**UN Committee on the Rights of the Child**

**2021 Day of General Discussion**

## **«Children’s Rights and Alternative Care»**

**Roman Zhavoronkov**

**Director of Disability Studies Foundation**

**Doctor of Juridical Sciences, Docent**

**Person with disability (cerebral palsy)**

javoronkov@mail.ru

**Written submission**

## **«Rights of children with disabilities to Alternative Care**

**in connection with the Covid-19 pandemic and other emergencies»**

Contents

1. Introduction

2. Rights of children with disabilities to alternative care

3. Alternative care standards

4. Measures to respect the right of children with disabilities to alternative care in case of emergency

**Introduction**

Understanding the impact of the COVID-19 pandemic on children’s rights and alternative care on a global scale and lessons learnt in terms of preparedness and response this report focuses on the most vulnerable category of children - children with disabilities.

The COVID-19 pandemic is having the strong impact on children with disability and there families. Obviously that the number of children with disability at risk of separation and in need of alternative care will be much more than the number of other children – both during the crisis, where containment measures may lead to separation of children from families, and as a result of the long-term socioeconomic impact of the COVID-19 crisis on families’ capacity to care.

The author is a person with a disability (cerebral palsy). He is a Doctor of Juridical Sciences specializing in the rights of persons with disabilities. Since 1993 he has been working to protect the rights of persons with disabilities in Russia. He has more than 90 publications in this area. He teaches at the Kutafin Moscow State Law University (MSAL).

**Rights of children with disabilities to alternative care**

 Many of the articles of the Convention on the Rights of the Child (CRC) are relevant to children in, or at risk of being placed in, alternative care. There are certain rights which are more likely to be under scrutiny or to be violated for children at risk of family separation or living in alternative care.

 In the context of the DGD on Alternative Care, it is therefore worth calling attention to a number of specific rights and principles with links to this theme:

-the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community (The Preamble of the CRC);

-the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding (The Preamble of the CRC);

-States must respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, with due consideration also given to children’s evolving capacities (Article 5);

-children should not be separated from their parents against their will unless their duly determined best interests so require, decided by the competent authority and subject to judicial review (Article 9);

-children must be protected from all forms of violence, abuse and neglect in all settings, including in the family and in alternative care (Article 19);

-children who are temporarily or permanently deprived of their family environment or in whose own best interests cannot be allowed to remain in that environment, come under the direct responsibility of the State which must provide them with special protection and assistance, including by ensuring that appropriate alternative care is provided (Article 20);

**-аrticle 23 outlines the rights of children with disabilities to live a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation;**

Some certain articles of the Convention on the Rights of Persons with Disabilities (CRPD) are relevant to *all* children with disabilities in alternative care or at risk of family separation:

-children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalls the obligations to that end undertaken by States Parties to the Convention on the Rights of the Child (The Preamble to the CRPD, paragraph 18);

-general principles of the CRPD, including, non-discrimination, full and effective participation and inclusion in society, and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities (Article 3);

-**children with disabilities have equal rights with respect to family life, that they should not be separated from their parents against their best interests, and never on grounds of disability; and, if alternative care is necessary, every effort should be made to provide it within the wider family, or within the community in a family setting (Article 23).**

Thus, the rights of children with disabilities are enshrined in two UN Conventions and a number of other international instruments.

The national legislation of the Russian Federation complies with the basic principles enshrined in international treaties.

The main normative acts of the Russian Federation in this area:

-federal laws of November 24, 1995 No. 181-FZ "On Social Protection of Persons with Disabilities in the Russian Federation"; dated December 28, 2013 No. 442-FZ "On the basics of social services for the population in the Russian Federation"; No. 178-FZ of 17 July 1999 on State social assistance; No. 81-FZ of 19 May 1995 on State benefits for citizens with children; dated February 26, 2013 No. 175 "On monthly payments to persons caring for children with disabilities and disabled people from childhood of group I";

-decrees of the Government of the Russian Federation of July 16, 2016 N 674 "On the formation and maintenance of the federal register of disabled people and on the use of the information contained in it"; No. 1236 of 24 November 2014 approving an indicative list of social services by type of social services; No. 797 of 30 May 2020 on the approval of the Rules for the Implementation of Special Payments to Citizens Who Accept Persons with Disabilities, Elderly Citizens, Orphans and Children Deprived of Parental Care for Accompanied or Temporary Residence (under Temporary Guardianship);

-orders of the Ministry of Labor and Social Protection of the Population of the Russian Federation dated November 24, 2014 N 938n "On Approval of the Approximate Procedure for the Provision of Social Services in a Semi-Stationary Form of Social Services"; No. 939n dated November 24, 2014 "On Approval of the Model Procedure for the Provision of Social Services in the Form of Social Services at Home"; No. 219 of 5 May 2016 on the approval of methodological recommendations for the development of a network of social service organizations in the constituent entities of the Russian Federation and the provision of social services to recipients of social services, including in rural areas; No. 351n dated April 12, 2017 "On Approval of the Professional Standard" Assistant (Assistant) for the Provision of Technical Assistance to Persons with Disabilities and Persons with Disabilities "; dated December 21, 2017 No. 861 "On the approval of methodological recommendations on the organization of social services and social support for citizens who have completely or partially lost the ability to carry out self-care, move independently, and provide them with medical care."

**Alternative care standards**

The Guidelines for the Alternative Care of Children were welcomed by the UN General Assembly and are grounded in children’s rights as well as in best practice in child protection and alternative care.

The Guidelines are based around two core principles: necessity (which is about assessing whether alternative care is genuinely needed) and suitability (which is about ensuring that alternative care, when necessary, is appropriate for each individual child, that it responds to the specific reasons why the child came into care, and to their individual needs, wishes, and circumstances).

The main normative acts of the Russian Federation in this area:

-Order of the Ministry of Labor of Russia dated December 8, 2014 N 995n "On approval of indicators characterizing the general criteria for assessing the quality of services provided by social service organizations";

-National standard "Social services for the population. Social inpatient services for elderly and disabled citizens. GOST R 58962-2020”.

**Recommendation for actions to respect the right of children with disabilities to alternative care in case of emergency**

The pandemic is disrupting child care and protection systems and services with far ranging implications for their provision as well as ongoing efforts to strengthen and reform them.

It is important to draw lessons from the impact of the COVID-19 pandemic on children’s with disabilities care for possible future public health, social and environmental global crises and to provide quality alternative care for children with disability, including the efforts to strengthen and reform alternative care systems.

States should develop a system of measures to ensure respect for the rights of children with disabilities in emergency situations. The system should provide that local authorities keep records of children with disabilities and their families. In case of emergencies, a plan should be developed to evacuate families with children with disabilities to places adapted for persons with disabilities. These can be rehabilitation centres, temporary shelters, etc. In these places, qualified medical and rehabilitation assistance should be provided to children with disabilities. The developed plan should provide for the foster family to which a child with a disability can be transferred if relatives are unable to care for them for various reasons (death, serious illness, etc.). If it is impossible to transfer a child with a disability to a foster family, the plan should provide for a specific specialized institution in which the child will be temporarily placed. This should be an institution specializing in the rehabilitation of children with disabilities who have the same nosology that this child has (an orphanage for children with disabilities, a specialized boarding school, etc.). At the earliest opportunity, a child living in such an institution must be brought up by his relatives. If it is impossible to do this, the child is transferred to foster care.