



WOMEN  
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EUROPE



# Guidelines for safeguarding and empowering children

Basic principles, key areas of action and  
procedures for women's specialist services



**ANNEXES**

## IMPRINT

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## Guidelines for safeguarding and empowering children Annexes

<b>Annex I. Country specific Legal Framework</b>	<b>4</b>
1. Croatia	4
2. Germany	5
3. Hungary	5
4. Malta	7
<b>Annex II. Country specific overall state of Child safeguarding in Child protection services</b>	<b>8</b>
1. Croatia	8
2. Germany	10
3. Hungary	10
4. Malta	11
<b>Annex III. Country specific key external agencies involved in working with children involved with Women's Specialist Services</b>	<b>13</b>
1. Croatia	13
2. Hungary	14
3. Germany	15
4. Malta	15



## Annex I. Country specific **Legal Framework**

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### 1. Croatia

Child safeguarding is ensured through the Criminal Code, the Family Law and the Social Welfare Act.

The Criminal Code defines as an aggravated form for many crimes in cases where the crime was committed against a child or a minor. Also, there are specific criminal acts concerning child pornography (Article 165), sexual abuse of children (Article 166), common law marriage with a child (Article 170), failure to provide child support (Article 172. para 2), failure to enforce child protection measures (Article 173), taking away the child from the parent or caretaker (Article 174), child abandonment (Article 176), violating the child's rights or abusing them (Article 177), violence in the family (Article 179.a).

The Family Law states that *"The courts and public bodies conducting proceedings in which decisions are made on the rights of the child must first and foremost protect the rights and welfare of the child."* (Article 5)

Furthermore, the Family Law prescribes that the child has a right to both parents, unless that is contrary to the best interest of the child (Article 6).

In case of divorce, parents can decide together where the child will live, who will have custody, about child contact and child support. This however rarely happens in the cases of domestic violence.

The Centre for Social Welfare (CSW) can take away parental rights in case of violence (Article 171). They can also deny shared custody and limit contacts, and have contacts under supervision. In practice, they almost never take away parental rights. CSW can issue a measure of protection of children (taking the child away from the family) or suggest another measure to the court. They can also report the violence. If there is a restraining order against the father that includes the child, contact is forbidden. If there is a restraining order against the father protecting just the woman, child contact can be carried out under supervision.

In case of divorce, the partners are required to undergo consultations about the divorce at the CSW (mandatory conversation with the CSW team, regarding mostly children). It is mandatory if the couple

has children (Article 54 para 1). If the parents do not reach an agreement by the end of the mandatory consultation process at the CSW, they have to report to the first session of family mediation (Article 54 para 4).

The parent who does not report to the first session of mediation, loses the right to file for divorce at the court, except in cases stipulated in Article 332. This Article 332 para 1 states that family mediation will not be mandatory in cases of a claim of domestic violence. However, it is based on the judgement by the CSW team on whether the partners can participate equally or not, and violence against the mother is not taken into account. In practice, the CSW often uses this to force the women to go into family mediation, otherwise they lose the right to file for divorce at court.

## 2. Germany

In Germany there are extensive regulations on the protection of violence and children. These include: police expulsion (state laws), allocation of housing under civil law, the Protection against Violence Act, penal laws, Article 3 of the UN Convention on the Rights of the Child (priority of the child's welfare over other legal positions worthy of protection), the Act on the Prohibition of Violence in Childrearing (as a guideline for family and youth welfare law), the Federal Child Protection Act (protection of children against sexualised violence, domestic violence, neglect, etc.).

## 3. Hungary

■ **Fundamental law (Constitution)** – Article XV (5), Article XVI: special protection and care for children

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■ **UN Convention on the Rights of the Child** – ratified by Hungary

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■ **Act No XXXI of 1997 on the protection of children and guardianship administration:**

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- a. Definition of “endangerment”
  - b. Children's rights
  - c. Article 17: lists the actors who perform tasks in relation to the child protection system: health service providers, public education institutions, police, prosecutors office, courts, government offices acting in their child protection and guardianship role, etc. These actors shall notify the child welfare service provider in case of endangerment of the child. They shall initiate proceedings in case of abuse, serious neglect, or other serious endangering reasons. They shall cooperate with each other and keep each other informed in order to facilitate the upbringing of the child in the family and to prevent and eliminate endangerment.
  - d. The act sets the role and obligations of child welfare services (and centers). A child welfare service is a special personal social service that protects the interests of the child, that serves to promote the child's physical and mental health and upbringing in the family, to prevent and end child's endangerment, and to return a child removed from his or her family.
  - e. The child welfare services are obliged to operate the endangerment detection and alert system; the identification of the causes of endangerment and preparation of a proposal for their solution, and to organise cooperation between the actors tasked with child protection (listed in Article 17 of the Act) coordinating their activities.
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■ **The Civil Code** (Act V of 2013) contains IV. Book on family law.

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- a. Among the principles 4:2. § is on “provisions of the protection of the child interest”.
  - b. A specific title of the Act regulates parental authority: general principles, content of parental authority, exercise of parental authority (rights and obligations of separated parent, child contact), suspension and termination of parental authority.
  - c. The act authorises the court or guardianship authority to oblige the parents to attend mediation in order to ensure the proper exercise of parental authority (including child contact), and their cooperation being necessary for this purpose. 4:172. §, 4:177. §
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■ **The Government Regulation No. 149/1997 (Xi. 10.) on guardianship authorities and on child protection and guardianship procedures** contains provisions on the exercise of parental authority, the visitation cases (including ordering mediation, or limiting, suspending or terminating visitation rights).

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■ **Criminal Code (Act No. C of 2012)**. Some relevant offences are:

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- a. Endangerment of the child (208. §)
  - b. Domestic violence (“violence in relationship”) (212/A. §)
  - c. Hindering child contact (210.§)
  - d. Child labour (209. §)
  - e. Changing the placement of the minor (211. §)
  - f. Not providing alimony (for children) (212. §)
  - g. Violation of legal family status (213. §)
  - h. Sexual coercion (197. §)
  - i. Sexual violence (198. §)
  - j. Incest (198. §)
  - k. Exploitation of child prostitution (203.§)
  - l. Child pornography (204. §)
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In several criminal offences if the act is committed against a victim who has not reached the year of 18 or 14, or if the act is committed against a victim who is under the care, upbringing or supervision of the offender, that is considered as an aggravating circumstance, with a higher punishment.

■ The **Code of Criminal Procedure** (Act No. XC of 2017): children are considered automatically as victims with special needs - thanks to the transposition of the EU Victims’ Rights Directive.

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■ **Act LXXII of 2009 on restraining applicable for violence between relatives**

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## 4. Malta

- **Minor Protection (alternative care act)**, Chapter 602, Laws of Malta. This law specifically deals with child protection and also necessitates mandatory reporting <https://legislation.mt/eli/cap/602/eng>

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- **Article 149, Civil Code**, Chapter 16, Laws of Malta dealing with the best interest of the child. This gives discretion to the court to determine what would be in the best interest of the child <https://legislation.mt/eli/cap/16/eng>

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- **Article 56A, Civil Code, Chapter 16, Laws of Malta**, states that children witnessing violence is to be considered a grave reason for one parent to request and be awarded care and custody of the child

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- **Criminal Code, Chapter 9**, Laws of Malta. Some relevant offences are:
  - Neglect and ill treatment of children (Article 247a)

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  - Subtitle IX dealing with threats, Private and harassment. All these forms of violence are to be aggravated if committed against a minor

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  - Child maintenance (Article 338z)

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  - Child Access (Article 338 II)

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  - Not looking after the children when duty bound to do so (Article 339j)

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  - Child labour (Article 248 DB)

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  - Prostitution of minors (Article 197)

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  - Defilement of minors (Article 203)

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  - Trafficking of minors (Article 248d)

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  - Offences related to rape, pornography and non consensual acts of a sexual nature are aggravated in punishment if they are done to minors

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- **The Convention on the rights of the child**

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- **The Convention on the Protection of Children against sexual exploitation and sexual abuse** (Lanzarote convention)

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- **The Istanbul Convention**

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## Annex II. Country specific **overall state** of Child safeguarding in Child protection services

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### 1. Croatia

According to Croatian Family Law, *“Courts and public legal bodies that conduct proceedings in which decisions are made directly or indirectly about the rights of the child must first of all protect the rights of the child and their well-being.”*<sup>1</sup>. In case of a divorce, the custody is presumed to be shared, with the child or children living usually with one parent, while the other parent has contact and pays for child support. The proceedings are done in agreement, and if there is no agreement, the Centre for Social Welfare will refer the parents to mediation, except in cases of domestic violence. Regarding protection of children, everyone is obliged to report to the Centre for Social Welfare violation of the child’s personal and property rights, which includes violence and neglect (Article 132).

Article 134 of the Family Law proscribes measures for protection of the child. These measures are: the measure of separating and placing a child outside the family, warning of errors and omissions in child care and measures of oversight.

In implementation, regarding state institutions, while officially children are a priority in cases of violence, their rights are often not upheld successfully because the rights of the violent father, specifically the so-called right of the child to both parents takes precedence, even to the detriment of the child. WSS run by women’s NGOs are the general exception to this rule.

Custody is already shared in Croatia, except in very few exceptions, but the parents need to reach an agreement. In contrary, the court makes the decision. Based on child custody arrangements, the child is usually physically living with one parent, while it has contacts with the other parent.

Centres for Social Welfare can take away parental rights in case of violence (Article 171). They can also deny shared custody and limit contacts, or have contacts under supervision. However, in practice, they almost never take away parental rights and prefer to limit the contacts by ordering supervised visits in

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1 Family Law, Official Gazette of Republic of Croatia, 103/15, 98/19, 47/20, Art. 5.



some cases. They can also report the violence. If there is a restraining order against the abusive father that includes the child – contact is forbidden. If there is a restraining order against the abusive father protecting just the woman – child contact can be carried out under supervision with a goal to restore the relationship between abusive father and child through supervision.

The courts use the principle that the child has a right to both parents and insists on preserving contact with both even when the parent is abusive. In practice this translates into upholding father's rights to have contact or even custody of the child (even when he is abusive and the child is afraid of the father). If the child refuses contact, the mother can be blamed by the perpetrator and the Centre for Social Welfare. There have even been cases of the court ordering contact to take place where the father can pick up the child at the shelter, therefore endangering everyone who lives and works there.

Fathers often pressure the centres/courts to establish immediate contact, even when the woman and children are at the shelter.

Women victims of violence are often put into difficult positions in lengthy court divorce proceedings due to the use of so-called „parental alienation syndrome“<sup>2</sup> by the perpetrators, their lawyers, CSWs, courts and other institutions. They are even subjected to criminal proceedings where they are accused as "alienating parents" if the child does not want to maintain a personal relationship with the abusive parent. This concept is used by the Polyclinic, and consequently by the CSWs and the courts, as a tool to proclaim the authentic statements of children about the violence they experienced as manipulation by one parent (usually the mother) and remove them from the court case. The unscientific concept of „parental alienation“ has been the basis for a number of proposals to take away custody over children from their abused mothers or to prosecute women or order their return to another country from which they fled because of violence.

A series of newspaper articles related to the work of the Polyclinic and the concept of child alienation published by the H-alter portal entitled "System for the protection or abuse of children"<sup>3</sup>, exposed this harmful practice of the Polyclinic and other institutions. After numerous negative reactions from professionals and the public, the director of the Polyclinic resigned, and the Polyclinic's work is under review. The Ministry of Labour, Pension System, Family and Social Policy received a number of complaints about the work of various CSWs which uncritically made allegations against women victims of violence, calling them the manipulative, alienating parent, and thus fundamentally jeopardised their positions in court proceedings. In one of these complaints, the Ministry conducted an extraordinary administrative inspection, and identified a number of serious shortcomings of the CSW and issued an instruction not to: *"...provide qualifications on parties that do not have a scientific basis from the existing International Classification of Diseases and Related Health Problems (ICD-10), such as listing a specific child alienation syndrome and qualifying a mother as a parent who has emotionally alienated children."*<sup>4</sup>.

Despite the instructions, the CSWs continue to work in the same way, ignoring this warning, expressing views that this is political pressure and continue to use the concept of alienation, adapted in a way that does not expressly use the word "alienation". Complaints to the State Attorney's Office to suspend criminal proceedings against women based on the concept of 'alienation' are rejected and criminal proceedings against women continue. Through long-term training of the judiciary and CSWs by the Polyclinic,

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- 2 **Parental alienation syndrome** (PAS) is a term for an unscientific concept introduced by child psychiatrist Richard Gardner in 1985, describing a situation where one parent is using psychological manipulation or undue influence over a child to distance him/her from the other parent.
  - 3 Portal H-alter: "Sustav za zaštitu ili zlostavljanje djece?" (System for the protection or abuse of children), a series of articles, accessed on August 15, 2022, available at <https://h-alter.org/ljudska-prava/sustav-za-zastitu-ili-za-zlostavljanje-djece/>
  - 4 Ministry of Labour, Pension, Social Policy and Family: Instructions after the conducted administrative and inspection supervision, 2021.

this has now become a serious systemic problem where these institutions continue to use this scientifically unrecognised concept, impacting especially women victims of violence and their rights.

The employees of the CSW misinterpret Article 31 in a manner that is contrary to the preamble of the Istanbul Convention because they point out it as a guarantee of the violent father's right to see the child despite the fact that the true meaning is to protect the victim of violence and children.

Also, courts determine meetings in an uncontrolled environment (e.g., parking lot of supermarkets) and thus give the perpetrators the opportunity to further victimise victims and violate imposed precautionary measures in criminal proceedings.

## 2. Germany

Aligning protection against violence with family law and parental custody rights has not been successful, neither in law nor in practice. Acts of violence against women and children and cases of abuse against children are not given priority over the rights of the violent person when decisions in parent-child proceedings are made. Research, literature and professional practice have clearly and soundly described the dilemma of the lack of alignment of violence protection measures and the statutory provisions. However, it is not possible to implement these findings across the board in family court practice and the work of child and youth welfare offices.

In Germany there are extensive regulations on the protection of violence on children. However, these are not sufficiently used for the benefit of the women and children affected by violence. Acts of violence are trivialised (“that happens once in a while”) or death threats are not believed (“that was not meant seriously”). When police evictions or court orders to protect against violence are issued, those affected by violence continue to be at risk if the perpetrators do not stop or because compliance is not monitored. Underestimating the danger leads to situations where instruments to protect against violence do not reach into the area of child protection and are not considered to serve the well-being of the child.<sup>5</sup>

## 3. Hungary

The protection, the interest/best interest of the child is set out in the national legislation. A child protection alert system is established by the legislation for prevention and response to child endangerment, and the relevant professionals are obliged to cooperate with each other.

In practice, a core question is how the authorities and service providers interpret and apply the concepts of the interest/best interest of the child, or endangerment.

Experience and related research of women's rights NGOs active in the field of response to violence against women and domestic violence have identified a number of shortcomings in the system.

The key concerns are:

- There are shortcomings in knowledge, attitudes and competence of the relevant professionals in the field of violence against women, intimate partner violence, and its effect in children.

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<sup>5</sup> Quoted from the Alternative Report from the German Istanbul Convention Alliance, February 2021, available at: <https://rm.coe.int/alternative-report-2021-german-istanbul-convention-alliance/1680a1f12b>

- Victim blaming appears among different authorities/institutions/service providers.

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- Authorities/service providers often do not examine, or do not take seriously previous history of violence, there is a lack of related (risk) assessment, or risk management.

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- If violence is directed 'only' towards the other parent, its effect or exposure of children is not recognised.

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- The visitation rights of the fathers are prioritised over the safety of the children and non-battering/battered mothers – forced visitation is a problematic practice. Mothers often face administrative fines, or might face criminal offence – even risk losing custody – if they try to protect children by not allowing visitation.

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- In past years the killing of children by violent fathers during visitation - even by a previously convicted perpetrator, or when there had been several reports by the mother to the police on violence – showed a serious systemic problem in the field.

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- It is often reported that the perpetrators of domestic violence are threatening, or put pressure on authorities, officials working on the cases.

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- Although there is a child protection alert system, there are shortcomings in how it works in practice (as different sources also revealed).

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- The different proceedings being in place in case of domestic violence (civil/family/child custody, visitation, and criminal) are not interlinked.

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- There is no cooperation between the institutional system/service providers to provide accommodation and other services for victims of domestic violence and the women's rights NGOs working in the field.

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- The women's rights/feminist approach is criticised and even falsely introduced in a training material for strengthening the cooperation of actors in the child protection alert system, developed under the Family Friendly Country Nonprofit Ltd., through a priority project using EU Social Fund resources.<sup>6</sup>

## 4. Malta

The safeguarding of children falls under the remit of the Directorate for the Child Protection Services. The Directorate has the duty to 'ex officio' investigate any harm or risk in relation to minors and take any action accordingly. It has also become mandatory for any professional that may be aware of children being at risk of abuse to immediately report to the directorate.

The courts are also tasked with ascertaining the protection of minors, not only in that they determine whether a minor is to be put under a care order, but also in those cases where there is ongoing separation, divorce or issues related to disputes with regards to the care and custody of children.

In practice, when the Directorate becomes aware of any harm that children are exposed to and the parents are in ongoing court proceedings, then the reporting parent is asked to take the matter to the court and they will only be involved if the court orders their involvement.

6 A GYERMEKVÉDELMI JELZŐRENDSZERI TAGOK EGYÜTTMŰKÖDÉSÉNEK ELŐSEGÍTÉSE  
 Related resources, analysis in Hungarian of women's rights NGOs working in the field: Főbb szakmai tapasztalatok és javaslatok a gyermekvédelmi jelzőrendszer működése és a kapcsolati erőszakra vonatkozó j [https://nokjoga.hu/wp-content/uploads/Eszrevetelek\\_javaslatok-a-Csaladjogi-Szakertoi-Munkacsoport-szamar\\_2\\_NANE\\_PATENT\\_Noi-Erdek.pdf](https://nokjoga.hu/wp-content/uploads/Eszrevetelek_javaslatok-a-Csaladjogi-Szakertoi-Munkacsoport-szamar_2_NANE_PATENT_Noi-Erdek.pdf)  
 Észrevételek, javaslatok a Családjogi Szakértői Munkacsoport Összesített munkaanyagának tervezete kapcsán  
 Észrevételek a Családjogi Jogalkalmazási Munkacsoport anyagához

One of the main concerns that is often raised by the court and at times by the Directorate of the children protection is the so called 'parental alienation'. In the majority of the cases, whenever a mother reports to the court that she is ongoing abuse by the father or even that the father is being directly abusive towards the children, it has become a trend to invoke parental alienation by the fathers. This is often pandered to by the courts and as a result, the courts tend to detract from the root of the cause, that being the abuse committed by the father, and go as far as accusing the mother that she is indeed alienating the children from their father. In most cases the courts appoint expert professionals to relate back to the court whether there is alienation or whether the children should have contact with the father. Very worryingly these experts often determine that there is alienation, completely disregard or even acknowledge that there is abuse being committed by the father and at times advise the court that the children should be taken away from the mother.

On the matter of parental alienation, the Directorate for Children Protection Services have issued mandatory reporting guidelines<sup>7</sup>, where they note parental alienation as one form of child maltreatment and have been associated with vicarious abuse. This is of grave concern, given that vicarious abuse and trauma are main forms experienced by mothers of intimate partner violence. So we now have a situation where abused mothers are being accused of the very form of violence experienced by themselves.

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7 Technical Committee "Mandatory Reporting Guidelines for professionals in terms of Minor Protection (Alternative Care) Act, Cap. 602 of the Laws of Malta", September 2020, available at: <https://family.gov.mt/wp-content/uploads/2021/05/Mandatory-Reporting-Guideline-Alternative-Care-Act-Document-13.04.21.pdf>



## Annex III. Country specific **key external agencies** involved in working with children involved with Women's Specialist Services

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### 1. Croatia

A primary external agency working with children involved with Women's Specialist Services (WSS) is the Centre for Social Welfare (CSW), which is involved in the process of divorce, particularly child custody recommendations and arrangements. During the divorce procedures, they give their opinions to the court as to how custody should be arranged, the arrangement for contacts, including supervising contacts. The CSW may also issue and enforce special measures, such as supervision of parental rights, as well as oversight where they visit the family and perform evaluations of the relations in the family, and parenting. In cases of intimate partner violence, the CSWs are obliged to report the violence to the police.

Another important external agency is the police who intervenes in cases of domestic violence and other forms of violence against women. They may also question the children as victims. They enforce protection orders which sometimes also include children.

The courts decide on custody, child contact, and any measures, including protection orders.

The Polyclinic for abused children performs evaluations and gives expert opinions in cases of domestic violence/violence against women and children which greatly affect the result of the divorce trials in the area of child custody and child contact. Now the Polyclinic for abused children is under investigation after a highly publicised series of articles on the use of the so-called Parental Alienation Syndrome in divorce proceedings, which the polyclinic promoted.

Ombudsperson for children's rights advocates for the protection and promotion of children's rights and for the prevention of harmful actions that threaten their interests. It can also participate in the procedure that precedes the adoption of regulations related to children's rights or which regulate issues of importance for children, and can encourage the adoption and changes of laws and other regulations related to the rights and protection of children.

## 2. Hungary

In addition to the act on ratification of the UN Convention on the Rights of the Child, the right and protection of children and the related framework, system and measures are regulated by the Act No. XXXI of 1997 on child protection and guardianship administration. The Act on child protection (Article 17), lists all the professions/professionals that perform tasks related to the child protection system in order to strengthen the upbringing of the child in the family, and to prevent and end the endangerment of the child, including the health care service providers, services providing in-person care, public education institutions, police, courts, etc.. These actors shall a) notify/send an alert to the child welfare service provider, if a child being at risk, b) initiate an official procedure in case of abuse or serious neglect of the child or the existence of other serious endangering reasons, as well as the child's self-inflicted serious endangering behavior. They shall also cooperate with and mutually inform each other in order to strengthen the upbringing of the child in the family, and to prevent and end the endangerment of the child.

A similar notification/alert system is regulated by the Act No. LXXII of 2009 on restraining applicable for cases on violence between relatives. That determines the actors performing tasks in relation to prevent violence between relatives, and sets a notification/alert system. In that system "the body responsible for family protection coordination" plays a central role. Based on the law, the notary of the respective local government is acting as such body for coordination.

In Hungary, the organised services providing accommodation and other care for and assistance to the victims of domestic violence are part of the child protection/social institutional system. They are regulated by the Act on child protection. These services are not defined as women-only/women's specialist services, although some accept only women. (It is not publicly known how many of such women-only centers exist and with how many beds they operate). There is no cooperation between these services and women's rights NGOs providing other kind of support and assistance to victims of violence against women and domestic violence.

The services providing accommodation for domestic violence victims are: crisis intervention centres, secret shelters and halfway houses.

Walk-in services for the victims are the "crisis ambulances", where survivors of domestic violence can get consultations without accommodation. The National Crisis Intervention and Telephone Service (OKIT) helpline provides support to survivors of domestic violence, child abuse, sexual exploitation, and human trafficking. OKIT plays a central role in organising the accommodation of victims who are in a crisis situation. (See more details in the WAVE Country report.)

In the case of children, the Barnahus model originated from Iceland has been introduced and adapted in a few places in the country. This model has been adapted with no involvement of women's rights NGOs working in the field, and these NGOs have gained negative experience with the operation of that model, due to the lack of understanding and knowledge about VAW by those who operate those services.

In Hungary, the services available for victims of violence against women that follows a women's rights approach are operated by women's rights NGOs, primarily by NANE Women's Rights Association and PATENT Association. The services of these NGOs are limited with their scope and capacity. Permanent services include helplines. Other services such as support groups for victims are dependent on available human and financial resources.

### 3. Germany

In Germany, the youth welfare offices are involved as authorities when violence has occurred. If there is a police intervention in the family, they are usually informed automatically. The task is to have the best interests of the child in mind.

Schools, kindergartens and the medical sector are also obliged to report to the youth welfare office if they perceive a child's welfare to be at risk.

In both cases, of course, there is always the question of what the youth welfare office does with this information and if they work on behalf of mother and child.

There are also WSS such as counselling centres that provide advice specifically on the effects of violence on children and keep an eye on their needs.

Besides, there are a large number of NGO advice centres in Germany that offer advice on the subject of children. This can be educational advice, but also dealing with crises, violence, etc.

### 4. Malta

Both the shelter's policy and the law require that the shelters have a child safeguarding policy. The policy is based on the:

- Minor Protection Act (laws of Malta that require mandatory reporting)
- Congregational policy – uniform service (one of the shelters belongs to the Good Shepherd Nuns)
- and both shelters part of the network are catholic faith based run and they follow the Church Safeguarding (as well as receive training and certified)



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