10.html>. Accessed June, 9 2020.

good faith.”²² Even though treaties are not always justiciable on their own without incorporation, the courts are still required to consider treaty obligations. This is made clear in Article 27 of the Vienna Convention on the Law of Treaties to which the Republic of Latvia is a party to. It is a basic principle of international law that a state cannot invoke its domestic law as a reason for not fulfilling its international obligations.

Concerning UNCRC enforcement into the domestic legal system of the Republic of Latvia, we must analyse the UNCRC incorporation framework. In the UNCRC itself there is no enforcement mechanism build and it is mostly performed by “European” courts as European Court of Human rights and Court of Justice of the European Union. The ECtHR mainly decides on individual applications lodged on the bases of ECHR. The ECtHR jurisdiction extends to all matters concerning the interpretation and application of the ECHR and its Protocols and not the UNCRC. In contrast to the CJEU issues decisions regarding many types of legal actions. Regarding children rights cases, the CJEU has so far reviewed preliminary references, and in the recent years the CJEU had only adjudicated a few children’s rights cases.²³

On 2019 in the analysis of the UNCRC incorporation into domestic law in Scotland, the most popular view expressed by respondents was that **“the elements of the framework that prohibits public authorities from acting incompatibly with the ECHR should be replicated for the UNCRC.”**²⁴ In other words, to ensure the UNCRC is binding and not just guiding. Additional suggestion was that **“the element of the framework that ensures substantive and legal remedies when a violation occurs should be included”**.²⁵ In other words, one of the major critiques of the international rights frameworks is the lack of enforcement mechanisms, so it is particularly important that UNCRC rights can be invoked before the courts.

Summarizing the above, the UNCRC enforcement mechanism is not profound, and in Europe, UNCRC is interpreted in the light of the ECHR in ECJ and as a preliminary reference in CJEU. Therefore, in the following analyses, I will examine the European legal system and children rights within it.

²² Vienna Convention on the Law of Treaties. (23 May 1969). United Nations, Treaty Series, vol. 1155, p. 331, available on: <https://www.refworld.org/docid/3ae6b3a10.html>. Accessed June, 9 2020.

²³ Handbook on European law relating to the rights of the child. European Union Agency for Fundamental Rights and Council of Europe, 2017. Available on : https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf. Accessed on 15 September 2020.

²⁴ Consultation on incorporating the United Nations Convention on the Rights of the Child into our domestic law in Scotland. Analysis Report. Available on: <https://www.gov.scot/publications/uncrc-consultation-analysis-report/pages/2/>. Accessed on 15 September 2020.

²⁵ Ibid.

3. Children Rights in Europe

3.1. European children's rights and the UN Convention on the Rights of the Child

European children's rights are fundamentally based on the UN Convention on the Rights of the Child (UNCRC). The fact that all EU and Council of Europe (CoE) member states are parties to the UNCRC gives the UNCRC significant standing at the European level. It effectively imposes common legal obligations on European nations with a knock-on effect on the way European institutions develop and apply children's rights.²⁶

In this way, the UNCRC has become the touchstone for the development of European children's rights law, with the result that the CoE and the EU increasingly draw on its influence. In particular, the integration of UNCRC principles and provisions into binding instruments and case law at the European level gives the UNCRC greater force. It opens up more effective channels of enforcement for those seeking to invoke children's rights in Europe.²⁷

The EU is not and cannot become a party to the UNCRC, since there is no legal mechanism within the UNCRC to allow entities other than states to accede to it.²⁸ However, the EU relies on "general principles of EU law" (written and unwritten principles drawn from the common, constitutional traditions of the Member States) to supplement and guide interpretations of the EU Treaties (Article 6 (3) of the TEU). The Court of Justice of the European Union (CJEU) rulings have confirmed that any obligation arising from EU membership should not conflict with Member States' obligations derived from their domestic constitutions and international human rights commitments.²⁹ As all EU Member States have ratified the UNCRC, the EU is bound to adhere to the principles and provisions enshrined therein, at least concerning matters that fall within the scope of the EU's competence (as defined by the EU treaties).³⁰

This obligation is reinforced by other EU treaties and in particular by the EU Charter of Fundamental Rights. Article 24 of the Charter is directly inspired by UNCRC provisions, including some that have acquired the rank of UNCRC principles, notably the best interests of

²⁶ Handbook on European law relating to the rights of the child. European Union Agency for Fundamental Rights and Council of Europe, 2017. Available on : https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf. Accessed on 15 April 2020.

²⁷ Ibid.

²⁸ Children's rights in the EU. Making 30 years of the UN Convention on the Rights of the Child. Available on: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644175/EPRS_BRI\(2019\)644175_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644175/EPRS_BRI(2019)644175_EN.pdf). Assessed May 1, 2020.

²⁹ For example: *J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities*. C-4/73, EU:C:1974:51, May 14, 1974. Available on: <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61973CJ0004>. Accessed April 20, 2020.

³⁰ Handbook on European law relating to the rights of the child. European Union Agency for Fundamental Rights and Council of Europe, 2017. Available on : https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf. Accessed on 15 April 2020.

the child principle (Article 3 of the UNCRC), the child participation principle (Article 12 of the UNCRC) and the child's right to live with and/or enjoy a relationship with his or her parents (Article 9 of the UNCRC).³¹

The importance of the UNCRC in guiding the development of EU children's rights is expressed in the Commission's Agenda for the Rights of the Child, which asserts that "the standards and principles of the UNCRC must continue to guide EU policies and actions that have an impact on the rights of the child".³² In this spirit, child-related legislative instruments, almost without exception, are accompanied by either explicit reference to the UNCRC or more implicit reference to children's rights principles, such as 'best interests', the child's right to participate in decisions that affect him or her, or the right to be protected from discrimination.³³

The CoE, similarly to the EU, is not as an organisation legally bound to the UNCRC, although all CoE member states are individual parties to this convention. Nevertheless, the European Convention on Human Rights (ECHR) cannot be interpreted in a vacuum, but must instead be interpreted in harmony with the general principles of international law. Any relevant rules of international law applicable in the relations between the States Parties to the ECHR should be taken into account, in particular the rules concerning the universal protection of human rights. The obligations that the ECHR lays on its States Parties in the field of children's rights, more specifically, must be interpreted in light of the UNCRC.³⁴ The European Committee of Social Rights (ECSR) has also explicitly referred to the UNCRC in its decisions.^{35,36} Moreover, the standard-setting and treaty-making activities of the CoE are influenced by UNCRC principles and provisions. For example, the Guidelines on child-friendly

³¹ Handbook on European law relating to the rights of the child. European Union Agency for Fundamental Rights and Council of Europe, 2017. Available on : https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf. Accessed on 15 April 2020.

³² Communication from the Commission of the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An EU Agenda for the Rights of the Child, COM (2011) 0060 final, Brussels. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0060>. Accessed on April 20, 2020.

³³ Handbook on European law relating to the rights of the child. European Union Agency for Fundamental Rights and Council of Europe, 2017. Available on : https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf. Accessed on 15 April 2020.

³⁴ *Harroudj v. France*. ECtHR. (4 October 2012, unreported). para 42. Available on: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=00341055984825262&filename=003-4105598-4825262.pdf>. Accessed April 20, 2020.

³⁵ *World Organisation against Torture (OMCT) v. Ireland*. ECSR. (7 December 2004, unreported). para 61.- 63. Available on: <https://rm.coe.int/no-98-2013-association-for-the-protection-of-all-children-approach-ltd/1680748cb0>. Accessed April 20, 2020.

³⁶ *Defence for Children International (DCI) v. the Netherlands*. Complaint No. 47/2008, ECSR. (20 October 2009, unreported). Available on: <https://www.refworld.org/cases,COEECSR,4b9e37ea2.html>. Accessed April 20, 2020.

justice³⁷ are directly informed by a range of UNCRC provisions, not to mention the accompanying General Comments of the UN Committee on the Rights of the Child.³⁸

3.2. Children's rights in the European Union

In the past, children's rights developed in the European Union (EU) in a piecemeal fashion. Historically, European children's right law was largely aimed at addressing specific child-related aspects of broader economic and politically driven initiatives, for example, in the field of consumer protection and the free movement of persons.³⁹ More recently, children's rights have been addressed as part of a more coordinated EU agenda, based on three key milestones:

1. the introduction of the Charter of Fundamental Rights of the European Union;
2. the entry into force of the Treaty of Lisbon in December 2009;⁴⁰
3. the adoption of the European Commission Communication on a special place for children in EU external action, and the Council EU Guidelines for the promotion and protection of the rights of the child.⁴¹

Most recently, this has been complemented with the Commission's adoption of a comprehensive strategy to support the Member States in addressing poverty and social exclusion through a range of early-years interventions (for children of pre-school and primary school age).⁴² While this particular initiative, like the agenda, is not legally binding, both are significant. And insofar as they establish the blueprint for the EU's normative and

³⁷ Council of Europe, Committee of Ministers (2010), Guidelines on child friendly justice. (17 November 2010). p. 26. Available on: <https://rm.coe.int/16804b2cf3>. Accessed April 20, 2020.

³⁸ See UN Committee on the Rights of the Child (CRC), General Comment No. 10 (2007): Children's rights in juvenile justice. Committee on the Rights of the Child. (25 April 2007). Available on: <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>. Accessed June 1, 2020.; and Committee on the Rights of the Child (CRC), General Comment No. 14 (2013) on the right of the child to have his or her best interest taken as a primary consideration. (29 May 2013). Available on: https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf. Accessed June 1, 2020.

³⁹ For example, Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68, OJ L 158, 30.4.2004. Available on: <https://eurlex.europa.eu/legalcontent/en/TXT/?uri=CELEX:32004L0038>. Accessed April 20, 2020.

⁴⁰ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ C 306, 17.12.2007, p. 1–271. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTEXT>. Accessed April 20, 2020.

⁴¹ Handbook on European law relating to the rights of the child. European Union Agency for Fundamental Rights and Council of Europe, 2017. Available on : https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf. Accessed on 15 April 2020.

⁴² Recommendation 2013/112/EU, Investing in children: breaking the cycle of disadvantage. European Commission. (20 February 2013). Available on: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:059:0005:0016:EN:PDF>. Accessed on April 25, 2020.

methodological approach to children's rights law – a blueprint that is firmly associated with the UNCRC and located within an ethic of child protection, participation and non-discrimination.

The EU may legislate only where it has been given competence under the treaties (Articles 2 to 4 of the TFEU). As children's rights is a cross-sectoral field, EU competence needs to be determined on a case-by-case basis. To date, areas relevant to children's rights where the EU has extensively legislated are:

1. data and consumer protection;
2. asylum and migration;
3. cooperation in civil and criminal matters.

Articles 6 (1) of the TEU and 51 (2) of the EU Charter of Fundamental Rights provide that the Charter does not extend the competences of the EU, nor does it modify or establish a new power or task for the EU. The Charter provisions are addressed the EU institutions and to the Member States only when they are implementing EU law. While always binding on the EU, the Charter provisions become legally binding for the Member States only where they act within the scope of EU law. Ever since the establishment of the Council of Europe (CoE), it has a clear commitment to protect and promote human rights. Its primary human rights treaty, ratified by all CoE member states, is the Convention for the Protection of Human Rights and Fundamental Freedoms, or European Convention on Human Rights (ECHR), which contains specific references to children. All the other general provisions of the ECHR apply to everyone, including children. Some have been shown to have particular relevance to children, namely Article 8, which guarantees the right to respect for private and family life. By using interpretative approaches that focus on the positive obligations inherent in the ECHR provisions, the European Court of Human Rights (ECtHR) has developed a large body of case law dealing with children's rights, including frequent references to the UNCRC. The ECtHR analyses applications on a case-by-case basis and therefore does not offer a comprehensive overview of children's rights under the ECHR.⁴³

The CoE other main human rights treaty is the European Social Charter (ESC⁴⁴ – revised in 1996⁴⁵), provides for the protection of social rights, with specific provision for children's rights. It contains two provisions of particular importance for children's rights. Article 7 sets out the obligation to protect children from economic exploitation. Article 17

⁴³ Handbook on European law relating to the rights of the child. European Union Agency for Fundamental Rights and Council of Europe, 2017. Available on : https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf. Accessed on 15 April 2020.

⁴⁴ European Social Charter. ETS No 35, (18 October 1961). Available on: <https://rm.coe.int/168006b642>. Accessed April 20, 2020.

⁴⁵ Council of Europe, European Social Charter (revised), CETS No. 163, (3 May 1996) Available on: <https://rm.coe.int/168007cf93>. Accessed April 20, 2020.

requires states to take all appropriate and necessary measures designed to ensure that children receive the care, assistance, education and training they need, to protect children and young persons from negligence, violence or exploitation and to provide protection for children deprived of their family's support. Implementation of the ESC is overseen by the European Committee of Social Rights (ECSR). It is composed of independent experts who rule on the conformity of national law and practice with the ESC.⁴⁶

At the policy level it is essential to note that in 2006, the CoE launched its programme 'Building a Europe for and with Children' – a transversal plan of action for addressing children's rights issues, including the adoption of standard - setting instruments across a range of areas.⁴⁷ Priorities are focused on four key areas:⁴⁸

1. promoting child-friendly services and systems;
2. eliminating all forms of violence against children;
3. guaranteeing the rights of children in vulnerable situations;
4. promoting child participation.

The principal aim of the CoE's children's rights programme is to "support the implementation of international standards in the field of children's rights by all CoE member states, and in particular to promote the performance of the UNCRC, highlighting its main principles: non-discrimination, the right to life and development, the best interests of the child as a primary consideration for decision-makers, and the right of children to be heard".⁴⁹ The programme has overseen the adoption of several children's rights instruments offering practical guidance to complement binding European legal measures, including:

1. Guidelines on child-friendly justice;⁵⁰
2. Guidelines on child-friendly healthcare;⁵¹
3. Recommendation on integrated national strategies for the protection of children from violence;⁵²

⁴⁶ Handbook on European law relating to the rights of the child. European Union Agency for Fundamental Rights and Council of Europe, 2017. Available on : https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf. Accessed on 15 April 2020.

⁴⁷ For more information, see: <https://www.coe.int/en/web/children/>

⁴⁸ Council of Europe, Committee of Ministers (2011), Council of Europe Strategy for the Rights of the Child (2012–2015), CM (2011)171 final, 15 February 2012, p. 6-13. Available on: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0060:FIN:EN:PDF>. Accessed April 20, 2020.

⁴⁹ Ibid.

⁵⁰ Council of Europe, Committee of Ministers (2010), Guidelines on child friendly justice. (17 November 2010). Available on: <https://rm.coe.int/16804b2cf3>. Accessed April 20, 2020.

⁵¹ Council of Europe, Committee of Ministers (2011), Guidelines on child-friendly health care. (21 September 2011). Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011DC0060&from=EN>. Accessed April 20, 2020.

⁵² Recommendation CM/Rec(2009)10 of the Committee of Ministers to member states on integrated national strategies for the protection of children from violence. Council of Europe, Committee of Ministers, (18 November 2009). p. 17. Available on: <https://rm.coe.int/168046d3a0>. Accessed April 20, 2020.

4. Recommendation on children's rights and social services friendly to children and families;⁵³
5. Recommendation on the participation of children and young people under the age of 18.⁵⁴

3.3. European Court of Human Rights and the enforcement of Children's rights

The European Court of Human Rights (ECtHR) is an international court established on the bases of ECHR. Article 34 of ECHR provides right to an individual application to any person, non-governmental organisations (NGO's) or groups of individuals claiming to be a victim of a violation of their rights which are fortified in ECHR. The exercise of this rights is mostly used by individuals who are 18 years of age and older, however children applications usually are petitioned by their parents or other legal guardians. The ECtHR in its notes for filling in the application form⁵⁵ ECtHR determines that the application should contain the original signature of the petitioner or legal representative, however, it's not necessary if the applicant is a child, then the application must be signed by child's legal guardian.

In cases of children in the state care – out-of-family care, the application to ECtHR would require a signature of state officials (due to that the legal guardianship over the child is given to State) which creates controversial paradigm.

If state official would petitioned in the name of out-of-family care children, it would petition against it-self. The legal guardianship over of out-of-family care children differs in ECHR contracting member states, therefor, **it's necessary to examine in this research analysis the Republic of Latvia's domestic legal acts and to whom the legal guardianship is given – either state officials, orphanage directors etc.** Although there are cases regarding parents' rights to private and family life of children temporarily placed in care.⁵⁶

The fact that an applicant has a guardian appointed under domestic law and the guardian's permission is required in domestic law for any action does not prevent an applicant having the

⁵³ Recommendation Rec (2011)12 on children's rights and social services friendly to children and families, Council of Europe, Committee of Ministers, (16 November 2011). Available on: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011DC0060>. Accessed April 20, 2020.

⁵⁴ Recommendation Rec(2012)2 on the participation of children and young people under the age of 18. Council of Europe, Committee of Ministers, (28 March 2012). Available on: <https://www.refworld.org/docid/506981802.html>. Accessed April 20, 2020.

⁵⁵ ECtHR, Notes for filing in the application form. [2018] Available on: https://www.echr.coe.int/Documents/Application_Notes_ENG.pdf. Accessed on June 6, 2020.

⁵⁶ *Achim v Romania*. ECtHR. (24 January 2018, unreported). Available on: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-178421%22%7D>. Accessed June 6, 2020. and *Stannkunaite v Lithuania*. ECtHR. (29 October 2019, unreported). Available on: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-197212%22%7D>. Accessed June 6, 2020.

standing to introduce an application.⁵⁷ ECtHR has stated **that the domestic rules are not always decisive concerning the representation of a child.**⁵⁸ Parents may generally bring applications on behalf of their children, **even if they have no custody rights**; however, foster-parents (one of the out-of-family care institutions) who applied to adopt a child have no biological or legal links entitling them to petition on child's behalf.⁵⁹ Municipal bodies or public law corporations performing official duties, running a public service (as orphanages, schools, hospitals etc.) under governmental control or participating **in the exercise of governmental powers cannot bring an application to ECtHR.**⁶⁰ Concerning out-of-family care institutions; they all are providing governmental services (taking care of no parent-children), and the legal guardianship is given to individual who is required to provide contractual (usually the contractual labour relationships) duties to the government. This loophole prevents ensuring human rights to the most unprotected individuals in society.

Other member state's domestic rules who allows guardianship rights to out-of-family "institutions" as foster families is the Russian Republic. Therefore, the foster families can petition to ECtHR as representative of the child in their care. In the case *V.D. and Others v Russia* (no. 71776/12)⁶¹ the application was cared for by a foster mother, of a violation of Article 8 of the European Convention, because of the national court decision to deny the foster family any subsequent contact with the foster child after returning him to his biological parents. The Court first ruled that the first applicant did not have the standing to make an application on behalf of R. as she was no longer his guardian, was not a relative and did not have his parents' permission. Also, that there is **no violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights owing to an order by the domestic courts to remove a child from his foster mother and return him to his biological parents.

However, the Court held that the relationship between the applicants and R. had amounted to "family life" within the meaning of the Convention. In particular, he had been in the first applicant's care for the first nine years of his life and had lived with the other applicants, whom

⁵⁷ *Zebentner v Austria*. ECtHR. (16 July 2009, unreported). para 39 – 41. Available on: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-93594%22%7D>. Accessed June 6, 2020. The Court notes that guardianship served the function of preventing an incapable person from disposing of their rights or assets to their disadvantage; this consideration did not apply in proceedings before the Court.

⁵⁸ E.g. *Scozzari and Giunta v Italy*. ECtHR. (13 July 2000, unreported). para 138- 139. Available on: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-58752%22%7D>. Accessed June 7, 2020.

⁵⁹ *Moretti and Benedetti v Italy*. ECtHR. (27 April 2004, unreported). para. 33- 34. Available on: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-992&filename=002-992.pdf>. Accessed June 6, 2020.

⁶⁰ E.g. *Dosemealti Belediyesi v Turkey*. ECtHR. (23 March 2010, unreported) Available on: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-98220%22%7D>. Accessed June 7, 2020.

⁶¹ *V.D. and Others v. Russia*. ECtHR. (9 April 2019, unreported). Available on: <file:///Users/user/Downloads/Judgment%20V.D.%20and%20Others%20v.%20Russia%20-%20foster%20child%20returned%20to%20biological%20parents.pdf>. Accessed June 10, 2020.

she had also fostered. Therefore, there was a **violation of Article 8** of the European Convention because of the decision to deny the foster family any subsequent contact with the child.

The Russian Government submitted that the courts' decision to refuse the applicants' any access to R. had been based on the Family Code, which provided an exhaustive list of those entitled to such contact. The applicants had had no blood or legal ties to R. and so had not had any right to access.

The ECtHR noted that it had in previous cases expressed concern about the lack of flexibility in Russian legislation on granting access to children, which did not take account of the variety of family situations or the best interests of children. Such issues had led the ECtHR to find a violation of Article 8 in the case of *Nazarenko v. Russia*⁶² where the law had excluded the applicant from his child's life after his parental status was removed, even though he had looked after her for five years. The Court found no reason to depart from its reasoning in *Nazarenko*.

The national courts (of the Russian Republic) had made no attempt to assess the particular circumstances of the case in relation to R. Not even such as the nature of the applicants' relationship with R, whether it was in the child's **best interests** to continue to have contact with the parent or to weigh up the applicants' interests and those of the parents. The national courts' reliance only on the terms of the Family Code noting that the denied access to the applicants could not be seen as "relevant and sufficient" reasons and it was not acceptable that they had not carried out an assessment of the circumstances. The ECHR saw it as a failure to weigh up fairly the rights of all those involved and there had been a violation of Article 8.

On regard of the right to represent a child, Article 34 gives an opportunity to petition applications to the ECtHR for the NGO's or groups of individuals. The petitions to the ECtHR from the NGO demand more examination of legitimacy of its rights to represent individual or group of individuals. In my opinion, in hypothetical case if NGO would represent and sign an application in behalf of out-of-family care children to the ECtHR; the threshold regarding admissibility criteria may never be possible to uphold due to the fact that the out-of-family care children already have legal guardianship provided by the state. As we concluded before, that the governmental institutions and the state officials couldn't petition to the ECtHR in regard to their official obligations, out-of-family care children most likely cannot be represented by NGO's too.

⁶² *Nazarenko v. Russia*. ECtHR. (16 July 2015, unreported). Available on: <file:///Users/user/Downloads/Judgment%20Nazarenko%20v.%20Russia%20%20exclusion%20of%20father%20from%20child's%20life%20following%20termination%20of%20his%20paternity.pdf>. Accessed June 10, 2020.

However, ECtHR concluded that the Convention has to be interpreted as “**guaranteeing rights which are practical and effective as opposed to theoretical and illusory.**”⁶³ Bearing this in mind there might be possibility to petition to ECtHR if there is convincing evidence of the likelihood that a violation of their rights will occur; mere suspicion or conjecture is insufficient in this respect.⁶⁴ Besides that, Article 35 of ECHR states that: *The Court may only deal with the matters after all domestic remedies have exhausted, according to the generally recognised rules of international law.* “Exhaustion of domestic remedies requires use of all available procedures to seek protection from future human rights violations and to obtain justice for past abuses. Local remedies can range from making a case in court to lodging a complaint with local police.”⁶⁵

The Republic of Latvia as a member state of the UNCRC and the ECHR, has an obligation to provide a legal system which includes institutions and state officials; who respect and protect and promote all children’s rights, including out-of-family care children’s rights and interests. Thereof, further research will be aimed at domestic legal system analysis regarding out-of-family care children’s rights and available law enforcement mechanisms.

⁶³ *Centre for Legal Resources on Behalf of Valentin Campeanu v. Rumania*. ECtHR. (17 July 2014, unreported). Available on: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-145577%22%5D%7D>. Accessed June 7, 2020.

⁶⁴ *Taura and 18 Others v. France*. ECtHR. (4 December 1995, unreported). p. 112 and 131. Available on: <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2228204/95%22%5D%7D>. Accessed June 7, 2020.

⁶⁵ Exhaustion of Domestic Remedies. Human Rights Library, University of Minnesota. Available on: <http://hrlibrary.umn.edu/svaw/law/un/exhaustion.htm>. Accessed June 7, 2020.

4. Children's Rights in the Republic of Latvia

4.1. The Appliance of International law in the Republic of Latvia

To be able to talk about the status of the European Convention on Human Rights and its application in the Republic of Latvia, it is first, necessary to find out the place of international law in the hierarchy of domestic law of the Republic of Latvia.

The Satversme⁶⁶ as the Constitution of the Republic of Latvia does not resolve this issue. The only reference to international law is to be found in Article 68 of the Satversme, where it is indicated: international agreements that regulate matters to be resolved through legislation require the approval of the Parliament of the Republic of Latvia - Saeima⁶⁷. The notion "approval", applying the teleological (or meaning and purpose) method of interpretation, as well as the systematic method of interpretation, considering this issue together with the Law "On International Agreements of the Republic of Latvia".⁶⁸

The hierarchy of legal norms is specified in Section 15 of the "Administrative Procedure Law"⁶⁹ adopted by the Cabinet of Ministers under Article 81 of the Satversme, and it is as follows:

1. the Constitution,
2. laws and regulations of the Cabinet of Ministers with the force of law,
3. regulations of the Cabinet of Ministers,
4. regulations binding on local governments;
5. "the legal norms of international law regardless of their source, shall be applied in accordance with their place in the hierarchy of legal force of external regulatory enactments. If a conflict is determined between a legal norm of international law and a norm of Latvian law of the same legal force, the legal norm of international law shall be applied."⁷⁰

The Law on International Treaties of Republic of Latvia⁷¹ purpose "is to regulate the conclusion, execution denunciation of international treaties of the Republic of Latvia"⁷² and

⁶⁶ The Constitution of the Republic of Latvia. (7 February 1922). Available on: <https://likumi.lv/ta/en/en/id/57980>. Accessed June 7, 2020.

⁶⁷ Ibid. Chapter II.

⁶⁸ Mārtiņš Mits. Eiropas Cilvēktiesību un pamatbrīvību konvencijas statuss Latvijas tiesību sistēmā. Konvencijas piemērošana nacionālā līmenī (Status of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the Latvian legal system. Application of the Convention at the national level). Latvijas Vēstnesis., 08.01.1997., Nr.5/6. Available on: <https://www.vestnesis.lv/ta/id/29472>. Accessed April 20, 2020.

⁶⁹ Administrative Procedure Law. (1 February 2004). Available on: <https://likumi.lv/ta/en/en/id/55567>. Accessed June 7, 2020.

⁷⁰ Ibid.

⁷¹ Law on International Treaties of the Republic of Latvia. (13 January 1994) Available on: <https://likumi.lv/ta/en/en/id/57840>. Accessed April 20, 2020.

⁷² On International Treaties of the Republic of Latvia. (1 January 2010) Available on: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Citi/On_International_Treaties_of_the_Republic_of_Latvia.doc. Accessed September 20, 2020.

other issues related to international treaties. This means that national legislation will be amended in accordance with international law. Thus, international law takes precedence over national ones (but not over the Satversme, because it is possible to place a legal act on the same level with the constitution or to place it above the constitution only with an act that has a constitutional character, but the declaration does not have it).⁷³

By acceding to international human rights treaties, the Republic of Latvia undertook political and legal commitments to ensure the implementation of the treaties in the country. Suppose national law does not provide a mechanism for applying certain rights in practice. In that case, there is nothing to prevent individuals from claiming the exercise of these rights on the basis of international law (because the state has an obligation to ensure them).⁷⁴

The legislator has clearly expressed the wish to harmonise the existing laws with the norms of international law binding on the Republic of Latvia, as well as to be guided by them in the process of drafting laws. However, **the question arises - does international law in the Republic of Latvia operate directly or only through national laws?** It follows from the considered models of implementation of international agreements in Latvia that:

1) after their ratification, international agreements do not automatically become a part of the Latvian legal system;

2) the norms of international agreements become a part of the national legal system in two cases:

- where a national rule contains a reference to the application of an international agreement in the event of a conflict,

- when international norms are applied by analogy, there is no reference to the international agreement in the national law. Still, the international norm is applied, or it is used in case the national law does not regulate the relevant issue.⁷⁵

Based on the notion that in some cases international norms become a part of national law and by analogy they can be applied in all other cases as well, we can conclude that **international agreements are directly applicable in courts of Latvia**. This opinion is also substantiated by Latvia's official report on the implementation of the International Covenant on Civil and Political Rights in Latvia which states the following:

"Where the texts of the relevant conventions so provide, everyone has the right to invoke the relevant convention directly, without the intervention of the relevant national legislation."

⁷³ Mārtiņš Mits. Eiropas Cilvēktiesību un pamatbrīvību konvencijas statuss Latvijas tiesību sistēmā. Konvencijas piemērošana nacionālā līmenī (Status of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the Latvian legal system. Application of the Convention at the national level). Latvijas Vēstnesis., 08.01.1997., Nr.5/6. Available on: <https://www.vestnesis.lv/ta/id/29472>. Accessed April 20, 2020.

⁷⁴ Ibid.

⁷⁵ Ibid.

He may also apply directly to the courts in support of his action under this Convention. The court must apply the convention in question.”⁷⁶

The European Convention of Human Rights (ECHR) is allowing Latvian citizens to seek protection of their human rights through domestic courts while leaving intact their rights to go to the European Court of Human Rights if domestic remedies fail. However, because the ECHR was not drafted with children in mind, it is essential that the UNCRC be consistently used to interpret and make decisions about children’s rights.

The UNCRC is not only binding in international law; it is reflected in the interpretation and application by the European Court of Human Rights of the rights guaranteed by the European Convention.⁷⁷ The European Court of Human Rights has repeatedly referred to the UNCRC in its decision- making and judgments and used it to interpret and assess children’s rights in a wide number of cases.

⁷⁶ Par Latvijas Republikas kārtējo ziņojumu par 1966.gada Starptautiskā pakta par pilsoniskajām un politiskajām tiesībām izpildi Latvijā laikposmā no 1995.gada līdz 2002.gada 1.janvārim. Rīgā 2002.gada 24.oktobrī. (On the regular report of the Republic of Latvia on the implementation of the 1966 International Covenant on Civil and Political Rights in the Republic of Latvia in the period from 1995 to 1 January 2002. Riga, October 24, 2002.): Ministru kabineta 2002.gada 24.oktobra rīkojums Nr.593., Latvijas Vēstnesis, 2002, 24.oktobris, nr. 156. Available on: <https://likumi.lv/ta/id/67717-par-latvijas-republikas-kartejo-zinojumu-par-1966-gada-starptautiska-pakta-par-pilsoniskajam-un-politiskajam-tiesibam-izpildi>. Accessed April 20, 2020.

⁷⁷ *Baroness Hales of Richmond v Durham Constabulary*. (17 March 2005, unreported). Available on: <https://publications.parliament.uk/pa/ld200405/ldjudgmt/jd050317/durham.pdf>. Accessed April 20, 2020.

5. Domestic law and regulatory framework of the out-of-family care system

5.1. Domestic law and a general understanding of out-of-family care

The 1989 UN Convention on the Rights of the Child stipulates that for a child to develop fully and harmoniously as a personality, he or she must grow up in a family environment, an atmosphere of happiness, love and understanding. On the other hand, a child who does not have his or her own family temporarily or permanently or who, in his or her own interests, may not be left in that family, is entitled to superior state protection and assistance.

In the Republic of Latvia, the legal acts which regulate and set out the regulatory framework of out-of-family care system are:

1. Law on the Protection of the Rights of the Child;⁷⁸
2. Orphan's Courts Law;⁷⁹
3. Ombudsman Law;⁸⁰
4. By-law of Ministry of Welfare.⁸¹

The Handbook on Putting the Convention on the Rights of the Child into Practice states that a child who is temporarily or permanently separated from the family needs to provide out-of-family care in the hierarchy: first family relatives, then foster family and only a third time - out-of-family care institution as orphanage.⁸²

According to the Law on the Protection of the Rights of the Child⁸³ the aim of out-of-home care is to create a sense of protection for the child, to provide conditions for his or her development and well-being, to support the child's efforts to be independent. When separating a child from the family, out-of-family care must be provided:

⁷⁸ Law on the Protection of the Rights of the Child. (22 July 1998.) Paragraphs three and 3.¹ and Section 32. Available on: [https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=\(2\)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law..](https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=(2)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law..) Accessed May 1, 2020.

⁷⁹ Orphan Court's law. (1 January 2007). Available on: <https://m.likumi.lv/ta/id/139369-barintiesu-likums/redakcijas-datums/2018/09/01>. Accessed June 6, 2020.

⁸⁰ Ombudsman Law. (1 January 2007). Available on: <https://likumi.lv/ta/en/en/id/133535>. Accessed June 7, 2020.

⁸¹ By-law of the Ministry of Welfare: Republic of Latvia Cabinet Regulation No 49. (27 January 2004). Available on: <https://likumi.lv/doc.php?id=83758>. Accessed June 7, 2020.

⁸² UNICEF Handbook on Putting the Convention on the Rights of the Child into Practice, 3rd revised edition, 2007, Available on: https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child_Part_1_of_3.pdf. Accessed May 1, 2020.

⁸³ Law on the Protection of the Rights of the Child. (22 July 1998.) Paragraphs three and 3.¹ and Section 32. Available on: [https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=\(2\)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law..](https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=(2)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law..) Accessed May 1, 2020.

1. **to a guardian** who completely replaces the child's parents - provides appropriate living conditions, upbringing, general and interest education, health care, as well as represents the child's rights and interests in all areas of life.

*Custody is a permanent solution for the growth of an orphan, or a child left without parental care in the family and should be chosen as the primary form of care for all orphans or children whose parents have been deprived or even deprived of custody;*⁸⁴

2. **to a foster family**, which is essentially a fixed type of out-of-family care institution in which the child remains until he or she can return to his or her family or if this is not possible, custody is established for him or her or the child is adopted.

*Unlike a guardian, a foster family has to coordinate issues that affect the child's interests (for example, the child's education, communication with parents, relatives and other persons close to the child), as the Orphan's court represents the rights and interests of a child placed in a foster family.*⁸⁵

3. If it is not possible to provide out-of-family care with a guardian or foster family or if it is not suitable for a particular child, then care is provided in **a childcare institution or orphanage**⁸⁶ - a state or local government-funded long-term social care and social rehabilitation institution⁸⁷. The state-funded orphanage service is provided to orphans and children left without parental care up to the age of two, children with mental and physical disabilities up to the age of four, as well as children with severe mental disorders up to the age of 18. For other children, the orphanage service is provided by municipalities.

The child should only be in the orphanage until he or she has the opportunity to return to his or her family or, if this is not possible until appropriate care is provided in a family environment, with a guardian or foster family, or until adoption.

In regulatory enactments, an orphanage is the most regulated form of out-of-family care institution, in which the child must provide such care as in the family, only the child's rights

⁸⁴ Atņemtā bērnība. Ikvienam bērnam ir tiesības uzaugt ģimenē. Lietderības revīzija "Ārpusģimenes aprūpes efektivitāte." (Deprived of childhood. Every child has the right to grow up in a family. Performance audit "Effectiveness of out-of-home care."). Rīga, 2019. Available on: http://www.lrvk.gov.lv/uploads/revizijuzinojumi/2018/2.4.19_2018/Zi%C5%86ojums_At%C5%86emt%C4%81%20b%C4%93rn%C4%ABba.%20Ikvienam%20b%C4%93rn%C4%93rn%C4%93rn%C4%ABbas%20uzaugt%20%C4%A3imen%C4%93.pdf. Accessed June 7, 2020.

⁸⁵ Ibid.

⁸⁶ Childcare centres and orphanage – institutions which providing public service are taking care of children without parental care or deprived of parental care. The institution titles may differ.

⁸⁷ Law on the Protection of the Rights of the Child. (22 July 1998.) Section 1., paragraph 8. Available on: [https://likumi.lv/ta/en/en/id/49096lawontheProtectionoftheChildrensRights#:~:text=\(2\)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law..](https://likumi.lv/ta/en/en/id/49096lawontheProtectionoftheChildrensRights#:~:text=(2)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law..) Accessed May 1, 2020.

and Social Services and Social Assistance Law. (1 January 2003). Section 9.1. paragraph 1. Available on: <https://likumi.lv/ta/en/en/id/68488>. Accessed May 1, 2020.

and interests are represented by the orphanage manager, and **parents (or foster parents) are replaced by employees**. As foster family, orphanage director and staff has to coordinate issues that affect the child's interests (for example, the child's education, communication with parents, relatives and other persons close to the child), as the Orphan's court represents the rights and interests of a child placed in a foster family.

It is important to note that in out-of-family care institutions – foster family and orphanage (child-care centres etc.) – the Orphan's Court still represents the rights and interests of the child until the child is returned to his/her parents or has been adopted. Due to this fact the rights and obligations of foster family and orphanage (child-care centres etc.) directors have to be ensured strictly based on the competences given and accordance with domestic law.

The process by which a child can fully integrate into a new family by terminating out-of-family care is adoption. As a result of the adoption, all rights and obligations are transferred from the biological parent (or caregiver) to the adopter.

The following **basic principles** enshrined in legislation must also be observed when implementing out-of-family care:

1. the priority of **the rights and interests of the child**, i.e. in legal relations affecting the child, the rights and interests of the child take precedence and all activities concerning the child, whether carried out by state or municipal institutions, public organisations or other natural and legal persons, as well as courts and other law enforcement authorities, must give priority to the rights and interests of the child.
2. when separating children from the family, **children of the same family are inseparable** (except in exceptional cases when it is done in the interests of the child).
3. out-of-home care for a **child under the age of three must be provided in particular in a family environment**⁸⁸ exceptions may be made not to distinguish between brothers and sisters;
4. a child in out-of-family care has **the right to maintain a personal relationship and direct contact with his or her family**⁸⁹, it also means that out-of-family care should be provided as close as possible to the child's previous place of residence in order

⁸⁸Guidelines on Alternative Care for Children. UN with a resolution adopted by the General Assembly No. 64/142. (24 February 2010). Available on: https://digitallibrary.un.org/record/673583/files/A_RES_64_142-EN.pdf. Accessed June 7, 2020.

⁸⁹ Parents, brothers and sisters, grandparents and persons with whom the child has lived on an undivided farm for a long time.

to facilitate communication and possible reunification with his or her family and to reduce disruption to his or her educational, cultural and social life.⁹⁰

5. out of the child's rights, **out-of-home care is regularly monitored and reviewed** to ensure that it is in the best interests of the child.⁹¹

5.2. The framework of institutions which ensures children rights protection system in out-of-family care

Institutions responsible for the implementation of out-of-family care are divided into state and municipal level institutions. Both state and municipal institutions are responsible for the field of out-of-family care. The leading institution that ensures the protection of the child's interests and rights in the municipality level is the **Orphans' Court**. It is an institution which upholds the obligations to give or to subtract guardianship and custody of the child.⁹² Orphan's Court monitors the out-of-family care institutions - guardians, foster families and orphanages.⁹³ The Orphans' Courts operational responsibilities include⁹⁴:

1. the right to decide for the possibility of the child returning to the biological family;
2. if the custody has been detinned by the national court decision, obligation to inform the Welfare ministry to register a child in the Adoption Register and lastly,
3. right to decide the transfer of the child to the adopter.⁹⁵

The Orphan's Court is a unique institution for the protection of the rights and legal interests of a child or a person under guardianship. Orphans' courts in Latvia are established and maintained by county or city municipalities. In the cases specified in the Civil Law of the Republic of Latvia, the Orphan's Court may assist in matters of inheritance if there is no notary

⁹⁰ Law on the Protection of the Rights of the Child. (22 July 1998.) Section 33, Paragraph one. Available on: [https://likumi.lv/ta/en/en/id/49096lawonthe protectionofthechildrensrights#:~:text=\(2\)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law..](https://likumi.lv/ta/en/en/id/49096lawonthe protectionofthechildrensrights#:~:text=(2)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law..) Accessed May 1, 2020. and Guidelines on Alternative Care for Children. UN with a resolution adopted by the General Assembly No. 64/142. (24 February 2010). Paragraph 11. Available on: https://digitallibrary.un.org/record/673583/files/A_RES_64_142-EN.pdf. Accessed June 7, 2020.

⁹¹ Convention on the Rights of the Child. (20 November 1989) Article 3, paragraph 3. Available on: <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>. Accessed April 25, 2020. and Guidelines on Alternative Care for Children. UN with a resolution adopted by the General Assembly No. 64/142. (24 February 2010). Available on: https://digitallibrary.un.org/record/673583/files/A_RES_64_142-EN.pdf. Accessed June 7, 2020.

⁹² Orphan Court's law. (1 January 2007). Article 2 part 1. Available on: <https://m.likumi.lv/ta/id/139369-barintiesu-likums/redakcijas-datums/2018/09/01>. Accessed June 6, 2020.

⁹³ Law on the Protection of the Rights of the Child. (22 July 1998.) Article 32. Available on: [https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=\(2\)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law..](https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=(2)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law..) Accessed May 1, 2020.

⁹⁴ Regulations for the Operation of the Orphan's Court: Republic of Latvia Cabinet Regulation No. 1037. (1 January 2016). Paragraphs 81.2 and 81.3. Available on: <https://m.likumi.lv/doc.php?id=150736>. Accessed on June 9, 2020.

⁹⁵ Ibid.

in the county or local government. Orphans' courts act on the basis of regulatory enactments and principles of public law.

The Orphan's Court usually consists of the chairman of the Orphan's Court and at least three members of the Orphan's Court. Their number may change depending on the number of inhabitants declared in the respective municipality. The activities of orphans' courts are supervised, and the State Inspectorate provides methodological assistance in matters of children's rights or the rights of a person under guardianship for the Protection of the Rights of the Child. Still, the Ministry of Justice provides methodological assistance in matters of certification and inheritance.

At the State level, the out-of-family care responsible institutions are the Ministry of Welfare⁹⁶ and the Inspection for Protection of Children's Rights.

The Ministry of Welfare of the Republic of Latvia develops public policy in the field of children's and family rights, coordinates the supervision of compliance with regulatory enactments, ensures the registration of children and adopters in the Adoption Register.

The Ministry of Welfare of the Republic of Latvia is the leading public administration institution in the field of labour, social protection, protection of children's rights, children's and family rights, as well as equal opportunities and gender equality for persons with disabilities. At the political level, the Ministry of Welfare is headed by the Minister of Welfare.⁹⁷

The Inspection for Protection of Children's Rights supervises the work of Orphan's Courts, carry out inspections in any institution regarding the observance of the rights of the child.⁹⁸ The State Inspectorate for the Protection of the Rights of the Child is an institution of direct administration under the supervision of the Minister of Welfare.⁹⁹

The Inspectorate has the following functions:

1. to monitor and control the observance of the Law on the Protection of the Rights of the Child and other regulatory enactments regulating the protection of the rights of the child;

⁹⁶ By-law of the Ministry of Welfare: Republic of Latvia Cabinet Regulation No 49. (27 January 2004). Available on: <https://likumi.lv/doc.php?id=83758>. Accessed June 7, 2020.

⁹⁷ By-law of the Ministry of Welfare: Republic of Latvia Cabinet Regulation No 49. (27 January 2004). Available on: <https://likumi.lv/doc.php?id=83758>. Accessed June 7, 2020.

⁹⁸ Law on the Protection of the Rights of the Child. (22 July 1998). Section 65¹. Available on: [https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=\(2\)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law.](https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=(2)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law.) Accessed May 1, 2020.

⁹⁹ Par tiešās pārvaldes iestādes "Valsts bērnu tiesību aizsardzības inspekcija" izveidošanu (On the establishment of the direct administrative institution "State Inspectorate for the Protection of the Rights of the Child"): Ministru kabineta 2005. gada 29. novembra rīkojums Nr. 755., Latvijas Vēstnesis, 2005, 30. novembris, nr. 191. (Available on: <https://likumi.lv/ta/id/122427>. Accessed on June 8, 2020.

2. to implement supervision of the work of orphans 'courts and methodological assistance (except for the tasks specified in Chapters VII and VIII of the Orphans' Courts Law);
3. to analyse the situation in the field of protection of children's rights;
4. to ensure the operation of the hotline in the area of protection of children's rights;
5. to provide recommendations to state and local government institutions and other institutions for ensuring and improving the protection of children's rights;
6. to co-operate with officials of state and local government institutions, as well as NGO's in the field of protection of children's rights;
7. to implement support measures for foster families;
8. under the competence of the Inspectorate to perform other functions specified in the regulatory enactments regulating the respective field.¹⁰⁰

Oversight of all institutions – state and municipality, is ensured by the **Ombudsman of the Republic of Latvia**¹⁰¹. The Ombudsman informs public of rights of the child, examines the complains by state or municipality institutions, submits proposals, which promote the conformity with the rights of the child.¹⁰² Ombudsman is the only source for the public on finding out children rights violations in out-of-family care institutions. However, the ombudsmen only have the right to inform public and to invite other law enforcement authorities to take action and stop the children's rights violation. Inviting also means the right to appeal against a decision to refuse to initiate criminal proceedings.¹⁰³

One of the recent reports on violations of children's rights was made in regard to the observance of children's rights in six medical institutions. One of them was VSIA “Children's psychoneurological Ainaži Hospital.”¹⁰⁴ At the time of the visit, the hospital had 74 children: 24 from families; 32 from municipal orphanages; five of the state social care centres; five of foster families; eight of the families of the guardians. During the inspection, the ombudsman discovered significant violations of children's rights. Evaluating the information obtained

¹⁰⁰ Valsts bērnu tiesību aizsardzības inspekcijas nolikums (Regulations of the State Inspectorate for the Protection of the Rights of the Child): Ministru kabineta 2005. gada 29. novembra noteikumi nr. 898., Latvijas Vēstnesis, 2005, 30. novembris, nr. 19. Available on: <https://m.likumi.lv/doc.php?id=122431>. Accessed June 8, 2020.

¹⁰¹ Ombudsman Law. (1 January 2007). Available on: <https://likumi.lv/ta/en/en/id/133535>. Accessed June 7, 2020.

¹⁰² Law on the Protection of the Rights of the Child. (22 July 1998). Section 65². Available on: [https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=\(2\)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law.](https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=(2)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law.) Accessed May 1, 2020.

¹⁰³ Ombudsman Law. (1 January 2007). Available on: <https://likumi.lv/ta/en/en/id/133535>. Accessed June 7, 2020.

¹⁰⁴ Latvijas Republikas tiesībsarga Ziņojums par bērnu tiesību pārkāpumiem VSIA “Bērnu psihoneiroloģiskā slimnīca “Ainaži” (Report of the Ombudsman of the Republic of Latvia on violations of children's rights in VSIA “Children's Psychoneurological Hospital“ Ainaži) Nr.1-12/1. Available on: http://www.tiesibsargs.lv/uploads/content/legacy/zinojums_saeima_ainazi_1517834285.pdf. Accessed June 7, 2020.

during the visits, the Ombudsman considers that hospitals staff and management have several criminal offences at their disposal (Articles 144, 152, 174, 317 and 319 of the Criminal Law¹⁰⁵) composition features. About established of these violations the ombudsman informed Attorney General. For health and field of care violations were informed to the Health Inspectorate.¹⁰⁶

The national courts also ensure the protection of out-of-family care children's rights in the Republic of Latvia. National courts of the Republic of Latvia interpret the norms of domestic legislation and provides a deeper understanding of the norms contained in the law. Regarding Orphan's Courts, national courts have specifically explained and helped to determine these institutions and their authorized person dictions and those meaning. Regarding Orphan's Courts decisions the resent Republic of Latvia Supreme Court Senate ruling explained that the collegial decision of the Orphan's Court regarding the non-renewal of the suspended right of custody means that the custody of the parent has continued to be suspended. The Orphan's Court, by not renewing the right of custody by a collegial decision, does not refuse to grant the right, but continues to restrict the rights of the parent. Therefore, it is not a negative administrative act (denial of rights), but an unfavourable (restrictive of rights) administrative act.¹⁰⁷

In other Supreme Court's ruling, the court determinate aspects that have to be taken into account in the restriction of access rights:

1. The right of contact between the child and the parent, or the maintenance of personal relations and direct contact, shall be limited provided that the communication is in the best interests of the child.

When assessing the restriction of access rights, in accordance with the principle of proportionality, the institution must always assess how it is possible to resolve the particular case in the most child-friendly way. Thus, the institution must always consider which type of restriction (full or partial) is most appropriate for a particular child.

2. A decision to restrict access has lasting legal effect, so that such a decision may be revoked if the court finds that the circumstances which led to the decision no longer exist or have changed. Therefore, the court must also take into account the factual circumstances which arose after the adoption of the contested decision. Such an

¹⁰⁵ The Criminal Law. (17 June 1998). Available on: <https://likumi.lv/ta/en/en/id/88966-the-criminal-law>. Accessed June 7, 2020.

¹⁰⁶ Procedures for the Implementation of Public Health Measures: Republic of Latvia Cabinet Regulation No 1050. (24 November 2010). Available on: <https://likumi.lv/ta/en/id/221565-procedures-for-the-implementation-of-public-health-measures>. Accessed June 7, 2020.

¹⁰⁷ Administratīvo lietu departamenta spriedums lietā (Judgment of the Department of Administrative Cases): No. SKA-815/2020., (8 May 2020, unreported). Available on: <http://at.gov.lv/downloadlawfile/6191>. Accessed June 9, 2020.

assessment of the current situation is also necessary to ensure effective protection of children's rights.

3. The opinion of a child who is a mature adolescent is relevant; contrary to the adolescent's opinion, the decision must be motivated. At the same time, however, it must be assessed whether, even though the case concerns contact with a teenager, there are no objective circumstances which may be detrimental to the rights and interests of that teenager. Similarly, the views of an adolescent, which is relevant because of his or her sufficiently mature age, must be assessed in the same way as any child's views on each child's individual personality traits, perceptions and whether they are influenced by others, including the parent.¹⁰⁸

The Supreme court of Republic of Latvia in its ruling also has ruled that existing norms in the legislation does not accord to the fundamental principles of law and therefore are not applicable. Court stated that Section 163, Paragraph four, Clause 1 of the Civil Law, which provides for an absolute prohibition to become an adopter for a person who has been punished for criminal offences with violence or the threat thereof, does not comply with the principle of proportionality. Court's ruling also stated that the institution (Orphan's Court) must therefore carry out a case-by-case assessment.

Legal norms, including the Civil Law and Cabinet of Ministers Regulations of 30 October 2018 No. 667., the "Adoption Procedure" sets out a mechanism by which an orphan's court can assess the individual circumstances of each case in order to ascertain whether the identity of an adopter who has previously been convicted of a crime related to or threatened by violence does not indicate a risk of violence and its consequences. the risk to the child to be adopted. Namely, in case the potentially adoptable child already lives in the family of the potential adopter, the Orphan's Court can simultaneously assess both the personality of the potential adopter and his / her relationship with the child, using the opinions of a psychologist and other specialists.

In accordance with Section 171, Paragraph one of the Civil Law, adoption is approved by a court, which must also make sure that the adoption is in the best interests of the child. Thus, the possibility to assess whether a person who has been punished for a criminal offence related to violence or the threat thereof may become an adopter would achieve the objective of the absolute prohibition included in the Contested Norm - protection of children's rights - of the same quality. Thus, the obligation of the state to protect every child from violence would be

¹⁰⁸ Administratīvo lietu departamenta spriedums lietā (Judgment of the Department of Administrative Cases): No. SKA-700/2020., (17 February 2020, unreported). Available on: <http://at.gov.lv/downloadlawfile/6149>. Accessed June 9, 2020.

fulfilled even if the adopter of the child of the other spouse could become a person who, although previously convicted of the criminal offence referred to in the Contested Norm, by his attitude, behaviour and actions, inter alia has confirmed that it does not pose a risk to the safety of the adoptee.¹⁰⁹

5.3. Analysis regarding out-of-family care children's rights enforcement mechanisms

Ensuring the rights of the out-of-family care children is the duty of state institutions and officials subordinate to them. Every state-official who encounters or performs his / her work duties related to the rights of the child has an obligation to promote and protect these rights; furthermore, in case of violation of these rights, report the breach to the relevant law enforcement authority. In everyday life, the protection of out-of-family children's rights is ensured by the Orphan's Court and out-of-family institutions. However, there are situations when other state institutions are involved, as in cases of criminal offence – Police and state's pointed prosecutor, in civil cases- national courts, Orphan's Courts officials, and even Ombudsmen.

Regarding out-of-family care children, all **criminal cases** are maintained “as state prosecutions.”¹¹⁰ In the criminal case, the maintainer of state prosecution would ensure and seek remedies of violations on behalf of the child. Orphan's Court is a representative of the child victim. In addition, the Kurzeme Region Board indicated that it would be necessary in regulatory enactments set deadlines for the speed with which the orphan's court appoints a victim representative. That would allow for timely planning procedural actions with the child and all persons present, to prevent evidence loss.¹¹¹

Although, it is the maintainers of state prosecution responsibility to ensure that it will prosecute and do its job in the best way possible, in some cases they don't. In these situations, the state's ombudsman has a right to intervene. Case examples:

*On August 30, 2017, the Ombudsman closed the inspection case No. 2017-17- 23D, with an opinion., finding several violations of children's rights in Jelgava city municipal

¹⁰⁹ Administratīvo lietu departamenta spriedums lietā (Judgment of the Department of Administrative Cases): No. SKA-34/2020. (31 January 2020, unreported). Available on: <http://at.gov.lv/downloadlawfile/6107>. Accessed June 9, 2020.

¹¹⁰ Criminal Procedure Law. (1 October 2005). Section 42 (1). Available on: <https://likumi.lv/ta/en/en/id/107820>. Accessed June 8, 2020.

¹¹¹ Latvijas Republikas tiesībsarga 2018. gada ziņojums (Annual Report of the Ombudsman of the Republic of Latvia for 2018). p. – 94. Rīga, 2019. Available on: http://www.tiesibsargs.lv/uploads/content/tiesibsarga_2018_gada_zinojums_1550749223.pdf. Accessed June 7, 2020.

institution "Jelgava Children's Social Care Centre".¹¹² The Ombudsman sent an opinion in the inspection case to the Department for the Protection of Persons and State Rights of the Prosecutor General's. The disposal of the director of the social care centre is ascertainable in Section 171 of the Criminal Law. The characteristics of the intended offence (abuse of guardianship), i.e., or the head of the institution, in the performance of the duties of guardian of the children, has abused her rights and harmed their dependent children left without parental care.¹¹³

Department of Protection of Persons and State Rights of the Prosecutor General's Office Ombudsman the application was sent for review to the State Police Zemgale Region Administration Jelgava to the precinct, which on 5 January 2018 decided between the refusal to initiate criminal proceedings.

The decision was based on Article 377, Paragraph 2 of the CPL (there is no composition of the criminal offence) and the first part of Article 373 (if a motivated written decision, a copy of the decision shall be sent to the person).

The Ombudsman appealed against the decision to refuse to initiate criminal proceedings in Jelgava in the Prosecutor's Office, which on February 14, 2018, made a decision on the decision to refuse to initiate the cancellation of criminal proceedings and sending material for additional inspection. March 1, 2018, the material submitted by the Ombudsman was taken over by the Zemgale Regional Offices of the State Police Criminal Police Bureau, which in the Division for Combating Extremely Serious and Serious Crimes. On March 2, a decision was made to initiate criminal proceedings under Section 319 of the Criminal Law the first part (failure to perform the duties of a public official).

Given that the former head of the orphanage pleaded guilty and regretted what had been done, At the end of 2018, the prosecutor fined her six minimum monthly salaries, which the guilty person paid.¹¹⁴

* Based on the Ombudsman's application for Salas district orphanage "Līkumi" violations of the rights of the child, the Office of the Prosecutor General's Office and the law of the state On July 8, 2015, criminal proceedings were initiated in the Department of Defence.

¹¹² Tiesībsarga atzinums lietā (Opinion of the Ombudsman in the case) Nr. 2017.17.23D. Available on: http://www.tiesibsargs.lv/uploads/content/atzinumi/atzinums_lieta_nr_2017_17_23d_1516269815.pdf. Accessed June 8, 2020.

¹¹³ Latvijas Republikas tiesībsarga 2018. gada ziņojums (Annual Report of the Ombudsman of the Republic of Latvia for 2018). p. - 67 Rīga, 2019. Available on: http://www.tiesibsargs.lv/uploads/content/tiesibsarga_2018_gada_zinojums_1550749223.pdf. Accessed June 7, 2020.

¹¹⁴ Latvijas Republikas tiesībsarga 2018. gada ziņojums (Annual Report of the Ombudsman of the Republic of Latvia for 2018). Rīga, 2019. p. 76. Available on: http://www.tiesibsargs.lv/uploads/content/tiesibsarga_2018_gada_zinojums_1550749223.pdf. Accessed June 7, 2020.

In January 2018, the Criminal Police Bureau of the Zemgale Region Administration of the State Police Division of Combating Extremely Serious and Serious Crimes in the Criminal Procedure of an Orphan The director of the house “Līkumi” (currently the Family Support Center “Saulstari”). The suspects according to Section 317, Paragraph two of the Criminal Law (service of a state official who has used abuse of power if it involves violence or a threat of violence) and Section 319, Paragraph one (failure to perform duties of a public official). He has applied a security measure - a ban on certain occupations - is prohibited to perform with the orphanage director responsibilities.

In 2018, the investigation was completed, in December by the Zemgale Court District Prosecutor's Office and the prosecutor decided to refer the criminal case to court. The criminal case will be heard in Zemgale district court in Jekabpils.¹¹⁵

Furthermore, in the Criminal Justice System in the cases when the child has committed a felony, the principles and rights of the child noted in UNCRC must be considered. The guidelines for action on children in the Criminal Justice system¹¹⁶ has underlined the main goals that the domestic criminal justice system has to incorporate. In the Republic of Latvia, the Criminal Justice System is based in the Criminal Law¹¹⁷ and Criminal Procedure Law¹¹⁸.

Section 89 of the Criminal Procedure Law determines the representative and trusted Person of a Minor. The following persons may be representatives – lawful representatives (parents, guardian); relatives (grandparents, sisters, brothers, caregiver) and non-governmental organization which fulfils the function of protecting the rights of the child. Also, with the permission of the person directing the proceedings, a minor has the right to participate in procedural activates together with the “trusted person”, unless this person is involved in criminal proceedings.

From mentioned above, we can see that the Criminal Justice System to regards to children rights and interests are more efficient considering representatives. In the criminal proceedings, the children/ minors can be represented by a larger group; however, the representative rights are strictly determined in Section 90 – 92 of the Criminal Procedure Law. Concerning out-of-family care children living in institutions, the representatives can only be

¹¹⁵ Latvijas Republikas tiesībsarga 2018. gada ziņojums (Annual Report of the Ombudsman of the Republic of Latvia for 2018). Rīga, 2019. p. 68. Available on: http://www.tiesibsargs.lv/uploads/content/tiesibsarga_2018_gada_zinojums_1550749223.pdf. Accessed June 7, 2020.

¹¹⁶ Guidelines on Children in the Criminal Justice System. (1997/30 of 21 July 1997.) Available on: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx>. Accessed September 16, 2020.

¹¹⁷ Criminal Law. (1 April 1999) Available on: <https://likumi.lv/ta/id/88966-kriminallikums>. Accessed September 15, 2020.

¹¹⁸ Criminal Procedure Law. (1 October 2005) Available on: <https://likumi.lv/ta/en/en/id/107820>. Accessed September 16, 2020.

orphanage director (guardian, caregiver), Orphan's Court official (legal guardian). The Criminal Procedure Law notes the rights of the representative of the child/minor explicitly; however, it does not determine the rights of the child/ minor itself. Such rights as child's participation, rights to freely express their views and more UNCRC sets out the obligation to facilitate their participation in all matters affecting them within judicial procedures. The right to child/minor to be heard in the proceedings in criminal cases in the Republic of Latvia is set out in the Law on the Protection of the Children's Rights Section 20. However, the right to be heard is not noted in Criminal Procedure Law and does not explicitly state that the representative has to be the one who fulfils this right. However, UNCRC says that the child has the right to be heard directly or through a representative body. In other words, it is not clear in a criminal proceeding to whom, representative or person directing proceedings, must fulfil the child's right to be heard. This aspect is vital especially regarding out-of-family care children because the alleged representatives of the child may not have the best intentions of representing the rights of the child, as previously analysed criminal cases of orphan directors showed.

In all **civil and administrative** court proceedings, children's rights and interests; from out-of-family care institutions are also represented by an Orphan's Courts officials. In respect of out-of-family children's civil rights, as inherence rights, the insurance and protection of these rights are directly regulated in Civil law and Notary law and as mentioned before Law on the protection of the Children's Rights, also in all civil and administrative proceedings child's rights must be protected and fulfilled.

Civil Law Section 177 states that the child is under parental custody of its parents, guardians etc. The legal guardian has obligation to represent the child civil rights and obligations till the age of 18. The Civil Law Section 185 allows the child to turn to Orphans Court to seek help in case if the parents (legal guardians) have imposed unreasonable restrictions on him or her or there are other disagreements in their relationship.

However, there are cases where the obligation to insure child's rights in not by Orphans Courts but also civil courts. The Civil law Article 73 determines: If there are persons under guardianship or trusteeship among the co-heirs, then the act of division made in accordance with the procedure shall be approved by the Orphan's Court, and if the share of the person under guardianship or trusteeship exceeds 14,000 euros, the decision of the Orphan's Court shall be submitted to the court for approval.¹¹⁹ Also, the current Civil Law regulations (Article 660 and Article 659) state that a sworn person notary at the request of the heir or in cases: when there is

¹¹⁹ The Civil Law. (28 January 1937). Available on: <https://likumi.lv/ta/en/en/id/225418>. Accessed June 8, 2020.

at least one minor among them or someone for some other reason is unable to defend his or her rights personally and does not have a guardian or custodian.

From the procurement for research announced by the Ministry of Justice of the Republic of Latvia in 2017 „Problems of the legal regulation of the Inheritance Law part of the Civil Law and its need for modernization ”, it follows that the existing legal provisions are not clear enough regulates the entities that are entitled to request the establishment of inheritance guardianship for the mass of inheritance. In other words, the sworn notary may not pace inheritance guardianship for the mass of inheritance in cases if the person who is underage (a child) is a rightful inheritor.

Civil Law does not define who is an interested party in a succession case. It follows from Article 660 of the Civil Law that a sworn notary, acting on his initiative, shall establish guardianship if one of the matters specified in Article 659 of Civil Law occurs. Notarial activity is based on the will of a person to perform such action, or a sworn notary does not serve the notarial activity on his or her own initiative.¹²⁰ And at this moment the Orphan’s Court is responsible for initiate the request of the establishment of inheritance because that it has guardianship over out-of-family care child.

The existing legal framework of out-of-family children's rights protection and enforcement mechanism is not efficient. Out-of-family care institutions do not have legal guardianship over the children in these institutions, only the guardian rights. Legal custody is given to the Orphan’s Court - a state institution and for most of the cases is not even close to the out-of-family care institutions as orphanages.

The legislator envisages the possibility for the Orphan's Court to react immediately in order to prevent the child from being in conditions dangerous to health or life, ensuring the opportunity for the child to be in safe conditions, giving it’s a chairman or member the right to make a unilateral decision.

According to Section 23, Paragraph one of the Orphans' Court Law, if an examination of a child's living conditions or otherwise reveals that the child is in conditions dangerous to health or life, as well as if the child's further family life may endanger his or her health or life, the chairman of the Orphan's Court whether a member of the Orphan's Court unilaterally makes the decision regarding:

- 1) termination of custody of the child for the parents;

¹²⁰ Latvijas Republikas Tieslietu ministrija izsludinātais iepirkums par pētījumu “Civillikuma Mantojuma tiesību daļas tiesiskā regulējuma problēmjaūtājumi un to modernizācijas nepieciešamība” (Procurement announced by the Ministry of Justice of the Republic of Latvia for the study “Problems of the Legal Regulation of the Inheritance Law Part of the Civil Law and the Necessity of Their Modernization”). Available on: <https://www.tm.gov.lv/lv/nozares-politika/petijumi>. Accessed June 8, 2020.

2) removal of the child from the guardian's family and suspension of the guardian from the performance of duties;

3) removal of a child from a foster family.

In essence, the sole decision is a temporary solution, because within the next 15 days the duties of the Orphan's Court include objectively and thoroughly clarifying the circumstances of the parent's future exercise of custody or foster family and guardian's ability to continue to perform their duties. If the decision is made to deprive parents of custody, the national courts case is in place and decides the case based on the evidence provided by Orphan's Court. However, the existing legal norms do not regulate Orphan's Courts duties or obligations after the child has been placed in out-of-family care institution and how out-of-family care children's rights are ensured. It is important to note that the legal guardian rights are still given to Orphan Courts but the guardian (caregiver) rights are given to the institution's director, foster parents and guardians.

During 2018 a total of 1,116 occurred for various reasons rotation of children, including both: care in a family environment – adoption, and out-of-family forms of environmental care – foster families. Fifty children were transferred back to institutional care.¹²¹ Adding to this, that in the Republic of Latvia Orphan's Courts are established in all its municipalities, the total number of them in 2019 was 117.¹²² According to Orphan's Courts law Section 33, a separate case shall be arranged for each child or person in custody in out-of-home care. One joint case of children in out-of-family care shall be arranged for children of the same family. Children who have common parents or one common parent has to be placed in the same out-of-family care institution or service provider.

And only state official, other than **Orphan's Court officials**, who as a right to file an application or appeal national court decisions is **Ombudsmen**. None of these state officials **is, actually, close or taking care of the child in out-of-family care**. Therefore, they might even don't know about the violations of children's rights.

The proposal of this research paper- to ensure out-of-family children rights in the Republic of Latvia, there is a need for legal advocates for children in out-of-family care

¹²¹ Latvijas Republikas Labklājības ministrijas Valsts bērnu tiesību aizsardzības inspekcija., Pētījums- Bērnu emocionālais traumatisms atkārtotas ārpusģimenes aprūpes maiņas gadījumos.(State Inspectorate for the Protection of the Rights of the Child of the Ministry of Welfare of the Republic of Latvia., Study - Emotional trauma of children in cases of repeated out-of-family care change) Available on: <file:///Users/user/Downloads/Petijums2020.pdf>. Accessed June 9, 2020.

¹²² Latvijas Republikas Labklājības ministrijas Valsts bērnu tiesību aizsardzības inspekcijas Bāriņtiesu iesniegto ikgada valsts statistikas pārskatu par bāriņtiesu darbu 2019. gadā analīze (The State Inspectorate for the Protection of the Rights of the Child of the Ministry of Welfare of the Republic of Latvia - Analysis of the annual state statistical reports submitted by the Orphans' Court on the work of the Orphans' Court in 2019.) Available on: http://www.bti.gov.lv/in_site/tools/download.php?file=files/text/Barintiesu_parskatu_analize_2019.docx. Accessed June 9, 2020.

institutions. During the year 2018, the Ombudsman's Office has received a total of 907 applications in the field of children's rights. Among them were also submissions regarding possible violations of the rights of the child. Of this total, 233 were written applications and 674 were face-to-face, telephone and electronic consultations. Last year, three inspection cases were initiated to clarify the circumstances, one of them on the initiative of the Ombudsman, and two on the submissions of private persons.¹²³

The largest number of applications - **111** applications were received regarding *the child's right to exercise access rights*; **109** applications have been received on *the right of a child to grow up in a family*, another 61 applications have been received on the rights related to the provision of primary education. However, **59** - on the rights *of orphans and children left without parental care*. In another 56 cases, persons applied to the Ombudsman's Office regarding maintenance issues.¹²⁴ From this, we can make the final conclusion, that regarding out-of-family care children's rights, there is not a sufficient children's rights system which has to be ensured by Orphan's Courts. Due to the work load of the Orphans Courts officials or small salaries the child right protection system is not being carried out efficiently. Having all this in mind, there is ongoing Orphans Court reform where Welfare Ministry is developing the new institution which will overlook the lawfulness of the Orphan Court official actions and their decisions.

As to the fact that most of the applications from out-of-family care children in 2018, wherein regard to **the right of a child to grow up in the family** and this child's right as such has raise dialogue even in the Republic of Latvia's Parliament, further this research paper will examine this right in more detail.

¹²³Latvijas Republikas tiesībsarga 2018. gada ziņojums (Annual Report of the Ombudsman of the Republic of Latvia for 2018). Rīga, 2019. 10. lpp. Available on: http://www.tiesibsargs.lv/uploads/content/tiesibsarga_2018_gada_zinojums_1550749223.pdf. Accessed June 7, 2020.

¹²⁴ Latvijas Republikas tiesībsarga 2018. gada ziņojums (Annual Report of the Ombudsman of the Republic of Latvia for 2018). Rīga, 2019. p. 391. Available on: http://www.tiesibsargs.lv/uploads/content/tiesibsarga_2018_gada_zinojums_1550749223.pdf. Accessed June 7, 2020.

6. Out-of-family care Children's rights to family

6.1. Adoption

Although every child has an inalienable right to grow up in a family or if it is not possible then as much it is possible to have rights to receive care in a family environment (foster care, guardian care). In 2018 approximately 900 children lived in childcare institutions – orphanages.¹²⁵ Therefore, further analysis in this research paper will be devoted to a child's right to a family. Also, upcoming changes in the Procedures for Adoption¹²⁶ and upcoming bill of amendments to the Law on the Protection of the Rights of the Child has made these rights – rights to a family - become recently well- known topic of discussion.

As mentioned before, the process by which a child can fully integrate into a new family by terminating out-of-family care is **adoption**. The task of adoption is to ensure for the children to be adopted upbringing in a family and a stable and harmonious living environment.¹²⁷ In 2001 UN Recommendations to Latvia UN Committee expressed its concerns at the fact that the legislation regulating adoption is out of date and does not guarantee adequate protection of the child involved as recognised in the Convention. Further, as the procedures for adoption, in particular intercountry adoption, are complicated and as there is nearly any foster system available, it notes that a significant number of children are obligated to live in orphanages and institutions for long periods.¹²⁸ In the light of article 21 of the Convention and of other related provisions, the Committee encouraged the State party (The republic of Latvia) to adopt the new legislation regarding adoption to simplify and expedite the procedures for adoption. Further, it recommended the State party to undertake measures to facilitate the creation of a foster care system with sufficient support. It also encouraged the State party to continue the process for the ratification of the Hague Convention of 1993 on the Protection of Children and Cooperation in Respect of Intercountry Adoption¹²⁹ which the Republic of Latvia became a party to on November 25, 2001.

¹²⁵ Latvijas Republikas tiesībsarga 2018. gada ziņojums (Annual Report of the Ombudsman of the Republic of Latvia for 2018). Rīga, 2019. lpp. 396. Available on: http://www.tiesibsargs.lv/uploads/content/tiesibsarga_2018_gada_zinojums_1550749223.pdf. Accessed June 7, 2020.

¹²⁶ Procedures for Adoption: Republic of Latvia Cabinet Regulation No. 667. (8 November 2018). Available on: <https://likumi.lv/ta/en/en/id/302796>. Accessed June 7, 2020.

¹²⁷ Republic of Latvia Cabinet Regulation No. 667. Procedures for Adoption. Article 2. [08.11.2018]. Available on: <https://likumi.lv/ta/en/en/id/302796>. Accessed June 7, 2020.

¹²⁸ The UN Recommendations to the Government of Latvia and information on their implementation. (26 January 2001). p. 44- 45. Available on: <https://undocs.org/en/A/74/231>. Accessed on April 21, 2020.

¹²⁹ Par Hāgas konvenciju par bērnu aizsardzību un sadarbību starpvalstu adopcijas jautājumos (On the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption): (9 November 2001). Available on: <https://likumi.lv/ta/id/55439-par-hagas-konvenciju-par-bernu-aizsardzibu-un-sadarbibu-starptvalstu-adopcijas-jautajumos>. Accessed June 7, 2020.

Adoption is possible only if the child is legally free, i.e. if the child is an orphan or if the child's parents have been deprived of custody by a court decision.¹³⁰ Paragraphs 4, 6 and 8 of Regulation No. 667 “Procedure for Adoption” (in force from 08.11.2018) are necessary for the guardian to give his or her consent to the adoption, as well as for the adoptee, if he or she has reached the age of 12.¹³¹

Adoption in the Republic of Latvia is regulated by Civil law Article 162- 176, by Law on the Protection of the Rights of the Child Section 3; and Procedure of Adoption. Until the year 2018, in the Republic of Latvia were allowed domestic adoption and foreign adoption from all out-of-family institutions. From the year 2018 on, a foreign adopter will not be able to adopt a child from a foster family, unless the foreign adopter is a relative of the child. These new rules were criticised by NGO’s for depriving one group - foster children, out of all out-of-family children, of the right to an independent and genuine family, unlike the rights of children in orphanages. Pointing out the discrimination¹³² practice of treating a particular group – foster children; in adoption cases less fairly than other children in out-of-family care institutions. To this argument, at that time The Minister of Welfare argued that the changes of the legislation relating to adoption procedure policy were a political decision which is a decision taken by an institution within the limits of its legal competence and which does not need to be based on legal considerations.¹³³

Today the out-of-family care institutions primary have involved, and numbers of children living in the orphanages have decreased. On 2019 December 31 number of children living in out-of-family care were: in foster families – 1355, in care of guardian – 4274, and in long-term social care and social rehabilitation institution (the titles of out-of-family care institutions differs¹³⁴) – 621. (Annex No 1) As mentioned before, adoption is possible only if the child is legally free, i.e. if the child is an “orphan” or if the child's parents have been deprived

¹³⁰ The Civil Law. (28 January 1937). Section 169. Available on: <https://likumi.lv/ta/en/en/id/225418>. Accessed June 8, 2020. and Procedures for Adoption: Republic of Latvia Cabinet Regulation No. 667. (8 November 2018). Paragraphs 5 and 6. Available on: <https://likumi.lv/ta/en/en/id/302796>. Accessed June 7, 2020.

¹³¹ Procedures for Adoption: Republic of Latvia Cabinet Regulation No. 667. (8 November 2018). Paragraphs 4,6 and 8. Available on: <https://likumi.lv/ta/en/en/id/302796>. Accessed June 7, 2020.

¹³²Oxford Learner’s Dictionaries. *Discrimination* noun. Oxford University Press. Available on: https://www.oxfordlearnersdictionaries.com/definition/american_english/discrimination. Accessed June 7, 2020.

¹³³ J. Briede, E. Danovskis. Politiska lēmums nozīme administratīvajās tiesībās., 10. lpp. Jurista Vārds. 11.08.2015./ Nr. 31 (883). Available on: https://www.cobalt.legal/files/bundleNewsPost/2478/Danovskis_Kruma_Politiska_lemuma_nozime_administrativajas_tiesibas_Augusts_2015.pdf. Accessed June 7, 2020.

¹³⁴ Latvijas Republikas tiesībsarga 2018. gada ziņojums (Annual Report of the Ombudsman of the Republic of Latvia for 2018).lpp.–60. Rīga, 2019. Available on: http://www.tiesibsargs.lv/uploads/content/tiesibsarga_2018_gada_zinojums_1550749223.pdf. Accessed June 7, 2020.

of custody by a court decision.¹³⁵ “Legally free” children are 1091, and 575 of them have expressed reluctance for adoption, which leaves 516 children in out-of-family care institutions, open – legally free and ready for adoption. However, as previous analyses show the Procedure of Adoption does not respect all of out-of-family care children rights to family, **the foster children are deprived of international adoption possibility.**

Here would be useful to remember, that regarding out-of-family children’s rights, Republic of Latvia also has an international obligation arriving from international treaties to ensure all rights and interests of the child to be respected and protected. Much further, as out-of-family care children are under state legal guardianship which is carried-out by Orphan’s Courts, all state institutions, including Ministry of Welfare, have to take in consideration of children’s best interests and rights deciding matters relating to the child. Article 3 of the UNCRC requires that the **child’s best interests be a primary consideration** in all actions concerning the child. In this case child’s rights to a permanent family.

6.2. International adoption ban

Even more, on 2 June 2020, the Saeima (Parliament) Commission for Human Rights and Public Affairs voted for the draft law on Prohibition of Foreign Adoption in the Republic of Latvia, which it had developed following the monitoring procedure.¹³⁶ A moratorium means suspending a particular law for as long as an acute crisis is resolved, until exceptional circumstances cease to exist, during which the application of that law could have serious negative consequences, or legal issues affecting important human rights issues. Given the nature of the concept of "moratorium", its application and its implications, the Commission's urgent statement on its application to foreign adoption seems incomprehensible and its effects unpredictable. Currently, this bill will be submitted to the Saeima for voting.

The right to a family has been considered fundamental right not just in international law treaties related to the rights of the child, but also the Constitution of the Republic of Latvia. Article 110 determines that the State shall protect and support rights of the child and that the State shall protect an “institution” as the family itself. Why regarding out-of-family care children’s rights to acquire new permanent family, or in other words, children’s rights to be adopted are not seen as other constitutional rights?

¹³⁵ Procedures for Adoption: Republic of Latvia Cabinet Regulation No. 667. (8 November 2018). Available on: <https://likumi.lv/ta/en/en/id/302796>. Accessed June 7, 2020.

¹³⁶ Legal Dictionary. Available on: <https://legal-dictionary.thefreedictionary.com/Moratorium>. Accessed on June 7, 2020.

The dialogue of international adoption is an ongoing debate not just in the Republic of Latvia. International adoption as a solution to the out-of-family care institutional system is seen as a deficiency compensation mechanism in many other states in the world. UNCRC Article 21 states that the parties are obligated to ensure the system of adoption that the best interests of a child shall be the paramount consideration. The States shall ensure the adoption is authorized by competent authorities, in accordance with applicable law and on the basis of all pertinent and reliable information etc. Also, States must recognize inter-country adoption as an alternative means of a child's care, if the child cannot be placed in foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin. UNCRC also determines that the inter-country adoption has to enjoy safeguards and standards equivalent to those existing in the case of national adoption and take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it.¹³⁷

To endorse more prehensible understanding of the out-of-family care children's chance to fulfil the right to a family, it's necessary to analyse statistics, which allows to come to conclusions as:

1. in 2019, the number of **110** children for out-of-family care were adopted, from which children from the age of 0 to 3 were **32**; from the age of 4 to 12 were **52**; and from the age of 13 to 18 were **26**. (Annex No 1)
2. on 1 January 2020, the database of the Ministry of Welfare contained information on 1,140 adoptable children, of whom 74.7% were nine years of age and older; (Annex No 2)
3. last year, in the Republic of Latvia 4 adopters had shown a desire to adopt a child who would be at this age, so out of 852 children only four have hope to find their real family in the Republic of Latvia;
4. in 2019, 81% of foreign adopters wanted to adopt a child between the ages of 9 and 18;
5. the number of children adopted in Latvia in 2019 was 108;
6. the number of adopted children abroad in 2019 was 42.

From data above mentioned and seen in Annex No 1 (2.2.) we can see that 1091 children in Republic of Latvia are "legally free", from them 575 do not want to be adopted and only 51 has clearly expressed their consent not to be adopted internationally. 516 children living in out-of-family care has expressed their willingness to be adopted either national or internationally.

¹³⁷ Convention on the Rights of the Child. (2 September 1990). Available on: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. Accessed April 20, 2020.

The debate on prohibition of international adoption in the Republic of Latvia has been popular many years, however, it has never succeeded due to the large number of children living in out-of-family care and due to the fact that national adoption of a teenage child is still not popular, as we can see in Annex No 2.

Initiative to ban international adoption and debates around it has highlighted various and controversial opinions. The Ombudsmen Juris Jansons has addressed the Parliament's Commission for Human Rights and Public Affairs pointing out that the existing adoption procedure is not efficient. The criteria set out in the legal framework for foreign adoption are mutually contradictory and are applied in practice depending on the understanding of the orphans' court staff about the best interests of each child. Furthermore, the Ombudsmen concludes that the restriction imposed on foreign adoption only by the form of out-of-home care is not sufficient to prevent children from foster families from being adopted abroad, because it is possible to change the form of out-of-family care from a foster family to an orphanage. The Ombudsmen mentions that the current regulations of the Cabinet of Ministers stipulate that a child from a guardian's family or foster family may be adopted only by the child's relatives. On the other hand, a child who is in a out-of-family care institution may be adopted abroad if it is not possible to ensure his or her proper upbringing and care in the family in the Republic of Latvia.

As mentioned before, these amendments were made during the previous Minister of Welfare Jānis Reirs, in whose view the policy of protection of children's rights had to be directed so that in the future all children would be adopted only in the Republic of Latvia. However, with the change of ministers, the position on this issue has also changed. The current Minister of Welfare Ramona Petraviča has expressed her conviction that every child should live in a family, even if it is abroad. Here is also important to point out already noted fact that 516 children in out-of-family care institutions have expressed their desire to be adopted, even so there is no data about children in foster families opinion about their desire to be adopted internationally due to the fact that it was prohibited.

States' exclusive rights, in this regard, the Welfare Ministries, Parliaments and other states institutions, to make political decisions regarding out-of-family children's rights and interests, must be made in respect of the institutions' legal competence set in domestic law. It also has a right to make states policy in regard to how out-of-family care should be changed in the future. One of the future policy's plans is a deinstitutionalisation plan which the basic idea is to provide out-of-family care as much as possible more "family" like. Deinstitutionalisation of out-of-family care successfully performed would lead to legal bases of international adoption

ban. UNCRC Article 21 determines the child should, as a matter of priority, have a foster family in their country of origin.

6.1. Deinstitutionalisation plan

The Ministry of Welfare, together with Latvia's planning regions and local governments throughout Latvia, is implementing a project under which local governments will be able to create a wide range of services for children living in social care centres and children with disabilities. The core of the plan is to provide social assistance, care and rehabilitation at the municipality level. In turn, adults with mental disorders according to their abilities and with the support of specialists will be able to choose to live independently and have a job suitable for them. Thus, within the framework of the project, deinstitutionalisation will take place in Latvia - large institutional care centres will be replaced with community-based social services and services close to the family environment.¹³⁸

Every child needs a family. Only in a family can a child receive truly individual love, attention and upbringing. In the family, the child learns what a home is, how to take care of themselves and others, and how to build their own family then. Research has shown that living in an institution or childcare centre has a negative effect on both a child's mental and physical development. Aware of the devastating impact of institutions on the child and his or her ability to live a happy life, the UN Convention on the Rights of the Child provides primarily for every child in out-of-home care to grow up in a family or family environment.

The process of what is planned to be done:

1. For young children left without parental care, new families will be sought - adopters, guardians, foster families. State financial support for these families will also be increased. At the same time, active work will be done so that, if possible, the child can return to his or her family.
2. As it is not possible to find a new family for all children at once and instead of the existing large childcare centres, local governments will be able to create smaller, family-friendly houses with no more than eight children living in one house.
3. Specialised foster families, which, in addition to the existing training, will have specific training for the care of particular children (for example, children with disabilities, young children, etc.) and will pay social contributions for the work of foster families. Thus, children who have recently lost their parents or have not been able to find a new family will also live in an environment that is similar to a real

¹³⁸The Ministry of Welfare webpage information. Available on: http://www.lm.gov.lv/lv/index.php?option=com_content&view=article&id=81579. Accessed June 8, 2020.

family. Specialised foster families allow them to receive individual treatment, which is necessary for the proper child's development and happy life.

4. Special small youth homes will be set up for young people who are about to reach adulthood and who may find it challenging to join a new family. Thus, while still receiving the support of specialists, they will be able to acquire all the necessary skills to be able to y organize their daily and everyday life successfully.¹³⁹

From reviewing the deinstitutionalisation plans' aim, the conclusion can be made that the Republics of Latvia policy regarding the out-of-family care system is aimed to decrease the number of children living in out-of-family care institutions. This plan also involves the right to family for children without parental care, new families will be sought – adopters, noting that big support will be given to foster families, however, the foster families are not permanent family, it is out-of-family care “family alike”. Therefore, my concern is while state policy is supporting foster family care the children’s right to the family will not be fulfilled and therefore, the international adoption should remain as a possibility for out-of-family care children to gain the right to a family. Hopefully, the **child’s best interests as a primary consideration** will be in all actions concerning the child also at the upcoming vote in the Republics of Latvia Parliament in respect of prohibition of international adoption.

¹³⁹The Welfare Ministries webpage. Available on: <http://www.lm.gov.lv/lv/nozares-politika/socialie-pakalpojumi/9-noderiga-informacija/sabiedriba-balstiti-socialie-pakalpojumi-un-deinstitucionalizacija/gimeniska-vide-berniem-kas-palikusi-bez-vecaku-aprupes>. Accessed June 8, 2020.

Final Conclusions

- National courts should seek to interpret domestic legislation consistently with the UNCRC. Even when international treaties have not been incorporated into the domestic law, there is no doubt that “domestic legislation has to be construed as far as possible to comply with international obligations”;
- The EU is not and cannot become a party to the UNCRC, since there is no legal mechanism within the UNCRC to allow entities other than states to accede to it.¹⁴⁰ However, the EU relies on “general principles of EU law” (written and unwritten principles drawn from the familiar, constitutional traditions of the Member States) to supplement and guide interpretations of the EU Treaties (Article 6 (3) of the TEU);
- The EU may only legislate where it has been given competence under the treaties (Articles 2 to 4 of the TFEU). As children’s rights is a cross-sectoral field, EU competence needs to be determined on a case-by-case basis. To date, areas relevant to children’s rights where the EU has extensively legislated are:
 1. data and consumer protection;
 2. asylum and migration;
 3. cooperation in civil and criminal matters.
- The principal aim of the CoE’s children’s rights programme is to support the implementation of international standards in the field of children’s rights by all CoE member states, and in particular to promote the implementation of the UNCRC, highlighting its main principles: **non-discrimination, the right to life and development, the best interests of the child as a primary consideration for decision-makers, and the right of children to be heard;**
- In cases of children in the state care – out-of-family care, the application to ECtHR would require a signature of state officials (due to that the legal guardianship over the child is given to State) which creates controversial paradigm. If state official would petition in the name of out-of-family care children, it would petition against itself;
- ECtHR has stated **that the domestic rules are not always decisive concerning the representation of child.**
- Convention has to be interpreted as **guaranteeing rights which are practical and effective as opposed to theoretical and illusory.**

¹⁴⁰Children’s rights in the EU. Making 30 years of the UN Convention on the Rights of the Child. Available on: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644175/EPRS_BRI\(2019\)644175_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644175/EPRS_BRI(2019)644175_EN.pdf). Assessed May 1, 2020.

- The Republic of Latvia as a member state of the UNCRC and the HRCH has an obligation to provide a legal system which includes institutions and state officials; who respect and protect and promote all children’s rights, including out-of-family care children’s rights and interests;
- Based on the notion, that in some cases international norms become a part of national law and by analogy they can be applied in all other matters as well, we can conclude that **international agreements are directly applicable in courts of Latvia.**
- In the Republic of Latvia, the legal acts which regulate and sets out the regulatory framework of out-of-family care system are Law on the Protection of the Rights of the Child, Orphan’s Courts Law, Ombudsman Law and By-law of Ministry of Welfare.
- The process by which a child can fully integrate into a new family by terminating out-of-family care is **adoption**. As a result of the adoption, all rights and obligations are transferred from the biological parent (or parents) to the adopter, together with the origin of the adopted child.
- Regulation No. 667 “Procedure for Adoption” determines basic principles enshrined in legislation must also be observed when implementing out-of-family care: the priority of the rights and interests of the child; children of the same family are inseparable; child under the age of three must be provided in particular in a family environment; a child in out-of-home care has the right to maintain a personal relationship and direct contact with his or her family; out-of-home care is regularly monitored and reviewed to ensure that it is in the best interests of the child.
- The leading institution that ensures the protection of the child's interests and rights in the municipality level is the **Orphans' Court**. It is an institution which upholds the obligations to give or to subtract guardianship and custody of the child.
- **The Ministry of Welfare of the Republic of Latvia** develops public policy in the field of children’s and family rights, coordinates the supervision of compliance with regulatory enactments.
- **The Inspection for Protection of Children’s Rights** supervises the work of Orphan’s Courts, carry out inspections in any institution regarding the observance of the rights of the child.¹⁴¹ The State Inspectorate for the Protection of the Rights of the Child is an institution of direct administration under the supervision of the Minister of Welfare.

¹⁴¹Law on the Protection of the Rights of the Child. (22 July 1998). Section 65¹. Available on: [https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=\(2\)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law.](https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights#:~:text=(2)%20Children%20have%20the%20right,conformity%20with%20the%20Education%20Law.) Accessed May 1, 2020.

- Oversight of all institutions – state and municipality, is ensured by the **Ombudsman of the Republic of Latvia**.
- The protection of out-of-family care children's rights in the Republic of Latvia is also ensured by **the national courts**. National courts of the Republic of Latvia interpret the norms of domestic legislation and provides a deeper understanding of the norms contained in the law. Supreme Court of the Republic of Latvia has stated that the institution (Orphan's Court) must carry out a case-by-case assessment in cases referred to children's rights.
- Every state-official who encounters or performs his / her work duties related to the rights of the child has an obligation to promote and protect these rights; furthermore, in case of violation of these rights, report the violation to the relevant law enforcement authority.
- Children's rights and interests; from out-of-family care institutions are represented by an Orphan's Courts officials in all criminal, civil and administrative court proceedings.
- **The legal problem:** the existing legal framework of out-of-family children's rights protection and enforcement mechanism is not efficient. Out-of-family care institutions don't have legal guardianship over the children in these institutions. Legal custody is given to the Orphan's Court, who is a state institution and for most of the cases are not even close to the out-of-family care institutions as orphanages. Therefore, out-of-family care children's rights protection and enforcement in court proceedings are not efficient.
- The existing legal norms do not regulate Orphan's Courts duties or obligations after a child has been placed in out-of-family care institution and how out-of-family care children rights are ensured.
- Only state official, other than **Orphan's Court officials**, who as a right to file an application or appeal national court decisions, is **Ombudsmen**. None of these state officials **is, actually, close or taking care of the child**. Therefore, they might even don't know about the violations of children's rights.
- **The proposal of this research paper-** to ensure out-of-family children rights in Latvia, there is a need for legal advocates for children in out-of-family care institutions. During the year 2018, the Ombudsman's Office has received a total of 907 applications in the field of children's rights.
- Every child has an inalienable right to grow up in a family, or if it is not possible, then as much it is possible to have rights to receive care in a family environment.
- Until the year 2018, Procedure of Adoption allowed domestic adoption and foreign adoption from all out-of-family institutions. From the year 2018 on, a foreign adopter

has not been able to adopt a child from a foster family, unless the foreign adopter is a relative of the child. That has created the discrimination practice of treating a particular group – foster children; in adoption cases less fairly than other children in out-of-family care institutions.

- The Minister of Welfare has argued that the changes of the legislation relating to adoption procedure policy was and is a political decision which is a decision taken by an institution within the limits of its legal competence and which does not need to be based on legal considerations. Although, Article 3 of the UNCRC requires that the **child's best interests be a primary consideration in all actions concerning the child.**
- States' exclusive rights, in this regard, the Welfare Ministries, Parliaments and other states institutions, to make political decisions regarding out-of-family children's rights and interests, must be made in respect of the institutions' legal competence set in domestic law.
- Deinstitutionalisation plan is aimed to decrease the number of children living in out-of-family care institutions in the Republic of Latvia.
- While state policy is aimed at supporting foster family care the children's right to the family will not be fulfilled, and therefore, the international adoption should remain as a possibility for out-of-family care children to gain the right to a family.

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Annex No 1

Orphan's Courts overview of cases concerning the deprivation and restoration of child custody and guardianship rights for parents of year 2019. Number of children in out-of-family care on 31 December 2019. Number of adoptable children in out-of-family care institutions.

Kopsaraksts

2. PĀRSKATS PAR BĀREŅU UN BEZ VECĀKU GĀDĪBAS PALIKUŠO BĒRNU ĀRPUSĢIMENES APRŪPI	
2.1. Ārpusģimenes aprūpē esošo bērnu skaits pārskata gada 31.decembrī (vecums gados)	Skaits
2.1.1. Bērnu skaits kopā:	6252
2.1.1.1. no tā bērnu skaits, kuri ievietoti audžuģimenē:	1355
tajā skaitā zēni: 0-3 (ieskaitot)	107
4-12 (ieskaitot)	429
13-17 (ieskaitot)	208
tajā skaitā meitenes: 0-3 (ieskaitot)	101
4-12 (ieskaitot)	313
13-17 (ieskaitot)	197
2.1.1.2. no tā bērnu skaits, kuri ievietoti aizbildņa ģimenē:	4276
tajā skaitā zēni: 0-3 (ieskaitot)	161
4-12 (ieskaitot)	1047
13-17 (ieskaitot)	982
tajā skaitā meitenes: 0-3 (ieskaitot)	159
4-12 (ieskaitot)	933
13-17 (ieskaitot)	994
2.1.1.3. no tā bērnu skaits, kuri ievietoti ilgstošas sociālās aprūpes un sociālās rehabilitācijas institūcijā (turpmāk - aprūpes un rehabilitācijas institūcija):	621
tajā skaitā zēni: 0-3 (ieskaitot)	6
4-12 (ieskaitot)	142
13-17 (ieskaitot)	229
tajā skaitā meitenes: 0-3 (ieskaitot)	8
4-12 (ieskaitot)	81
13-17 (ieskaitot)	155
2.1.2. Bērnu skaits, kuri uzturas aprūpes un rehabilitācijas institūcijā ilgāk par trīs mēnešiem:	32
tajā skaitā zēni: 0-3 (ieskaitot)	3
4-12 (ieskaitot)	8
13-17 (ieskaitot)	6
tajā skaitā meitenes: 0-3 (ieskaitot)	2
4-12 (ieskaitot)	3
13-17 (ieskaitot)	10
2.1.3. Bērnu skaits, kuri uzturas aprūpes un rehabilitācijas institūcijā ilgāk par sešiem mēnešiem:	569
tajā skaitā zēni: 0-3 (ieskaitot)	3
4-12 (ieskaitot)	132
13-17 (ieskaitot)	213
tajā skaitā meitenes: 0-3 (ieskaitot)	5
4-12 (ieskaitot)	73
13-17 (ieskaitot)	143

Kopsaraksts

2.1.4. Bērnu skaits, par kuriem aizbildņi nav devuši piekrišanu adopcijai, kopā:	3148
tajā skaitā zēni: 0-3 (ieskaitot)	114
4-12 (ieskaitot)	762
13-17 (ieskaitot)	748
tajā skaitā meitenes: 0-3 (ieskaitot)	79
4-12 (ieskaitot)	687
13-17 (ieskaitot)	758
2.2. Adoptējamo bērnu skaits, kuri pārskata gada 31.decembrī atradās ārpusģimenes aprūpē (audžuģimenē, aizbildnībā (tikai tie bērni, kuru aizbildņi ir devuši piekrišanu bērna adopcijai citā ģimenē), aprūpes un rehabilitācijas institūcijā) (vecums gados):	Skaits
2.2.1. Adoptējamo bērnu skaits kopā:	1091
tajā skaitā zēni: 0-3 (ieskaitot)	14
4-12 (ieskaitot)	333
13-17 (ieskaitot)	295
tajā skaitā meitenes: 0-3 (ieskaitot)	21
4-12 (ieskaitot)	201
13-17 (ieskaitot)	227
2.2.1.1. no tā bērnu skaits, kuri nepiekrīt adopcijai vispār:	575
tajā skaitā zēni: 0-3 (ieskaitot)	0
4-12 (ieskaitot)	165
13-17 (ieskaitot)	173
tajā skaitā meitenes: 0-3 (ieskaitot)	0
4-12 (ieskaitot)	100
13-17 (ieskaitot)	137
2.2.1.2. no tā bērnu skaits, kuri nepiekrīt adopcijai uz ārvalstīm:	51
tajā skaitā zēni: 0-3 (ieskaitot)	0
4-12 (ieskaitot)	17
13-17 (ieskaitot)	10
tajā skaitā meitenes: 0-3 (ieskaitot)	0
4-12 (ieskaitot)	12
13-17 (ieskaitot)	12

Annex No 2

Orphan's Courts overview of cases concerning the deprivation and restoration of child custody and guardianship rights for parents, adoption cases of year 2017 till 2019.

<i>Ārpusģimenes aprūpe Latvijā</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
<i>Iedzīvotāju skaits Latvijā:</i>	1 950116	1 934379	1 919968
- bērnu 0-17 gadi skaits	356 527	358 762	358 813
- % no iedzīvotāju skaita	18.28 %	18.54 %	18.7%
<i>Bērnu skaits ārpusģimenes aprūpē:</i>	6669	6438	6252
- audžuģimenēs	1173	1246	1355
- aizbildnībā	4459	4398	4276
- aprūpes iestādēs	1037	794	621
- adoptēti Latvijā	127	102	108
- adoptēti ārvalstīs	69	50	42
<i>Aizbildņu skaits</i>	3560	3450	3395
- no tiem „svešie” aizbildņi	800	713	738
<i>Audžuģimeņu skaits</i>	600	636	712
- no tām „tukšās” audžuģimenes	97	97	107
<i>Aprūpes iestāžu skaits</i>	48	43	35
<i>No audžuģimenēm pārvietoto bērnu skaits:</i>			
- citā audžuģimenē	26	36	73
- aprūpes iestādē	32	21	42
- aizbildnība	66	67	78
- adoptēti	96	72	68
- atgriezti bioloģiskajiem vecākiem	50	82	92
<i>No aizbildniecības pārvietoto bērnu skaits:</i>			
- pie cita aizbildņa	56	45	35
- audžuģimenē	17	40	34
- iestādē	41	29	23
- adoptēti	39	35	36
- atgriezti bioloģiskajiem vecākiem	134	140	153
<i>Bērni, par kuriem bāriņtiesa pieņēmusi lēmumu, ka adopcija ir bērna interesēs</i>	239	225	204
<i>Bērni, kuri nodoti adoptētāja aprūpē</i>	155	118	110
<i>Bērni, kuru uzturēšanās adoptētāja aprūpē pārtraukta</i>	20	14	16
<i>Bērni, par kuriem bāriņtiesa:</i>			
- pieņēmusi lēmumu par adopciju uz ārvalstīm	113	46	44
- atcēlusi lēmumu par adopciju uz ārvalstīm	6	3	0