

Children's Rights in the
Sustainable and Digital
Environments:
Exploring Opportunities

edited by **Suzana Kraljić & Cocou Marius Mensah**



University of Maribor

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Children's Rights in the Sustainable and Digital Environments: Exploring Opportunities and Challenges

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Foreword

SUZANA KRALJIĆ, COCOU MARIUS MENSAH

Monograph editors

On November 20, 2024, the world celebrated the 35th anniversary of the United Nations Convention on the Rights of the Child (UNCRC), the first binding international instrument totally devoted to recognising children as rights-holders entitled to innate and inviolable protection. The UNCRC, with its 54 articles, has since become the most widely ratified human rights treaty in history, and according to the United Nations Children's Fund (UNICEF), the Convention has driven transformative action worldwide. It has inspired states to reform legislation, allocate resources, and implement policies that have dramatically improved children's access to essential needs such as healthcare, nutrition, or education - fundamental prerequisites for their survival and healthy development (Article 6 of the UNCRC). Moreover, the Convention (Articles 12, 13, 14, 15, and 17) has empowered children to express their views freely, access information, associate and participate actively in societal discourse as full rights-holders and not passive recipients of care and protection.

However, as this book explores, the world has transformed significantly since 1989. Over the past 35 years, children have been facing evolving and mutating challenges, the traditional ones being the persistent effects of poverty, conflict, and

displacement, and the modern ones connected to the intensifying impacts of climate change and digitalisation. The emergence of a digital ecosystem has created new opportunities for learning, expression, and connectivity, but also new societal threats related to exploitation, disinformation, and cyberbullying, to name a few. As it is commonly said, extraordinary problems require extraordinary measures. Therefore, additional optional instruments, including the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (2000) and General Comment No. 25 (2021) on Children's Rights in the Digital Environment, have further refined child protection. The role of Courts, from the European Court of Human Rights (ECtHR) to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), a quasi-judicial body, has amplified these standards, embedding them into national legal orders and promoting children's rights.

The book brings together the expertise of scholars from across the globe to address these intersections, presenting diverse perspectives rooted in legal, sociological, and policy-oriented analysis. Topics range from intergenerational integration in postmodern societies to digital privacy and data protection; from parental responsibilities and legal reform in Poland to the rights of children with disabilities in Slovene law; from the humanitarian protections of children under the Geneva Conventions to the complex realities of children in armed conflicts in Africa, with case studies from the Democratic Republic of the Congo and Côte d'Ivoire.

These chapters share a common commitment: to critically examine how existing legal frameworks respond - or fail to respond - to the dynamic realities children face today. The book underscores the urgency of reinterpreting children's rights in light of current and emerging issues, including the digital divide, environmental degradation, and new forms of exclusion that disproportionately affect the youngest and most vulnerable.

In conclusion, heartfelt thanks go to all the contributors, the editorial team, and the institutions dedicated to advancing the well-being of children around the world. This book stands as an invitation to deepen our shared commitment to children's rights by acknowledging the evolving realities of their lives and by fostering collaboration across disciplines, sectors, and regions. In doing so, we align with the spirit of the 2030 Sustainable Development Goals (SDGs) - a global call to action for a more just, inclusive, and sustainable future for every child, everywhere.

FAMILIES AND SOME ASPECTS OF INTERGENERATIONAL INTEGRATION IN CONTEMPORARY POSTMODERN SOCIETY

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Based on the theoretical and empirical results of intergenerational integration and relationships, the paper analyses key aspects of intergenerational relationships in the family and their impact on the well-being of older adults from the beginning of demographic changes, such as the increase in life expectancy, to the change in the age structure of the population worldwide. The analysis of different types of connections and relationships, solidarity, conflict and ambivalence, highlights all the complexity of interactions and the need for a flexible approach in studying and resolving their dynamics, forms of integration and intergenerational relationships, maintaining the mental health of older adults, emphasised on the importance of quality family relationships in ensuring security, purpose and connection. Based on the identified challenges, we propose strategies for improving relationships between older adults and their children, which highlight the importance of open communication, empathetic understanding, setting clear boundaries, cooperation and joint planning, support and solidarity, and seeking professional help. Proposed strategies, such as counselling and support practice, can lead to better outcomes in connecting generations, maintaining the mental health and quality of life of all family members, especially older adults, and promoting the integration of different generations in the family.

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1 Introduction

If modern society was characterized by informal intergenerational integration and cooperation, especially within the family, demographic changes forced us to start thinking at various levels about the need for integration and solidarity between generations, which is gaining more and more attention from the state, civil society, and experts. Intensive technological development, modernization, industrialization and social changes in the twentieth century and, last but not least, the emergence of artificial intelligence, have caused numerous changes in intergenerational relations, which have resulted in the loss of competence of the older generation in the field of integration and socialization of the younger generation, while intensifying, formalizing and professionalizing education. In addition to the many challenges of modern society, ranging from medical issues to social norms and values, the last few decades have also highlighted the intensive aging of the population, which represents one of the most important demographic changes in the history of humankind. The increase in the number of older adults is a global trend that has a profound impact on societies, economies, and health and social systems around the world. This phenomenon, also known as demographic aging, is the result of an increase in life expectancy and a decrease in the birth rate. Chan et al. also stated that with the increase in life expectancy worldwide, the elderly population will increase, which poses a significant challenge to global society.¹

Slovenia is also facing both an increase in the elderly population and a declining birth rate, which represents one of the significant demographic challenges, as the current birth rate does not ensure long-term stability. However, demographic change shows the need to develop integration policies that take into account the specific requirements of older adults. In 2024, Slovenia, like the rest of Europe, is facing significant demographic changes, but the population is expected to decline by 5 percent by 2070, from 2.1 million to 2 million.² Differences between generations are an important factor in shaping the satisfaction of the needs of different generational groups. Therefore, in line with the above, we highlight the importance of the dynamics of integration in intergenerational relationships in families and their impact on the well-being of older adults, especially in the context of modern demographic changes. Specific objectives include reviewing the theoretical and empirical

¹ Chan et al., 2010.

² Ageing Report, 2024.

foundations of relationships, such as bonding, solidarity, conflict and ambivalence, highlighting their role in maintaining the mental health of older adults, and identifying challenges and opportunities to support older adults and their families. In addition, on the basis of the identified challenges, we want to propose concrete proposals to improve intergenerational integration and relationships and promote harmony in the family, with an emphasis on open communication, empathy, support, and solidarity.

2 Relationships in the Family Between Generations in the Light of Extended Life Expectancy

The resulting explosion of aging has profound implications for society, nations, governments, and individuals, including families. In the last 50 years, life expectancy has also increased noticeably, which has led to significant changes in the age structure of the population, resulting in one generation being added to the average life expectancy, according to Bengston & Lowenstein, while in the last 300 years, civilizational changes have led to a decrease in mortality, resulting in a change in the age structure of the population.³ However, these questions are not confronted enough in Slovenian society, which makes it difficult to understand both aging and old age, one's own physicality, variability, and family relationships. The high level of social exclusion of older adults, poverty, which is higher after the age of 65, women are especially at risk, undervaluation of work in social care, the length of long-term care policy-making, etc., are just some of the indicators of how we actually understand old age in Slovenia. Young generations today invest in cryptocurrencies, while older adults have problems with how to diversify investments, where to invest their capital, how to organize a safe old age, how to overcome loneliness, and how to maintain social networks.

Since we define a generation as a group of individuals born in the same period, who have a common cultural context and whose collective work shapes a specific culture⁴, the study of generational theories allows for the analysis of the impact of social, cultural, political and economic conditions on the formation of identities, values and relationships within these generations. This, therefore, makes it possible to understand how each generation experiences and interprets aging according to its

³ Bengston & Lowenstein, 2018.

⁴ Magano, 2020, after Campbell, 2015.

historical and social circumstances. Lüscher states that in an academic context, the definitions of the terms "generation" and "family" are intended to define their meaning clearly.⁵ Definitions that are upgraded according to social changes act as interpretive hypotheses that facilitate the understanding and exploration of phenomena. According to Janković, the term "family" means a type of social community that is individual, special, and unique.⁶ At the same time, Ljubetić is convinced that the family is "a universally social and inevitable part of human society".⁷ Elkind and Stacey⁸ define a family as "the primary emotional and social community of parents and their biological and/or adopted children who live together and uniquely perform their family functions".

In contrast, Giddens defines a family as "a small group of close-knit people who contribute, socialize, connect, and answer to each other."⁹ That is why the family is historically changeable, as well as generations, because both are constantly changing and adapting to modernity. One of the aspects of family change is the process of pluralization of forms and ways of life of the family in postmodern society. Goriup, on the other hand, defines the family as "the oldest, most enduring but also the most volatile social group."¹⁰

While the phenomenon of population ageing is well documented in industrialised societies as a result of a combination of better health, longer life expectancy, and reduced birth rates¹¹, in the 21st century, families as the smallest units of society face increasing challenges related to population ageing. Van Gaalen and Dykstra estimate that relationships between family members do not always move in a continuum between solidarity and more conflictual, but that solidarity and conflict are interconnected in specific ways.¹² Based on this, they found that the following can develop between generations:

⁵ Lüscher, 2003.

⁶ Janković, 2008.

⁷ Ljubetić, 2007, p. 5.

⁸ Elkind & Stacey, 1993, 1995, after Ljubetić, 2007, p. 5.

⁹ Giddens after Ljubetić, 2007, p. 6.

¹⁰ Goriup, 2005, p. 91.

¹¹ Bengston & Lowenstein, 2018.

¹² Van Gaalen & Dykstra, 2006, pp. 947–960.

- *harmonious relationships*, in which the likelihood of conflicts is very small, and relationships between children and parents are similar to relationships with friends;
- *ambivalent relationships*, in which there is an intense exchange of material support, accompanied by emotional burden, and we may also feel a greater presence of conflicts;
- *relationships of commitment* that do not deviate from support or conflict, especially the relationship of maintaining contact between generations;
- *favourable relationships* in which emotional support is present and other forms of exchange between generations are absent; and
- *disharmonious relationships* in which negative relationships between generations prevail.

Also, Silverstein and Bengtson¹³ have formulated a five-stage typology of intergenerational relationships between parents and children and related relationships between generations according to family types as:

- *close-knit relationships* characterised by strong integration and intergenerational solidarity, which is most commonly experienced by all generations in extended families;
- *isolated relationships* in which close connection and intergenerational solidarity are lacking, most often in isolated extended families;
- *social relationships in which solidarity is of varying intensity* according to individual dimensions, without a characteristic functional connection, but with other forms of solidarity, which most often develop in modified extended families;
- *intimate and distant relationships* that allow for different intensities of connection and solidarity, characterized by strong emotional and consensual solidarity (degree of convergence of values, attitudes, beliefs between family members), but without strong solidarity with respect to other dimensions;
- *relationships of duty*, with a transversal level of functional integration and solidarity, with relatively common forms of practical assistance and structural solidarity, but without emotional closeness and consensual solidarity.

¹³ Silverstein & Bengtson, 2019.

This (may) take place as a result of the pluralization of family forms and in response to an increasingly liberal view of family life, a more freely different sexual orientation, and perception of the human personality. It indicates the coexistence of different forms and ways of family life, which may be the result of one's own (stylistic) preferences or imposed by particular events or situations (e.g., divorce, extended families, etc.). Minkler, Fuller-Thomson, Miller & Driver note that in addition to families in which both parents are employed, there is also a change in the roles of grandparents. They are increasingly taking on parental roles, as in many cases, they become the primary caregivers of their grandchildren.¹⁴

Emotional closeness in the family is significant. Still, it does not necessarily exclude both connection and conflicts, because even the happiest families can be exposed to unpleasant circumstances and life-demanding situations (e.g., illnesses, injuries, etc.). Unhappy families are often accompanied by interpersonal unrest related to economic, political, and cultural changes and the search for meaning in society. On the other hand, happy families also experience stressful situations caused by social and family changes, but they can (may) be resistant to their negative impacts. To address these challenges, extended families often rely on a variety of strategies, such as religious practice, spirituality, or alternative social connections, when direct support within the family is not possible. The diversity and complexity of family structures, including divorce, remarriage, multiple (social) parents, ethnic, racial, and status diversity, and migration, are changing the modern structure of family life, making the study of these dynamics more challenging and interesting, especially for family sociologists and social gerontologists.

Although standard family models are more challenging to apply to this "new complexity," it opens up space to explore the changes and variations in family styles and well-being that result from these social changes.¹⁵ Lüscher also points out that family members who have the same socio-temporal status also share feelings, opinions and lifestyles, because they are (were) in the same period part of the same social unit as the extended family, in which the recognition of differences in relation to other family members takes place, since the identity of an individual or group is based on both specific personal and social characteristics.¹⁶

¹⁴ Minkler, Fuller-Thomson, Miller & Driver, 2000.

¹⁵ Silverstein & Giarrusso 2013.

¹⁶ Lüscher, 2003.

3 Intergenerational Integration in the Grip of Changed Population Dynamics

Due to the changes that have occurred, intergenerational relationships in modern society are increasingly important for family life. However, population dynamics resulting from birth rates, mortality, and migration movements are crucial for the formation of generational relationships in the family.¹⁷ Both the younger and older generations are subtle and (co)dependent social groups, as they depend on each other in their functioning, living, and providing for their living needs, as well as on each other. Therefore, the role of the middle generation is important, as it can (can) bring the generation of children (grandchildren) closer to the older generation (grandparents) so that they learn to understand, coexist and tolerate each other, to connect, strengthen interpersonal bonds, maintain contacts and a sense of need, coexistence, acceptance of traditions, different cultures and different values.

As current demographic changes have a noticeable impact on family dynamics, they require more years of "shared survival between generations" than at any other time in human history.¹⁸ This results in an increased number of elderly parents and grandparents, who can contribute to family stability¹⁹ and, as a "latent network", provide support to younger family members.²⁰ However, despite the positive aspects, the extension of the period of cohabitation also brings negative consequences, such as long-term care for dependent older adults and potential conflicts.²¹ In this context, intergenerational relationships become crucial to family life, whether it is providing support or resolving conflicts.²²

In the light of the pluralization of family forms, modern (otherwise different) families are faced with numerous changes in structure and roles, with a trend of increasing divorce and separation rates and the birth of children to single parents²³, which includes the associated pluralization of lifestyles and life courses, changing family values, and intrafamily differentiation. Therefore, the pluralization of family forms can be understood as a reaction to an increasingly liberal view of family life,

¹⁷ Lüscher, 2003.

¹⁸ Bengston & Lowenstein, 2018 after Bengston, 1996; Goldscheider, 1990; Lowenstein, 2000.

¹⁹ Bengston & Lowenstein 2018 after Silverstein, Giarusso & Bengston, 1998.

²⁰ Bengston & Lowenstein, 2018.

²¹ Bengston & Lowenstein, 2018; Bengston, 2018 after Bengston, Rosenthal & Burton, 1995.

²² Bengston & Lowenstein, 2018.

²³ Bengston & Lowenstein, 2018.

(different) sexual orientation and (individual) perception of human personality. It denotes the coexistence of different forms and ways of family life, which are (often) the result of one's own (stylistic) preferences or are imposed by certain events or conditions. In parallel, political and cultural developments shape family bonding and dynamics. However, the resulting changes require more intensive integration and adaptation of family roles and relationships in the light of better integration, support, and resources for all family members, especially the (oldest), even though the possibilities for family integration and home care for older adults are shrinking. However, Bengtson & Lowenstein and Bengtson & Harootyan²⁴ point out that in this context, the stereotype of older adults as a burden on either the national economy or the family is not proven (because not all older adults need support, and working-age family members do not always provide direct care to older adults. Research by Logan & Spitze²⁵, has shown that older adults attach great importance to the needs of younger generations and that the social norms that accompany older adults reflect their desire for autonomy and the role of parents to be supporters rather than recipients and not to become a burden to younger family members.²⁶

4 The Need for Intergenerational Integration and Solidarity

Intergenerational contacts and integration, which were a natural part of family life in modern society, are increasingly becoming the subject of various social and humanitarian programs of governmental and non-governmental organizations and civil society. However, at a time of increasingly pronounced demographic change, intergenerational integration, cooperation, and intergenerational solidarity are necessary to enable coexistence between generations. The simplest definitions of intergenerational integration and solidarity highlight the importance of "social cohesion between generations".²⁷ The key questions here are: what kind of integration and solidarity between which or what generations?

Intergenerational integration and solidarity are not only about helping (elderly) parents when they are no longer able to take care of themselves, but also not only about helping parents with their children when they are unable to accompany their

²⁴ Bengtson & Lowenstein, 2018; Bengtson & Harootyan, 1994.

²⁵ Logan & Spitze, 1995; according to Bengtson & Lowenstein, 2018.

²⁶ Bengtson & Lowenstein, 2018.

²⁷ Bengtson, Olander & Haddad, 1975; Katz, Lowenstein, Phillips & Daatland, 2005; Roberts, Richards & Bengtson, 1991.

child to or from kindergarten or school due to work obligations. The goals of intergenerational cohesion and solidarity are broader and have long-term implications for global society. According to Berčan²⁸, the goals of intergenerational integration and cooperation are:

- maintaining the autonomy and individuality of older adults; maintaining contact with family, neighbourhood, peers, and above all, members of the other two generations;
- ensuring access to information on everything important to older adults: forms and types of assistance to meet material and non-material social needs and protect their rights;
- development of older adults' self-confidence, a sense that they can (still) do something for their environment. But also for himself;
- the opportunity for older adults and young adults to learn to reflect on the moral and ethical dimensions of interpersonal relationships and social events, to develop positive moral and ethical concepts, organizational, communication and other social skills;
- experiencing the effectiveness of one's actions, as such experiences strengthen the personalities of both generations and activate them to take responsibility for their own lives.

It is interesting, however, that the need for such forms of integration and cooperation is advocated by the younger, middle, and older generations.

5 The Importance of Integration for Intergenerational Family Relationships

The debate on the generational question began in the mid-20th century due to the increase in life expectancy, changes in perceptions of aging and old age, and the increased role of the welfare state. The history of generational concepts can be divided into:

- In ancient times and the Middle Ages, to understand the present and the past in the light of tradition;

²⁸ Berčan, 2007, p. 46\201247.

- modernity, in which generation is used primarily to mark the transition to a new and open future and is seen as a generator of progress;
- a present marked by multiple choices, uncertainty, and doubt, as well as a focus on the past, which is reflected in the analyses of postmodernism.

Today, we understand intergenerational integration as a challenge to the individual and institutional formation of integration and coexistence, especially in the context of the debate on the renewal and progress of society. Lüscher in "Generationenbeziehungen in Familie und Gesellschaft" (2003) emphasizes that generational relationships are based on repetitive interactions, last for a specific period, and are subject to social contexts that shape, change or question them. Therefore, in parallel with the concept of generational relations, the author also emphasizes the importance of the concept of generational order, which shows that the formation of these relationships is not only a consequence of the spontaneous connection of individuals, since it often depends on social values, expectations, cultural ideas and legal regulations, as well as the understanding of the experience of birth and death as reference points that serve as a means of understanding the idea of time, with a special focus on the link between public, social, social, social and family generational experiences.

The etymology and history of the term contribute to a better understanding of the ideas associated with the concept of generation. Even in antiquity, the Greek word "genesis" and the Roman term "generatio" played an important role. The Greek term "genos" is derived from the verb "genesthai", which means to disappear, describing crossing the ever-changing threshold of life. In Roman antiquity, the term generation, translated from Greek, means origin, production, or reproduction, with an emphasis on the idea of creating something that is similar to itself in form, although individually different from its creator. Understanding generations has become a key component of the institutionalization of human coexistence, where the dynamic events described by the exchange of generations become reference points for rules, customs, and norms that transmit previous generations to new ones, especially in the family and family relationships. Lüscher also argues that the origin of the concept of generation in antiquity points to a fundamental tension that can be understood as a dichotomy, meaning that life arises from life, but parents and children differ. This paradox reflects the modern understanding of generations, where, despite their proximity, the differences and individuality of each generation

are recognized. The notion of generation reflects the ideas of continuity and cyclicity and represents processes that repeat themselves as natural, logical, and inevitable. Today, the concept of generation is still used as a metaphor for the process of creation and as a symbol of continuity in human coexistence, Lüscher is convinced.²⁹

The emphasis on intergenerational connectedness involves an analysis of social order, where social authority often derives from belonging to a particular age, with a specific focus on knowledge traditionally attributed to older adults.³⁰ In the past, age has been attributed to specific characteristics that have shaped generational affiliation as a critical element of the constitution of personal identity. However, this understanding was less individualistic than in postmodern society. Bengston's model theory of connection and solidarity, on the other hand, explores intergenerational relationships in the family, focusing in particular on feelings of connection, attachment, and exchange of services between different generations. Undeniably, older adults are noticeably pushed to the margins of social events, either because of their life situation, or when children move away and create their own families, or when they retire, they move away from the labor market, and when they are no longer interested in the areas in which they have been active for many years. Older adults are also often undesirable in political parties, except during election periods, even though their electoral votes can have a significant impact on the election outcome. However, the attachment and, isolation and loneliness of older adults can be explained because:

- it is society that isolates them, discriminates against them, excludes them, and corners them; and
- older adults themselves withdraw from social life, either because they feel that they are not wanted or because they find it challenging to come to terms with the changes that are happening in society and simply do not find their corner in it anymore.³¹

According to this model, family bonding and solidarity are not only the result of a biological connection or a common home, but the result of active processes of connection, interaction, support, and exchange between family members,

²⁹ Lüscher, 2003.

³⁰ Lüscher, 2002.

³¹ Pečjak, 2007.

highlighting the importance of family ties as key to maintaining stability and continuity in the family system.³² This is confirmed by the results of a 20-year study by Bengston and Lowenstein of three-generational families, that family feelings of kinship, solidarity, connection, affection and exchange of services, despite intense social changes, remain strong.³³ This is despite changes in family structure and socio-economic context, such as more frequent divorces and mass entry of women into the labour market, as well as increased levels of education for both sexes, as parents have maintained a high level of identity and constant connection and exchange with adult children. In another study, Bengston, Biblarz & Roberts explored how achievement orientations are formed in young people, including their educational and professional aspirations, values, and self-esteem.³⁴ These guidelines are considered traits that can be passed down from generation to generation in a family, thus promoting continuity over several decades. In this process, affective bonds between parent and child play a key role. Given the fact that Generation X is more likely to have parents with a university degree compared to the baby-boom generation, fewer siblings, a working mother, and having grown up in a separate household, it is important to compare these two generations compare in family solidarity and achievement orientation. The results showed that Generation X's achievement orientations were strikingly similar to those of their parents in the early years of life, nearly 30 years earlier. This proves that, despite changes in family structure and socio-economic context, intergenerational influences remain meaningful and robust.

6 Typology of Integration in Intergenerational Family Relationships

Intergenerational relationships represent a complex network of interactions and communication that reflects closeness and trust between parents and children.³⁵ This relationship is analysed in terms of solidarity, conflict, and ambivalence, given the multidimensional characteristics and structures of these relationships.³⁶ However, it is essential to emphasize that the quality of intergenerational relationships should not be judged solely on the basis of binary descriptions, but several aspects should

³² Bengston & Lowenstein, 2018.

³³ Bengston & Lowenstein, 2018.

³⁴ Bengston, Biblarz & Roberts, 2002, after Bengston & Lowenstein 2018.

³⁵ Agandi Zhou et al., 2023.

³⁶ Zhou & Bai, 2022.

be considered, including contacts and interactions, similarities, emotional closeness, and conflict.³⁷

The diversity and complexity of different forms of intergenerational family relationships are the subject of much research, but the research of Silverstein & Bengtson is crucial.³⁸ By analyzing a nationally representative sample, the authors identified various possibilities for intergenerational family relationships:

- close-knit relationships characterised by strong integration and intergenerational solidarity, which is most commonly experienced by all generations in extended families;
- social relationships in which solidarity is of varying intensity according to individual dimensions, without a characteristic functional connection, but with other forms of solidarity, which most often develop in modified extended families;
- physically connected relationships characterised by high emotional closeness, frequent interaction and mutual assistance;
- social, intimate and distant relationships that allow for different intensities of connection and solidarity, characterized by strong emotional and consensual solidarity (degree of convergence of values, attitudes, beliefs between family members), but without strong solidarity with respect to other dimensions;
- isolated relationships in which close connection and intergenerational solidarity are lacking, most often in isolated extended families;
- relationships of duty, with a transversal level of functional integration and solidarity, with relatively frequent forms of practical assistance and structural solidarity, but without emotional closeness and consensual solidarity;
- a separate type of relationship that represents the other extreme with a low level of connection; and;
- alienated relationships, showing a connection with an average level of functional exchange, but a low level of emotional attachment.

³⁷ Zhou & Bai, 2022.

³⁸ Silverstein & Bengtson, 1997 after Bengtson & Lowenstein 2018.

Various authors point out that these results reveal significant differences in the distribution of bonding in family relationships, with relationships with mothers often being closer than with fathers, and relationships with fathers being more often prone to distance.

The paradigm approach of integration and intergenerational solidarity serves the relevant analysis of integration and relationships between generations, cohorts and age groups, which provides an exploration of integration, but also vulnerabilities in family relationships, intergenerational support, the role of grandparents, spirituality, migration and other social movements, globalization and modernization and industrialization in the light of the increasing presence of artificial intelligence.

Silverstein, Bengston et al. also investigated intergenerational integration and solidarity in paradigms of ambivalence and identified the importance of the complexity of emotional relationships between generations, both positive and negative.³⁹ An analysis of hidden classes conducted on a sample of 2,698 relationships between elderly parents and children in six developed countries (Great Britain, Germany, Israel, Norway, Spain, and the United States of America (Southern California)) identified four basic hidden classes that were differently distributed among countries, but showed an immutable metrological structure at the international level. The most common relationships in some countries were: friendly (in England), distant (Germany and Spain), incompatible (USA), and ambivalent (Israel). After adjusting for demographics, health, life circumstances, contacts, and support, these classes retained their relevance and specificity in each country. These findings complement the understanding of intergenerational relationships, provide deeper insights into the diversity and complexity of these relationships around the world, and confirm the importance of taking into account contextual differences when studying the interaction between older parents and children, emphasizing that family relationships cannot simply be generalized on a global scale.

7 Integration and Solidarity in Intergenerational Family Relationships

Intergenerational integration and solidarity encompass various forms of maintaining social cohesion in the family through emotional, behavioral, structural, and normative forms of integration.⁴⁰ Fundamental dimensions of solidarity include

³⁹ Silverstein, Bengston et al., 2010.

⁴⁰ Hwang et al., 2022, after Roberts et al., 1991.

affective proximity, frequency of contact, similarity of values, exchange of assistance, geographical proximity, and obligations of industry norms.⁴¹ Although some research has suggested the possibility of reducing these dimensions to a one-dimensional construction, empirical evidence makes this assumption. It points out that the criteria of association and solidarity dimensions are considered as relationship-oriented attributes.⁴² Studies have classified intergenerational relationships into different types, such as close-linked, distant, intimate, obligatory, and social, based on a combination of these traits.⁴³ These types of solidarity have been found in a variety of cultural contexts, including in Europe, Asian countries, and among American Chinese expatriates.⁴⁴

The construct of intergenerational integration in the light of solidarity at the family level is characterised by the behavioural and emotional dimensions of interaction, cohesion, emotion, and support between parents and children, grandparents and grandchildren in long-term relationships. Bengtson & Schrader, Roberts, Richards & Bengtson⁴⁵ highlighted six conceptual dimensions of intergenerational integration and solidarity for measurement:

- emotional (feelings and assessments expressed by family members about their relationship with other members);
- pooled (type and frequency of contact between intergenerational family members);
- consensual solidarity (consensus on opinions, values and orientations between generations);
- functional (giving and receiving support between generations);
- normative (expectations about filial obligations and parental obligations and norms about the meaning of family values); and
- structural ("structure of opportunities" for intergenerational interaction, reflecting geographical proximity between family members).

⁴¹ Hwang et al., 2022.

⁴² Hwang et al., 2022, after Bengtson & Roberts, 1991.

⁴³ Hwang et al., 2022, after Silverstein et al., 1997.

⁴⁴ Hwang et al., 2022, after Dykstra & Fokkema, 2011; Steinbach, 2008; Guo et al., 2012; Yi & Lin, 2009; Li et al., 2019.

⁴⁵ Bengtson & Schrader, 1982; Roberts, Richards & Bengtson, 1991.

Szydlík⁴⁶ also investigated intergenerational integration and solidarity, classifying the factors of these into four categories, such as:

- structural opportunity (e.g., geographical proximity, cohabitation);
- the structure of needs (e.g., financial, health and emotional needs);
- family structure (family composition, social history, family roles);
- cultural-contextual structure (social, economic and tax system, state welfare, housing market, labour market, etc.).

Szydlík notes that emotional connection and solidarity are positively influenced by (greater) proximity to being.⁴⁷ Although the younger and older generations belong to the same group in terms of addiction, they depend on others, most often the middle generation, to connect, function, live and provide for their living needs, which brings children closer to the older generation so that they learn to understand, live and tolerate people who have different needs. This is especially important in the preschool period, because the youngest children are the most receptive to the fact that we can instill these values in them. This is also important for the older generation, as bonds are strengthened, contacts are maintained, and older people feel that they are still needed. It is important to maintain relationships between generations, and children are most often the link that connects, and at the same time, they learn to coexist, accept tradition, different cultures and otherness.⁴⁸ Research in the UK also suggests that children who already participate in intergenerational programmes have a more positive view of the older population than those children who do not yet participate in the programme.⁴⁹ Also, transfers in the family depend on the occasion (e.g., whether the parents have the money to (re)pass it on to their children) and needs (unemployed schooling children receive more financial transfers). Socio-economic status is therefore seen as an important factor for intergenerational solidarity. Similarly, Bengtson & Roberts (1991) state that there is a correlation between normative solidarity (the degree of commitment to family norms and family obligations, the performance of family roles and the fulfilment of family obligations) and affection, as the latter has a positive effect on the connection or frequency of contact between parents and children. Structural solidarity, such as

⁴⁶ Szydlík, 2008, p. 97.

⁴⁷ Szydlík, 2008, p. 97.

⁴⁸ Arko, Goričan & Kovač, 2011.

⁴⁹ Heyman, 2011.

geographical proximity, and good parental health increase the frequency of contact between parents and adult children.

Szydlík (2008) also singled out the characteristics of the family as an important factor. Lawton et al. and Silverstein et al. point out that (albeit different) research has shown noticeable differences in intergenerational integration and solidarity depending on the gender of the parent and the sex of adult children, as well as according to the status of the parent – divorced and married.⁵⁰ As they note, the motivation to help elderly parents varies between daughters and sons. Therefore, they point out that daughters offer more support in the case of greater emotional attachment, and sons in the case of a greater amount of contact. Silverstein & Bengtson⁵¹ also note that the influence of parental gender influences adult children to be more often associated with mothers than with fathers, which is also confirmed by Szydlík⁵², who also points to the strong connecting role of women, since mother-daughter relationships are usually stronger and more stable; Parrot & Bengtson⁵³, on the significant impact of family relationship histories on intergenerational integration and solidarity. Past relationships of intense emotional connection between parents and children are more often reciprocal and therefore there is a greater likelihood of receiving and giving different forms of support and help to each other.

Closely related to the composition of the family are various normative approaches to the custodial role, which Pyke & Bengtson⁵⁴ point out when they cite two different family typologies of care, namely:

- individualistic families, in which care is minimized and mainly within the framework of formal services; and
- collectivist families, in which care is distributed among all family members and is supposed to be a form of establishing family bonds and solidarity.

The paradigm of intergenerational integration and solidarity, which represents a comprehensive scheme for describing intergenerational relationships, has been the basis for most research on family intergenerational relationships in the last four

⁵⁰ Lawton et al., 1994; Silverstein et al., 1995.

⁵¹ Silverstein & Bengtson, 1997.

⁵² Szydlík, 2008.

⁵³ Parrot & Bengtson, 1999.

⁵⁴ Pyke & Bengtson, 1996.

decades.⁵⁵ This paradigm, although originally developed and validated by data collected in the United States, is widely used around the world, including in countries such as Japan, Germany, the Netherlands, New Zealand, and Canada.⁵⁶ Also, theoretical and empirical advances in the social psychology of small-group cohesion, such as the models of Heider⁵⁷ and Homans⁵⁸, contributed to the development of the initial model of intergenerational solidarity (after Silverstein and Bengtson). This model identified six basic elements of solidarity: emotional proximity, social contact, geographical distance, supportive behaviour, filial obligations, and consensual relationships.⁵⁹

Therefore, this paradigm remains the gold standard as a model for measuring bonding and intergenerational relationships, especially in terms of emotional connection.⁶⁰ Based on this model, researchers have attempted to include conflict as a seventh dimension, which has led to the development of a paradigm of solidarity and conflict.⁶¹ However, this additional dimension has sparked debates about whether bonding, affection, and conflict can coexist in intergenerational relationships and whether conflict is constantly at odds with bonding and emotional solidarity. Therefore, while Bengtson's model of intergenerational connection and solidarity is criticized for focusing only on the positive aspects of relationships between parents and adult children and for ignoring conflicts, at the same time, we find that his updated model also includes conflicts that may result from the potential negative effects of (excessive) solidarity. Conflict in this model is perceived as a permanent and dynamic part of family relationships.⁶² However, Szydlik emphasizes that conflict does not necessarily mean the absence of integration and solidarity (and vice versa), and solidarity does not necessarily imply the absence of conflict, because it can arise from the very mode of integration and solidarity.⁶³ Thus, for adult children, caring for adult parents can be stressful, and for older adults, negative emotions due to the loss of autonomy.

⁵⁵ Silverstein & Bengtson, 2010.

⁵⁶ Silverstein & Bengtson, 2010.

⁵⁷ Heider, 1958.

⁵⁸ Homans, 1950.

⁵⁹ Silverstein & Bengtson, 2010.

⁶⁰ Silverstein & Bengtson, 2010.

⁶¹ Silverstein & Bengtson, 2010.

⁶² Albertini et al., 2007.

⁶³ Szydlik, 2008.

8 The Problem of Lack of Intergenerational Connection, Contacts and Communication

In modern, postmodern society, we are witnessing the most significant generational gap today between the generation of grandparents (baby boomers, fewer veterans) and the generation of (great) grandchildren. Intergenerational differences arise due to the processes of intensive modernization and globalization, as well as progress in society, which can also be negative for society. The middle generation is the link between the two generations, as it can prevent older adults from becoming lonely by establishing a proper connection between grandparents and grandchildren. This is very important for both generations, especially in these relationships. We can learn about tolerance and respect because postmodern society values vitality, well-being, and a healthy lifestyle. Older adults also want to stay vital for as long as possible, and we must accept the fact that they are aging and living accordingly. A person performs special tasks during all periods, which he also has in his later years. Stielrin⁶⁴ talks about the family task of inviting the older adult to remain involved in the family in some special and unique way. "A long string of delegation means that we stay connected to our parents, generations throughout our lives." All generations need the past in the present, but for the future, which in turn requires integration, solidarity, dialogue and cooperation.

In terms of intergenerational integration, older parents have more interaction with children with whom they live or who live closer to them, the further south they are located on the European continent, note Silverstein & Bengston⁶⁵, as well as that the involvement of adult children in the care of elderly parents is usually voluntary in the social democratic countries of northern Europe than in the countries of southern Europe, where parental involvement is usually mandatory. Therefore, older parents in countries with more advanced social welfare systems may also experience fewer conflicts with their children than in countries with weaker social policies, even though older parents show more affection and produce more conflict due to greater involvement and dependence on adult children. The family's ability to cope with the bonding of family members with conflicts arising from obligations and caregiving actually affects the quality of care and the quality of the relationship between the members of the extended family. However, the dimensions of integration, solidarity,

⁶⁴ Čačinovič-Vogrinič, 2000.

⁶⁵ Silverstein & Bengston, 2010, after Hank, 2007; Brandt et al., 2009.

and conflict do not constitute a single continuum of them. Intergenerational integration and solidarity can show both a high level of connectedness and solidarity as well as a high level of conflict or a low level of connectedness and solidarity, or a low level of connectedness and latency of conflict, depending on family dynamics and circumstances.⁶⁶

9 Ambivalence in Intergenerational Family Relationships

Historically, ambivalence has been present in family relationships between parents and children since the beginning of human society, as evidenced by mythological stories and contemporary literature. However, the term "ambivalence" supposedly first appeared only in 1910.⁶⁷ Given that the family life of different generations is based on the tension between the desire for autonomy and the need for interdependence, it is not surprising that intergenerational relationships in extended family life are among the most ambivalent social relations⁶⁸, which indicates the complexity and contradictions that can arise between generations. The concept of ambivalence in intergenerational family relationships requires a deeper understanding of the complexity of human interactions. Sociologists have extended this concept of linking conflict and ambivalence as an intrinsic feature of human relationships, given their complexity and irreconcilable demands.⁶⁹ In contemporary postmodern society, intergenerational ambivalence, which is the result of various forms of family life and sources of stress, is becoming increasingly important. Von Humbolt et al.⁷⁰ explored this topic on 424 older participants aged 65 to 97 years. They found that the dimensions of bonding, support, and conflict in relationships between older adults and their adults unfold as the quality of interaction between older adults and adult children, family integration, care and support, boundary definition, distance and alienation, and communication difficulties. In any case, the diversity of experiences in old age regarding intergenerational relationships and the conflicting expectations of older adults in relation to their adult children should not be overlooked, because ambivalence can also be understood as a "sensory concept"

⁶⁶ Bengston & Lowenstein, 2018.

⁶⁷ Lüscher, 2002.

⁶⁸ Silverstein & Bengston, 2010, after Fingerman, Hay & Birditt, 2004.

⁶⁹ Silverstein & Bengston, 2010, after Merton & Barber, 1963.

⁷⁰ Von Humbolt et al., 2021.

as defined by Blumer⁷¹, because it gives its "user a general sense of reference and guidance in approaching empirical cases".

Emotional closeness in intergenerational relationships between older adults and their children is defined as a positive feeling or solidarity.⁷² This closeness is manifested in intimacy, good mutual understanding, and the provision of financial support and gifts, which are traditional expectations in filial commitment.⁷³ Previous research has shown that intimate emotional relationships between older adults and children, receiving financial support, and closeness in the living space are associated with lower rates of depression and better psychological well-being in older adults.⁷⁴ A study by Zhou & Bai⁷⁵ found that the quality of intergenerational relationships is crucial to meeting the social and emotional needs of older people, as well as their mental health. This research highlights the importance of emotional closeness and support in intergenerational relationships for the mental health and well-being of older adults, highlighting the need to foster quality interactions between generations to prevent mental health problems and improve overall well-being.⁷⁶ Research also shows the importance of emotional closeness and support in the extended family for healthy aging of older adults⁷⁷, as communication between generations allows (primarily) older adults to (often re)find their life meaning, satisfaction, and happiness.⁷⁸ At the same time, the lack (e.g., financial, emotional, physical, household chores, personal hygiene, etc.) of children's help can cause depressed moods, feelings of loneliness, and fear in older adults.⁷⁹ Agandi Zhou et al.⁸⁰ believe that financial and instrumental support represent key forms of intergenerational support, with each playing a specific role in intergenerational communication. Financial support is manifested through financial transfers between generations, often as a sign of respect for older adults. Huang & Fu, however, add that this increases their sense of happiness, as receiving financial support from children is crucial for overcoming financial obligations, as well as high healthcare costs and daily

⁷¹ Blumer, 1969.

⁷² Zhou & Bai, 2022, after der Pers et al., 2015.

⁷³ Zhou & Bai, 2022, after Chong et al. 2016.

⁷⁴ Zhou & Bai, 2022, after Li & Zhang, 2019; Fu & Ji, 2020.

⁷⁵ Zhou & Bai, 2022.

⁷⁶ Zhou & Bai, 2022, after Agandi Zhou et al., 2023.

⁷⁷ Agandi Zhou et al., 2023, after Merz et al., 2010.

⁷⁸ Agandi Zhou et al., 2023; Sun et al., 2022.

⁷⁹ Agandi Zhou et al., 2023; Iecovich et al., 2002.

⁸⁰ Agandi Zhou et al., 2023.

needs.⁸¹ Instrumental support for children, on the other hand, is the help provided by adult children in the institute of the household. Agandi Zhou et al., on the other hand, warn that intergenerational integration and relationships may decrease due to (gradual) dysfunction of the older adults.⁸²

Many authors point out the problem of emotional dissonance that may develop between members of an extended family, because intergenerational ambivalence in later life is more common in relationships in which older parents are submissive and in poorer health, because they become dependent on the adult children they once cared for.⁸³ This was followed by Connidis & McMullin⁸⁴ and developed the term "structural ambivalence" to refer to relational ambivalence caused by institutional forces, with competing requirements for family members' resources, which can result in a conflict of roles (e.g., between roles in an extended family).

10 The Impact of Older Adult Choice on Intergenerational Family Relationships

The rapidly increasing trend of population ageing and the serious consequences of ageing have prompted reflection on risk factors for choosing family life and connecting with close family members. A postmodern view of aging provides a new framework for understanding this process, shifting the focus from aging as a biomedical phenomenon, often understood as physical decline and disease⁸⁵, to the prolongation and quality of life in old age. Such an approach emphasizes more positive approaches to aging, focused on enjoying life despite old age. Zhou & Bai, Mueller et al. and Vyas & Okereke state that these include psychosocial, emotional, behavioural, and physiological factors, which are most reflected at the global level of society.⁸⁶ Individual older adults choose their way of life, what they will give up and what they will accept, which in turn changes solidarity as it has been in modern society. Also, because there are fewer and fewer older adults living with younger generations, this also changes their relationships if they do not live together with younger generations. Given the ubiquity of postmodern values, social changes are

⁸¹ Huang & Fu, 2021.

⁸² Agandi Zhou et al., 2023.

⁸³ Silverstein & Bengtson, 2010; Fingerman, Chen, Hay, Cichy & Lefkowitz, 2006; Willson, Shuey et al., 2003; Willson, Shuey, Elder & Wickrama, 2006.

⁸⁴ Connidis & McMullin, 2002; Silverstein & Bengtson, 2010.

⁸⁵ Powell, 2022.

⁸⁶ Zhou & Bai, 2022; Mueller et al., 2020; Vyas & Okereke, 2020.

important, such as changing traditional approaches in life and choices. However, there is an increasingly noticeable shift from economic achievements to quality of life, to greater freedom in lifestyle choices and self-expression.⁸⁷

An important factor influencing the satisfied mental well-being of older adults is the choice of the way of family bonding, life, and the quality of intergenerational relationships with children, because these relationships play a key role in shaping the mental health of older adults.⁸⁸ The choice of family life for older adults may presuppose harmonious relationships between parents and adult children. Still, it does not guarantee them, as the choice can be a burden, a concern and a source of confusion for them. Decisions as a result of choice are increasingly difficult for older adults to make, either for their well-being or for the well-being of those close to them. In the ideology of choice, they are faced with an infinite possibility of choices, which are (often) illusory, often even traumatic for them, because they want their choice to be ideal for everyone, so that the social space accepts their choice, to maintain good relations with all those involved, so that they can actually choose freely, and not under the "silent" pressure of family members, who have "already chosen for them" and that their decisions and ambitions would be theirs.

The ideology of choice has penetrated deep into older adults' understanding that they "have to do something" – in light of expectations and for the benefit of younger generations. Often this is not their (original) choice, because they feel "guilty", which they feel when they "look for the optimal choice for everyone involved", so they try to find a way to influence their own choice and their children's desires. They are often angry because, as Salecl states, their "choice often paradoxically requires the denial of their desires, even their needs and beliefs and values," which psychoanalysis understands as an essential mechanism by which older adults deal with their internal conflicts."⁸⁹ Not unpreparedness, but predictability, was the basis of the value orientation of generations of veterans and baby boomers in intergenerational integration, cooperation, and solidarity, experienced in their youth, when as children they found themselves at the same crossroads of their youth in relation to their parents in modern society. That is why, above all, they see immovable property as something that keeps them from poverty, loneliness, even illness and weakness.

⁸⁷ Inglehart, 2020.

⁸⁸ Zhou & Bai, 2022; Fi & J, 2020; Lai et al., 2019; Li & Zhang, 2019.

⁸⁹ Salecl, 2011, p. 35.

Therefore, their choice inspires them with fascination and at the same time with fear, anxiety, and even horror.

11 The Importance of Connection, Support, and Quality Relationships in Old Age

Taking into account a comprehensive analysis of demographic trends and research on intergenerational relationships and their impact on the mental health of older people, the importance of support and quality relationships in old age stands out, which are not only related to emotional support, but also include complex mechanisms of connection, exchange, reciprocity, and shared concerns. Understanding the importance of connection, support, and quality relationships in old age provides deeper insight into the ways in which an extended family can positively impact the well-being of older members.

Emotional closeness and support in daily activities create a sense of meaning and purpose, which is important for maintaining a positive mental state in old age. Financial support, which can manifest itself in the form of cash transfers or the provision of basic needs, provides stability and security to older adults. Feeling financially and materially supported by the family reduces stress and anxiety and allows older adults to focus on maintaining their quality of life and taking care of their health. On the other hand, instrumental support, which includes practical assistance with daily activities such as household chores or shopping, alleviates the physical and logistical challenges faced by older people. This type of support allows them to remain active in their communities and maintain a sense of autonomy.

It is important to emphasize that support and quality relationships in the family are not just one-way. Reciprocity in relationships where support is shared between different generations builds a sense of community and mutual trust. This is important not only for the emotional well-being of older adults but also for strengthening overall family dynamics and cohesion.

Therefore, the promotion of quality intergenerational relationships and support in the family is becoming a necessity in modern society. It is important to continuously invest in strengthening intergenerational solidarity, to promote open communication and exchange of support, and to provide resources and programmes that promote

the maintenance of family ties and quality intergenerational relationships. Educating about the importance of intergenerational support, promoting open dialogue within the family, and providing the means to develop quality relationships are key steps in ensuring happy and fulfilling aging. This holistic perspective highlights the importance of the family as a fundamental pillar of support in the ageing process. It highlights the need for continuous investment in maintaining family values and intergenerational ties.

12 New Challenges and Opportunities for Integration in Intergenerational Relationships of Older Adults in the Family

Recognizing the key challenges that older people face in their relationships with children is an important step in understanding the complexity of intergenerational dynamics. While older generations grew up in a society that emphasized traditional values driven by duty and a humble life⁹⁰, younger generations, including Generation Z, are growing up in a globalized world marked by rapid technological development and mobility.⁹¹ These generational differences in perceptions of ageing shape intergenerational relationships, as for young people, ageing can be associated with the challenges posed by fast-paced lifestyles and technologies, and older generations often learn to live in an increasingly digitalised world, which requires a change in their attitudes and behaviours. Therefore, a postmodern perspective on ageing allows for a deeper understanding of these changes and provides a basis for developing policies and measures that can respond to the specific needs of older people in a digitalised society.

Therefore, it is important to recognize these challenges for several reasons. Intergenerational relationships often serve as a key support and source of emotional connection for older and younger family members. Understanding the challenges that seniors face in these relationships allows for better adjustments and strengthening of family bonds. These relationships have a profound impact on the overall well-being of the family and can provide a sense of belonging, support, and security.

⁹⁰ Slagsvold & Hansen, 2021.

⁹¹ Johnson & Bonner, 2022.

The identification of key challenges enables the timely identification of the needs of older people in the context of family relationships. This allows for the development of tailored support programmes and interventions that aim to improve the quality of these relationships and ensure the well-being of all involved. For example, suppose a lack of communication between older parents and children is recognized. In that case, programs can be developed that promote open and honest communication to resolve misunderstandings and improve emotional connection. Also, what often leads to new challenges in intergenerational relationships is changes in family structures and social standards. Identifying these challenges helps to understand trends and adapt approaches to respond to new needs and dynamics. More and more intergenerational families are facing challenges arising from different values and cultural and social aspects, and this harmonious family life requires connection, understanding, and adaptation. Appropriate intergenerational relationships have a significant impact on the emotional and psychological well-being of all family members. Recognizing the challenges enables everyone to reduce stressful situations, conflicts, and other negative consequences in order to provide the necessary and targeted support for healthier, satisfied intergenerational relationships with an inclusive and supportive environment for all generations in the family.

13 Generational Partiality: the Dynamics of Intergenerational Integration

The most common challenges of older adults in their relationships with adult children in intergenerational integration and solidarity are the complex dynamics that shape family interactions and relationships, as they arise from generational partiality, which they perceive as differences in integration and solidarity between them. Older parents (may) face the challenges of generational partiality by not appreciating and acknowledging their children's contributions and experiences, ignoring their advice, opinions in making important life decisions, etc., which makes them feel that they are not respected, valued or even ignored.

Although longitudinal studies show a high degree of affective solidarity between generations, it has been found that:

- Older respondents are more likely to report a higher level of solidarity than younger generations. This generational bias can affect the perception and experience of relationships and potentially lead to tension and misunderstandings, which can further reinforce the feeling of insufficient support or understanding of older adults by their children in the aging process (e.g., when an older parent wants to maintain a high level of autonomy and independence, but feels limited or undervalued by the assumptions or stereotypes that their adult children have about their abilities), which can cause a particular challenge is the divergence of expectations and needs between older parents and their adult children, when older parents strive to maintain traditional forms of solidarity in the family, such as more frequent contact or mutual assistance, and adult children often try to reconcile these obligations with their life priorities and obligations, which requires finding a compromise and adapting;
- the diversity of forms of intergenerational integration and solidarity (e.g., emotional closeness, frequency of contact, exchange of help and similarity of values, etc.) can pose a challenge in mutual understanding and adaptation, because older parents and adult children have different priorities and preferences when it comes to types of support and forms of connection in the family, which can lead to misunderstandings and mismatches, conflicts and disappointments (e.g., older parents want more practical help and cooperation their children in their daily activities, while adult children may prefer to express emotional support or provide financial assistance);
- the inclusion of conflict as an additional dimension in the paradigm of intergenerational integration and solidarity draws attention to different types of interactions (e.g., affection and conflict), as they affect the stability and quality of relationships. Conflict can be inherent in intergenerational relationships, but its presence can cause stress and tension, especially if it is not adequately resolved or managed. Situations often arise in which elderly parents and adult children disagree on important family issues, such as caring for elderly family members or dividing the inheritance. A lack of understanding or compromise in resolving these conflicts can lead to deepening tensions and weakening family bonds;
- finding a balance between the expectations of older parents and the needs of adult children. As older parents age, they face a variety of physical and mental changes, as well as challenges that may require more support and care from

- their adult children. When they are more dependent on their children's help to carry out daily activities or provide medical care. However, adult children may not be willing or able to provide the necessary care due to their obligations, limitations or lack of resources;
- older parents and adult children may struggle with changing roles and responsibilities in the family. While older parents have traditionally been the bearers of authority and care in the family, roles change as older parents become more vulnerable or dependent on their children's help, which can cause insecurity or discomfort, both in older parents, who may feel helpless due to the loss of autonomy, and in adult children, who may feel overwhelmed by new responsibilities.

Older adults face a series of challenges in relationships with adult children that arise from the concept of ambivalence, focusing on the mixed positive and negative emotions that may be present in these interactions. One of the key challenges is the profound emotional dissonance that can arise from intergenerational ambivalence, where older parents and adult children can feel both attraction and rejection for each other at the same time. In this context, a challenge can be identified, which lies in the lack of understanding and empathy between a similar challenge relates to the conflict between the desire for autonomy and the need for interdependence within the family. Especially if the elderly parent lives alone, has limited mobility, wants to maintain their independence and control over their life, and finds it difficult to perform daily tasks (e.g., shopping, paying money orders, etc.). But, even if an adult child wants to help them, the adult child may experience a rejection of the help offered, leading to disappointment for the child on the one hand and the elderly parent, who is worried about the ability to control and the loss of their independence.

14 Final Thoughts

Demographic change, characterised by increasing life expectancy and changes in the age structure of the population, poses key challenges for families and society as a whole. In the context of these changes, intergenerational relationships are becoming increasingly important and have a direct impact on the stability and well-being of family life. The analysis of different types of intergenerational integration and relationships, such as solidarity, conflict and ambivalence, reveals the diversity and complexity of these interactions, ranging from intense emotional proximity to

distance, and the importance of taking into account contextual differences, including social, cultural and economic specificities, highlights the need for a flexible approach to the study and treatment of intergenerational dynamics.

Intergenerational relationships also play a key role in maintaining the mental health and well-being of older people, as quality family relationships that include emotional, financial, and instrumental support provide a sense of security, purpose, and connection as key components of happy and fulfilling ageing. An emphasis on reciprocity in relationships and the promotion of open dialogue and exchange of support within the family are essential to ensure intergenerational solidarity and quality ageing, and education on the importance of family and community support in maintaining family values is a key step in ensuring the optimal well-being of older people in modern society. Recognizing significant challenges in intergenerational relationships, such as generational bias, divergence of expectations and needs, ambivalence, and the impact of filial norms, is crucial to understanding the complexity of these relationships, as understanding these dynamics allows for the development of targeted support strategies that promote harmonious and satisfactory intergenerational relationships and contribute to the overall well-being of the family and society.

Among the reasons why there could be more conflict and a reduction in the age group in integration and generational solidarity by 2030, we highlight the increase in:

- dependency relationships. Declining birth rates mean fewer workers will be available to support aging adults;
- perceptions of "generational inequality", because if inflation continues to intensify, older adults are increasingly likely to be perceived as "greedy geezers", as public support for older adults comes from funds that could be allocated to younger generations.

Also, ageism will negatively perpetuate stereotypes that see the elderly as rigid, terribly old-fashioned, incapable, irrelevant, and worthless because more of the elderly population lives in the past, with mental disorders (e.g., Alzheimer's disease, heart attacks, strokes, etc.), which will define the perception of aging as inherently negative. Also, because technological progress is becoming more and more a part of the personal lives of older adults, as many people cannot or do not want to adapt to

new techniques. However, due to the decline in the birth rate, the young generation will be increasingly valued and attention will be focused on young people, including at the expense of older adults. Nevertheless, the research results point to the continuation of the relatively high level of integration and solidarity between macrogens that characterize Western societies after the fall of the Berlin Wall.

Therefore, in addition to the strategies already in place, new ones are needed to improve integration in the light of satisfied relationships between older adults and their children, which will enable a structured approach that is based on open communication, empathic understanding, setting clear boundaries, flexibility and adaptability, cooperation and joint planning, support and solidarity, and seeking professional help. These strategies will promote deeper awareness, connection, and harmony in the family, ensure the long-term stability and well-being of all family members, and promote adaptation to change and strengthen the resilience of family relationships in modern postmodern society. Incorporating these strategies into counseling, therapy, and supportive practices will allow for better mental health and quality of life for all family members, with a particular focus on older adults.

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AXIOLOGY OF CHILDREN'S RIGHTS

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The article focuses on the value system that relates to children's rights. The starting point is the assumption that historically, children were not protected by law, which meant treating them as "half" people or "material" from which a human being would later be created. As a result, it was only in the 19th and 20th centuries that children's rights were legalized, which we owe primarily to educators and medical doctors. Despite this, children's rights are well embedded in Western thinking. The axiology of human rights, including children's rights, is informed by multiple sources and historical inspirations. The most fundamental among them include 1) the Judeo-Christian tradition; 2) the legacy of the Enlightenment; 3) republican ideals of liberty and equality; 4) democratic traditions; 5) the trauma of wars, genocide, totalitarianism, and authoritarian regimes; 6) the recognition of peaceful international cooperation as a prerequisite for development and progress. As a result, the axiology of children's rights includes two groups of provisions. The first refers to general regulations that undermine human rights. The second group refers to regulating the environment in which the child grows up and socializes.

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1 Introduction

In the 20th and 21st centuries, children's rights are an obvious standard. No one can imagine a rational, comprehensive list of rights and freedoms without including minimum guarantees addressed to the youngest. Coming to the common conviction that the law should protect children, and not just people as such, was neither easy nor quick. In short, our civilization had to mature enough to see children's rights. To see a child, a person who for centuries was treated as a "little person", an "incomplete person," or a "half person", as a special subject of legal protection.

In the long process of recognizing the importance of children's rights, the system of values played a primary role. It created the rudimentary assumptions that define the way children and their rights are perceived. Therefore, what can be called the humanistic perspective of "humanizing" the child, giving him human characteristics with all his attributes (dignity, equality, freedom, prohibition of discrimination) is of fundamental importance in defining and promoting children's rights. However, in the case of the axiology of children's rights, additional attributes inseparably related to their proper development are important. Taken together, they create an environment for growth, an environment in which the child matures, socializes, and becomes an inseparable part of the community.

This environment is primarily the family, school, and a circle of close and distant friends. This environment creates a space endemic to the child, not only of the rights of adults (such as equality), but also of specific children's rights that define the child and allow them to grow up properly. This exceptional environment requires, among other things, love, respect, a sense of value and closeness, security, and especially certainty of tomorrow. All of these specific elements of the children's rights system are not very measurable and uncountable, and therefore, they are challenging to fit into the corset of legal regulations from which we can reconstruct legal norms. This is why the axiology of children's rights is so important, because norms expressed *in extenso* allow for proper interpretation, giving them meaning, and above all, realizing the fundamental goal of all children's rights, which is - to put it briefly - to make the child happy.

2 The Development of Children's Rights

For centuries, a prevailing belief held that a child was neither *de iure* nor even *de facto* a human being. Consequently, there was no contemplation of extending rights or privileges to children's rights that, through gradual evolution, ultimately developed into what is now recognized as human rights. It was universally accepted that a child was merely "human material," a "half" or "incomplete" person, with their humanity developing progressively over time. Childhood was thus regarded as a phase of "becoming human" - a stage during which a malleable entity was gradually transformed into a fully realized human being through learning, habituation, and socialization. A "human being," in this perspective, was an adult - an individual who was psychologically and physically fully developed.¹

This view was, in a sense, reflected in the famous riddle of the Sphinx, which posed the question: "What creature walks on four legs in the morning, two legs at noon, and three legs in the evening?" This riddle, deeply rooted in mythological beliefs, illustrates the historically dismissive attitude towards both children and older adults, who - like children - were not perceived as full-fledged persons. As a result, they were often excluded from legal considerations regarding their status, rights, and freedoms. In the Sphinx's riddle, the creature that crawls on all fours in the morning (an infant), then walks on two legs at noon (an adult), and finally uses a cane to walk on three legs in the evening (an older person), signifies that only the adult - who walks on two legs - is considered complete, autonomous, and fully functional. The extreme phases of this transformation - infancy and old age - were viewed as transitional mutations or temporary intervals in human existence. This perspective largely explains why, for many centuries, neither children nor older adults were recognized as bearers of human rights. Even when the necessity of a distinct normative framework for these two groups was acknowledged, it was often argued that both were already encompassed within the broader category of human rights, rendering any separate articulation of their rights superfluous.

As a result, the historical approach to children was predominantly pragmatic, treating them as a "potential" human resource. This perception was reinforced by factors such as large, multi-child families, high child mortality rates, and a general lack of

¹ Kosher, Ben-Arieh & Hendelsman, 2016, pp. 9-18.

adequate care and attention in terms of health, education, and culture. For centuries, there was an ingrained belief in the natural and social selection of children, whereby only a few – those most resilient, persistent, and well-adapted to societal life – would successfully transition into adulthood.² This perspective did not undergo significant transformation until the late 19th and early 20th centuries. The shift was influenced mainly by emerging currents of legal and philosophical thought that began to recognize the individual as a legal subject - not merely a biological or social entity but a rights-bearing person with entitlements, responsibilities, and freedoms.³

Numerous intellectuals and practitioners contributed to this legal emancipation of children's rights. However, legal scholars and prominent political philosophers were conspicuously absent from the forefront of this movement. One notable exception was Jean-Jacques Rousseau, who, although not primarily regarded as a political philosopher in the context of children's rights, was instead recognized as a pedagogue and, indeed, the founder of modern pedagogy.⁴ Rousseau asserted that nature intends for children to experience childhood before reaching adulthood. He emphasized that a child is not merely a miniature adult but rather a fundamentally distinct human being with a unique perception of the world. Consequently, he advocated for a shift in focus - from emphasizing children's obligations to recognizing their rights. He also underscored the duty of parents to guide, support, and act as companions in their child's gradual journey toward adulthood.

Rousseau's conceptualization of the child's distinct status in relation to the adult laid the foundation for modern pedagogy and, crucially, introduced a new perspective on children's rights. This perspective provided the initial justification for treating children's rights as a separate legal category rather than subsuming them under the broader framework of human rights. In this framework, a child was not seen as an incomplete or miniature human but rather as a distinct individual, one with unique ontological and epistemological needs, expectations, and, consequently, rights.⁵ Thus, Rousseau advocated for *children's rights* as opposed to merely *human rights for children*, arguing that the latter failed to fully capture the specific needs and entitlements of the child as a legal subject. Over time, this rigid distinction was softened, giving rise to the prevailing view that a child is, fundamentally, a human

² Cunningham, 1995; Archard, 2004.

³ Bhattacharya, 2022, pp. 1-16.

⁴ Collins, 1976, pp. 51-80.

⁵ Nicola, 2006, p. 349.

being and thus entitled to human rights - alongside specific rights arising from their status as a child, i.e., children's rights. As evidenced by Rousseau's contributions, this evolving understanding of childhood and children's rights played a pivotal role in broadening societal awareness of the importance of children and their legal protections. It also challenged the perception that children's rights merely constitute a subset of human rights, demonstrating instead that they require distinct legal recognition and protection.

Children's rights, which distinctly differentiate them from human rights in general, have been primarily conceptualized by medical professionals, psychologists, and educators. These experts highlighted the social consequences of mistreatment, inadequate upbringing, or, in extreme cases, the complete absence of upbringing. Pedagogues emphasized that the ultimate character and disposition of an adult are determined by their environment, education, and the behavioral patterns they encounter during the process of socialization. Maria Montessori argued that children are inherently good, meaning that if adults exhibit undesirable traits, it is often the result of negative childhood experiences in which their innate and natural goodness was suppressed, giving rise to undesirable characteristics. According to Montessori, ensuring the protection of children's rights is essential to fostering and enriching the inherent good within them, which will, in turn, manifest in adulthood. This perspective was widely shared among educators, who consistently maintained that "a life without childhood is crippled".⁶ These and similar views, which reinforced the necessity of safeguarding children's rights, were also championed by other influential figures, including John Dewey, Stefan Szuman, and, among Polish scholars, Janusz Korczak, who famously asserted that "a child is not a future human being; a child is already a human being".⁷ This conviction, albeit slowly, gained widespread acceptance in legal and philosophical discourse. It developed against the backdrop of broader, more profound processes of recognizing humanity as a legal category, reflected in fundamental legal concepts such as "personhood," "dignity," "freedom," "self-development", and "equality." The post-Enlightenment vision of

⁶ Korczak, 1998, p. 121.

⁷ Alongside him, it is essential to mention Ludwik Rajchman, the originator of the idea to establish an international organization dedicated to children's welfare – UNICEF (United Nations International Children's Emergency Fund, later renamed in 1953 as the United Nations Children's Fund). Initially, the Fund was established to provide food and healthcare for children and mothers in countries devastated by World War II. In 1950, UNICEF's mandate was expanded to address the long-term needs of children and women in developing countries worldwide. In 1953, UNICEF became a permanent part of the United Nations system. The Polish physician Ludwik Rajchman is widely regarded as the founder of UNICEF and served as its first chairman from 1946 to 1950.

human rights, which upheld the principle that rights are equally inherent to all individuals, significantly contributed to shaping these currents. Additionally, the evolving doctrine of the Catholic Church, which increasingly focused on the dignity of the human person and found expression in Christian personalism, played a role in elevating the discourse on children's rights.

The late 19th century also saw the rise of socialist movements, which actively contributed to raising awareness of children's rights, particularly in response to the growing number of child laborers who were neglected, underpaid or entirely unpaid, deprived of safe and sanitary working conditions, and, in many cases, denied access to education and healthcare. Furthermore, it is essential to acknowledge that the advocacy and acceptance of children's rights were, in many ways, preceded by the broader women's emancipation movement. The organized feminist movements at the turn of the 19th and 20th centuries initiated what may be termed a "dignity revolution" in human rights – a movement that first exposed the dire conditions of a marginalized group, then highlighted its societal and legal significance, and finally advocated for formal legal changes that were expected to translate into tangible social improvements. It was within the framework of this dignity revolution that the assertion that a child is not merely a potential or future human being but an actual human being in the present gained widespread recognition. This realization underscored the necessity of incorporating children's rights into legal frameworks at both national and international levels, thereby rectifying their historical exclusion from legal protections.

From a legal perspective, this shift represented a true *Copernican revolution* in the approach to children's rights. Previously, the dominant belief was that a child was the property of their parents and, due to their lack of legal capacity, could not be a rights-bearing entity. As such, children were considered ineligible to possess rights and freedoms, which effectively precluded them from the expanding corpus of newly recognized and increasingly specific human rights.⁸

However, the persistent advocacy of educators, medical professionals, and psychologists ultimately led to the widespread recognition that children are indeed human beings and should not only benefit from general human rights but also be

⁸ Balcerek, 1986, p. 38.

entitled to a distinct set of special rights, exclusive to them. This principle was fully articulated in the first international legal instrument dedicated solely to children – the 1924 Geneva Declaration of the Rights of the Child.⁹

The Declaration sets forth five fundamental principles concerning the treatment of children:

1. A child must be given the means necessary for normal physical and spiritual development;
2. A hungry child must be fed, a sick child must be cared for, a delinquent child must be rehabilitated, and an orphan or abandoned child must be provided with shelter and assistance;
3. In times of distress, a child must be given priority for aid;
4. A child must be prepared for gainful employment and protected from all forms of exploitation;
5. Children must be raised with the understanding that their best qualities should be dedicated to the service of their fellow human beings - an idea that today aligns with the modern concept of a child's right to self-development.

This Declaration marked the initial step in a broader movement toward the codification of children's rights within international law. It laid the groundwork for subsequent legal instruments aimed at ensuring the protection and recognition of children as distinct rights-bearing individuals within the broader framework of human rights.

The Geneva Declaration was the first catalyst in the gradual development of international legal regulations aimed at recognizing children as beneficiaries of the broader spectrum of human rights. A subsequent and more comprehensive post-war instrument was the 1959 Declaration of the Rights of the Child, adopted during the 14th session of the United Nations General Assembly. This Declaration directly referenced the 1924 Geneva Declaration, which had been adopted by the Assembly of the League of Nations.

⁹ Jimeno, 2020, pp. 143-166.

The principal objective of the 1959 Declaration was to affirm the belief that “mankind owes to the child the best it has to give” and to ensure that every child enjoys “a happy childhood and the benefits, both for their own well-being and that of society, of the rights and freedoms enshrined [therein]”.¹⁰ Notably, for the first time, the Declaration explicitly (*expressis verbis*) recognized the child as a subject of human rights in their own right. This recognition symbolically concluded the long-standing struggle to have children's rights acknowledged as human rights while simultaneously distinguishing them from rights traditionally accorded to adults. In doing so, the Declaration contradicted Rousseau's initial assertion that children's rights are not, by definition, human rights.

Compared to its 1924 predecessor, the 1959 Declaration significantly expanded the framework of children's rights, establishing ten fundamental principles:

1. the right of every child to equal rights;
2. the right to conditions ensuring comprehensive development;
3. the right to a name and nationality;
4. the right to maternal and child care;
5. the duty of special care for children with disabilities;
6. the right to love, understanding, and parental care;
7. the right to education, recreation, and sport;
8. the right to protection and assistance;
9. the duty to shield children from neglect, cruelty, and exploitation;
10. the right to protection from discrimination and upbringing in a spirit of tolerance.

The 1959 Declaration was primarily an appeal to governments, institutions, parents, and educators to adhere to these principles and to establish the necessary legal frameworks for their implementation. While it had significant resonance and persuasive impact, much like the Geneva Declaration before it, it remained a non-binding instrument. This lack of enforceability hindered its effective implementation. Nevertheless, the Declaration played an essential role in advocacy and public awareness, emphasizing the significance and gravity of children's rights as a distinct category within human rights.

¹⁰ Klafkowski, 1979, p. 283.

The impact of the *dignity revolution*, which framed children's rights as a specific subcategory within the broader human rights framework, extended beyond the creation of additional international legal instruments exclusively dedicated to children. It also led to the incorporation of child-specific provisions into general human rights treaties. The 1959 Declaration's principle that a child is a subject of human rights, and that children's rights are inherently linked to human rights, found concrete legal development in subsequent years. From that moment onward, it became inconceivable for any human rights instrument to exclude children from its scope. This development permanently dismantled the notion that a child is merely a "small", "incomplete", or "unfinished" human being.

The understanding that a child is a full-fledged human being, and that human rights encompass children's rights while also recognizing that children's rights extend beyond those of adults became particularly evident in subsequent international human rights instruments. A defining feature of this evolution was the inclusion of child-specific provisions in general human rights treaties. The 1948 Universal Declaration of Human Rights, in Article 25, explicitly granted children the right to "special care and assistance" and "social protection." Similarly, the 1966 International Covenants on Civil, Political, Economic, Social, and Cultural Rights guaranteed equal rights—including access to education and protection—for all children.

In 1973, the International Labour Organization adopted a convention establishing 18 as the minimum age for employment in occupations hazardous to health, safety, or morality. Subsequently, in 1978, Poland submitted a draft Convention on the Rights of the Child to the United Nations Human Rights Commission. This initiative culminated in the adoption of the 1989 Convention on the Rights of the Child by the United Nations General Assembly - a landmark achievement in the expansion and recognition of both human and children's rights.

While the importance of the 1989 Convention, as well as Poland's contribution to its drafting and refinement, cannot be overstated, it is crucial to acknowledge the political context in which it was developed. The Convention, though formally introduced by Poland, was intended to serve as evidence of the progressive stance of the socialist bloc, which sought to position itself as the first political formation to comprehensively and – importantly – legally enshrine children's rights in

international law. In the heavily propagandized climate of the 1970s and 1980s, the Convention was presented as proof that socialist states genuinely cared about children's welfare and that socialism itself was the guarantor of authentic children's and human rights. By contrast, capitalism was portrayed as offering nothing more than non-binding declarations devoid of substantive legal effect.

In this sense, the Convention, proposed in the latter half of the 1970s, was part of the Cold War's ideological contest over human rights. It was, in part, a response to the 1975 Helsinki Final Act of the Conference on Security and Cooperation in Europe (hereinafter: CSCE). However, while the political motivations behind its drafting are undeniable, this does not diminish the significance of the Convention ultimately adopted in 1989. Instead, it situates the document within the complex political and ideological landscape of its time.

The very notion of a binding international treaty outlining an extensive catalog of children's rights was intended to highlight the superiority of socialist states over the so-called bourgeois concept of human rights, which, while recognizing children's rights in principle, failed to afford them adequate prominence. Today, more than three decades after the Convention's adoption, its Cold War context has lost its relevance. Instead, what remains is a universally accepted legal standard affirming that human rights inherently include children's rights, while also acknowledging that children's rights constitute a unique and indispensable subcategory within the broader framework of human rights.

It must be emphasized from the outset that the adoption of the 1989 Convention on the Rights of the Child did not mark the conclusion of the process of juridification of children's rights. On the contrary, several international legal instruments addressing children's rights emerged in the years following its adoption. Among these were the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the 1996 European Convention on the Exercise of Children's Rights, and the 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, adopted by the United Nations. In 2008, another landmark treaty - the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse – was enacted. This instrument was the first in the international legal order specifically designed to combat all forms of sexual

violence against children, including abuse committed within the family and crimes facilitated by new technologies.¹¹ Despite the increasing number of specialized treaties, the 1989 Convention on the Rights of the Child remains the most significant and authoritative international instrument on children's rights.

Regardless of the ideological and political context surrounding its adoption, it is now universally recognized as an unassailable legal standard that human rights inherently encompass children's rights. Put differently, children's rights are a distinct subclass within the broader framework of human rights. As a result, children benefit from general human rights on equal footing with adults while also enjoying special protections tailored to their specific vulnerabilities and needs.

3 The Context of the Legal Regulation of Children's Rights

The recognition of children's rights as an integral part of human rights derives from the broader system of values embraced by democratic societies. The axiology of human rights, including children's rights, is informed by multiple sources and historical inspirations. The most fundamental among them include:

1. the Judeo-Christian tradition;
2. the legacy of the Enlightenment;
3. republican ideals of liberty and equality;
4. democratic traditions;
5. the trauma of wars, genocide, totalitarianism, and authoritarian regimes;
6. the recognition of peaceful international cooperation as a prerequisite for development and progress.

The Judeo-Christian tradition introduced the concept of personhood, affirming human dignity as a reflection of the divine image. It also established a moral dichotomy between sin and virtue and posited that every individual possesses free will to choose between good and evil. The Enlightenment redefined humanity's place in the world, emphasizing the principles of equality and freedom while juxtaposing faith with reason, empirical knowledge, and utilitarianism. Most notably, the Enlightenment inverted the traditional hierarchy by prioritizing human agency

¹¹ Szmigiel, 2018, p. 272 and following.

over divine authority. It championed individual freedom, self-realization, happiness, and progress as paramount societal values.

Republican ideals of liberty and equality were built upon the foundations of the Enlightenment and were institutionalized, most notably in France and the United States. The American constitutional system, anchored in the Bill of Rights, enshrined human rights at the highest legal level, often granting them constitutional status. This framework expanded the human rights canon by formally recognizing freedoms such as freedom of speech, freedom of religion, and freedom of assembly. Republican thought, rooted in Enlightenment philosophy, established a radically new approach to rights and freedoms, departing from the era of privileges granted to select social groups and instead embedding rights within the rigid structure of constitutional law, thereby ensuring a minimum standard of legal protection for all individuals.

Democratic traditions constitute another cornerstone of the axiology of human rights, including children's rights. These traditions encompass the institutional experience of democratic governance, wherein constitutions, human rights, the rule of law, political culture, pluralism, dialogue, and compromise are all respected. Democratic principles reject coercion and violence, instead promoting deliberation and the pursuit of common ground over divisiveness. With respect to children, democratic traditions unequivocally repudiate slavery and child exploitation while simultaneously emphasizing the need for education and children's inclusion in socialization and participatory processes.

The 20th century, marred by war, genocide, and totalitarian ideologies that flagrantly disregarded human rights, serves as a stark reminder of the need for strong international protections, particularly for children. This was a century in which children, on an unprecedented scale, became victims of ethnic, national, linguistic, and religious purges. The trauma of these historical atrocities underscored the necessity of safeguarding human rights, with special attention to the protection of the most vulnerable and defenseless - children.

The contemporary system of child protection broadly represents a response to the catastrophic consequences of past human rights violations. As Polish writer Zofia Nalkowska poignantly observed, "humans inflicted this suffering upon other

humans”.¹² The smoke rising from the crematoria of Birkenau, hauntingly chronicled by Polish author Seweryna Szmaglewska¹³, and the chimneys of hundreds of other Nazi concentration camps – Auschwitz, Dachau, Ravensbrück, Stutthof, Sachsenhausen, and Groß-Rosen – stand as harrowing evidence of the utter desecration of human dignity, the destruction of fundamental freedoms, and the profound moral decay of the 20th century. These historical realities profoundly influenced the subsequent imperative to establish rigorous human rights protections, particularly for children.

Lastly, the recognition of peaceful international cooperation as a fundamental prerequisite for development and progress remains a key component of the value system underpinning human rights, including children's rights. Today, international cooperation in human rights protection is self-evident, encompassing both the promotion of fundamental principles, values, and rights and collective responses to human rights violations. A recent illustration of this principle is the international outrage over war crimes committed against civilians and children in Ukraine. The indiscriminate bombing of hospitals and orphanages, as well as the forced abduction and deportation of Ukrainian children to Russia for the purposes of Russification, have justifiably provoked global condemnation - evoking historical memories of atrocities committed more than 80 years ago.

Long before these events, Pope John Paul II emphatically declared: “No more war! Peace – peace must guide the destiny of nations and all of humanity”.¹⁴ On another occasion, he stated, “The measure of a society's humanity is its care for children”.¹⁵ The Pope further articulated his philosophy on children's rights in his famous 1994 *Letter to Families (Gratissimam sane)*, written in commemoration of the International Year of the Family. In this letter, he asserted unequivocally: “All the rights of the child are contained within the right to be loved. Therefore, a society cannot claim to protect children, provide them with care, or foster their development if, in

¹² Nalkowska, 2021.

¹³ Szmaglewska, 2020.

¹⁴ John Paul II's, 1989 - Letter to the Polish Episcopal Conference on the 50th Anniversary of the Outbreak of World War II (August 26, 1989). Cf. <https://www.ekai.pl/papiez-na-lecie-wybuchu-wojny/> (accessed: 6 February 2025).

¹⁵ John Paul II's, 1979 - speech of October 2, 1979, delivered at the United Nations General Assembly in New York.

undertaking these efforts, it does not simultaneously reaffirm its fundamental duty to love the child”.¹⁶

4 Values Defining Contemporary Children's Rights

In addition to the general democratic axiology, the system of values shaping our approach to human rights, including children's rights, derives from the principles and values that have influenced the development of contemporary constitutional law and international law, along with their respective legal standards.¹⁷ The institutionalization of these principles and values means that references to them are now embedded in legal instruments of varying ranks and must be considered when considering children's rights. These references, enshrined in national constitutions and international treaties, form the normative axiology of children's rights.

Broadly, they fall into two categories. The first category consists of the general axiology of human rights, which includes fundamental provisions related to human dignity, equality, freedom, the prohibition of discrimination, and the justified, necessary, and proportionate interference with human rights. This category provides irrefutable evidence that children's rights are human rights, thereby unequivocally rejecting outdated perceptions that a child is merely a “small”, “half”, or “potential” human being. The axiology of human rights is built upon key foundational concepts that serve as the cornerstones of complex systems for the protection of individual rights and freedoms. Among these fundamental concepts are dignity, equality, freedom, property, the prohibition of discrimination, the prohibition of inhumane treatment, the right to privacy, the right to found a family, the right to health protection, and the right to freedom of movement.

The second category consists of endemic rights pertaining to family life. These include constitutional or international treaty provisions that safeguard the natural environment in which a child lives, grows, learns, and develops. The axiology of family life is thus defined by principles such as the protection of motherhood, parenthood, and family; the special protection of marriage; the state's duty to protect children; the right of parents to raise their children in accordance with their own beliefs; the right to education; the child's right to protection and care from the state;

¹⁶ John Paul II's, 1994.

¹⁷ Wringer, 1981.

and the principle of parental responsibility for the upbringing and development of the child. This group of rights, which defines the conditions for a child's life and development, constitutes children's rights *sensu stricto* – rights that ensure the child is adequately prepared for life in what Pope John Paul II described as “the most beautiful, freshest, and richest period of hope, filled with joyful anticipation of the future”.

Consequently, the value system underpinning child protection—enshrined in constitutional and international legal standards - comprises two subsystems. The first is the general axiology of human rights, encompassing fundamental principles such as dignity, equality, freedom, and the prohibition of discrimination. The second is the endemic axiology of family life, which includes the protection of motherhood, parenthood, and marriage, the right of parents to raise their children, and their shared responsibility for the upbringing and development of their child.

As evidenced, the value system through which children's rights must be understood affirms the assertion of Pope John Paul II, who stated: “*Children are the springtime of the family and society, a hope for the future that continuously unfolds and must be nurtured so that it may bloom most beautifully*”. The Polish Pope strongly emphasized that children's rights cannot be considered in isolation from family rights and that child protection cannot be separated from the protection of the environment in which the child lives, is raised, and develops¹⁸. This interrelation is at the core of the specificity of children's rights as the rights of minor human beings. A child does not live in isolation; they live with their mother and father, within a family, and within other natural environments such as school, peer groups, and mass media - all of which shape the child and bear a particular responsibility for their development.

However, when discussing the axiology of children's rights, one must not focus exclusively on legal frameworks conventionally associated with value systems underlying more or less codified catalogues of human rights and freedoms. It is equally crucial to recognize that the fundamental value protected by children's rights is the child *per se*. Jerzy Bartmiński defines value as “that which, in light of language and culture, people regard as precious”.¹⁹ According to him, the designation of

¹⁸ Pope John Paul II's teaching on the rights of the child was integrally linked to his teaching on the rights of the family. See also Maino, 2023, pp. 241-255.

¹⁹ Bartmiński, 2003, p. 62.

something as a value - i.e., as something precious, is not only an individual but also a collective determination. This communal vision of value is reflected in the international system of children's rights protection. Similarly, in constitutional legal frameworks, the child is regarded as a value, which is why legal systems are structured to ensure its adequate protection.

The child, as an essential element of constitutional axiology, is perceived by civil society as good, as someone precious, as a person who must be protected, among other reasons, because they are a part of the national community (constituted by the constitution) or the global community (regulated by international law).²⁰ At the linguistic-structural level in legal texts, the term *child* encompasses a range of denotative and connotative meanings. Denotatively, it refers to “a human being”, “a minor”, “a person under the age of 18”.²¹ Connotatively, it conveys developmental stages (immaturity), emotional and psychological needs (security, respect), and social needs (care, parental presence, assistance).

In normative regulations, including the 1997 Polish Constitution, particular emphasis is placed on the child's need for security and care, their immaturity, and their desire for respect. Additionally, and self-evidently, the positive evaluation of the term *child* is linked to values esteemed within the community, for which the term serves as a carrier. Chief among these values are two fundamental personal goods: dignity and humanity. The dignity of the child, like that of an adult, is inherent and inalienable, forming the foundation of human and civil rights and freedoms. It is inviolable, and its respect and protection are obligations of public authorities.

Furthermore, the granting of rights to the youngest members of society and the protection of their freedoms demonstrates that another fundamental attribute – humanity – is not regarded as merely potential but as actualized in childhood. This directly challenges the outdated notion that a child is a “half-human” or merely a *future* human rather than a *present* one.²² The protection of the value that is the child finds its linguistic representation in legal predicates that convey entitlements: “has the right to” or obligations of the state authorities and guardians: “shall”, “is guaranteed”, “the authorities and responsible individuals are obliged to”.²³ Thus, the

²⁰ Freeman, 2017, pp. 91-106.

²¹ Article 1 of the Convention on the Rights of the Child.

²² Korczak, 2012, p. 14.

²³ Gorlewska, 2016, p. 139.

architects of children's rights emphasize the value of the child primarily by endowing them with certain just entitlements – **the essence of children's rights as a whole.**

5 Conclusion

Children's rights undoubtedly have their specific grammar, specific only to them. Although, as is evident, all human rights apply to children, the standard – established by the United Nations Convention on the Rights of the Child – is that children – as a special subject of law – have rights dedicated only to them. When speaking about these rights, it should be borne in mind that the purpose of all rights addressed to children is to ensure their happiness, which guarantees proper development and, ultimately, reaching adulthood. In practice, in order to achieve this happiness, it is necessary not only to apply appropriate regulations but also to give them a context and a proper definition, the directive of which should always be to read the regulations in such a way as to maximize children's rights (in the positive sense) and minimize their discomfort (in the negative sense). In a word, the axiology of children's rights seeks, as Collin Wrings said, justification for these rights and provides tools for their effective enforcement.

The axiology of children's rights contained in international agreements and the constitutions of individual countries includes two groups of provisions. The first refers to general regulations that undermine human rights in general. These are provisions confirming values such as dignity, equality, freedom, and the prohibition of discrimination. The second group refers to regulating the environment in which the child grows up and socializes. Both regulations protecting the family (maternity) and other measures (e.g., school) are essential here.

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THE CHILD'S RIGHT TO DEVELOPMENT IN THE DIGITAL AGE

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Interestingly, the *UN Convention on the Rights of the Child* and the Internet emerged almost at the same time. However, the process of finalizing the Convention took a long time, and even today, some children's rights are still not fully protected. On the other hand, from the moment the Internet began to represent a social reality, its development proceeded at an incredible speed, overcoming any obstacle, subtly infiltrating almost every sphere of today's human life. Although it may not seem so, the unstoppable development of the digital world was still made possible by humans – those same humans who did not sufficiently focus on the proper development of the child. It is of utmost importance that children's rights, including the right to development, be monitored and protected in all circumstances, including in the digital environment, even if this requires the imposition of certain limitations.

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1 Legislative History of Children's Rights

Within the framework of the United Nations (hereinafter: UN), many instruments have been adopted that directly or indirectly strive to protect the position of children. However, even before the UN was founded, certain changes in the understanding of children had begun. The moment when it became clear that the adopted international standards could and must be applied to children, the process of "internationalization of children's rights" began, which had first materialized in the Declaration on the Rights of the Child from 1924, which was adopted by the Assembly of the League of Nations and then, in an expanded form, the United Nations adopted a new Declaration on the Rights of the Child in 1959.

Even though it does not apply exclusively to children and does not have a binding character, the Universal Declaration of Human Rights is of great importance. This Declaration established important principles and values that were later elaborated in legally binding UN treaties.

In addition to the Declaration as mentioned above, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are also important.

For improving the position of children, the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages from 1962 is also of great importance. However, in the field of family law, that is, children's law, the most important act that was adopted is the UN Convention on the Rights of the Child from 1989 (hereinafter: UNCRC).

It took a long journey to recognize and institutionally regulate children's rights finally. Today, numerous organizations are behind the acts whose norms regulate the position of children exclusively, i.e., the acts that indirectly affect children's rights. The intent of these acts is not uniform in terms of whether they are legally binding or not, and neither is their relevance, but one thing is certain – once this process has been initiated, the way children and their position will be perceived becomes permanently set. In terms of family law, specifically child law, the most

significant milestone was the adoption of the UNCRC in 1989.¹ Before UNCRC, the recognition of children as developing individuals and the need for their protection was central to international children's rights law. The Convention's drafters likely understood both the importance of safeguarding children's development and the practical challenges of establishing it as a human right. Although the right to development isn't explicitly stated in earlier declarations or human rights treaties, its inclusion in the UNCRC was intentional.² The UNCRC itself stems from years of work. The development of a document on children's rights was driven by a growing recognition of children as distinct individuals and the strengthening of International Human Rights Law³. At the 34th session of the UN Commission on Human Rights in 1978, the impact of armed conflicts on children and the need to protect them were highlighted. During this session, the Polish delegation presented a draft of the Convention on the Rights of the Child (the so-called *Polish draft*), based on the 1959 UN Declaration. Shortly afterwards, a working group was formed dealing with the proposals submitted by various states or organizations. More than ten years would pass before the Working Group submitted the final text draft (though the initial plan was for the Convention to be adopted in 1979), which was first adopted by the UN Human Rights Commission and the Economic and Social Council. It was then further submitted to the UN General Assembly for adoption, where it was adopted by acclamation. The final version differed significantly from the original draft, with one key change – and one of the Convention's major innovations in international children's rights law – being the inclusion of the child's right to development in a binding treaty.⁴

The UNCRC represents a unified and coordinated document. In contrast, the rights proclaimed in the UNCRC represent a synthesis of efforts to ensure the best possible quality of life for the child. Though the final regulation of children's rights and its attempt to improve the overall position of children are undeniably motivated by a noble idea, it was surely not an easy road to finally put this idea into practice.

¹ *Convention on the Rights of the Child (CRC)*, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.

² Peleg, 2019, p. 91.

³ Detrick, Doek & Cantwell, 1992, p. 19.

⁴ Peleg, 2019, p. 55.

2 The Right to Development in the UN Convention on the Rights of the Child

The issue of establishing a right to development did not receive significant attention during the drafting process. It wasn't until 1988, a decade later, that India proposed adding Article 6 to the UNCRC, addressing the child's right to life and linking it to children's rights to survival and development, a suggestion that was subsequently endorsed by the Working Group responsible for drafting the UNCRC.⁵

The innovation of the UNCRC lies not in the protection it offers to children's development, but in the establishment of a right to development which does not have a single 'true' meaning but grants extensive protection to various aspects of this right, such as physical, emotional, spiritual, and cultural growth.⁶ The inclusion of the right to development in the UNCRC was intentional, as it had not been explicitly safeguarded in previous international declarations on children's rights or in any broader human rights treaties.⁷

In addition to the dilemmas raised by the concept of the right to life, specifically who can be considered its entitled party, the concept of the right to development also offers room for different interpretations, even though most of the discussions centred on the meaning of the right to survival and its potential overlap with the right to life whereas the right to development mostly remained on the periphery of the discussion.⁸

While at first glance it may seem that a child's development has nothing to do with the general human right to development, as highlighted in the UN Declaration on the Right to Development, certain similarities can be observed.⁹

Firstly, the *travaux préparatoires* show that the concept of the child's survival and development was influenced by the developmental discourse of the time, which can be explained by the fact that the UN Declaration on the Right to Development was adopted only three years before the UNCRC. Secondly, the Committee on the

⁵ Peleg, 2017, p. 3.

⁶ Peleg, 2019, p. 56.

⁷ Peleg, 2019, p. 56.

⁸ Peleg, 2017, p. 3.

⁹ Manfred, 2005, p. 46.

Rights of the Child has taken a holistic approach to the concept of development, emphasizing the importance of all other provisions of the UNCRC through the principle of development. Finally, the fact that the right to life, survival, and development is considered one of the four general principles of the UNCRC confirms that the child's right to development goes hand in hand with the general human right to development as outlined in the UN Declaration on the Right to Development.

The mentioned UN Declaration on the Right to Development attempted to define this right, which it views as "an inalienable human right based on which every person and all nations acquire the right to participate in, contribute to, and enjoy the results of economic, social, cultural, and political development."¹⁰ The ultimate goal of development, according to the Declaration, is the "improvement of the well-being of the entire population and all individuals."¹¹

During the negotiation of the final text of Article 6, Italian representatives emphasized that the terms survival and development in the language of international organizations had acquired special significance, implying the assurance of the child's survival in order to achieve the full development of the child's personality, both physically and spiritually.¹²

It is our view that this implies that if states create an environment that allows children to grow healthily and safely, without fear and beyond scarcity, and to develop their personality, talents, and abilities to their fullest potential in accordance with their developmental capacities, they are simultaneously implementing the right to human development.¹³ Ensuring the survival and physical health of the child is undoubtedly a priority for member states, but it is also emphasized that this provision covers all aspects of development, with health and psychosocial well-being being closely interconnected. The Committee on the Rights of the Child emphasizes that the right to survival and development can only be implemented in a holistic way, through the respect of all other provisions of the UNCRC, such as the child's right to health, adequate nutrition, social security, an appropriate standard of living, a healthy and

¹⁰ Declaration on the Right to Development, 1986, Article 1(1).

¹¹ Declaration on the Right to Development, 1986, Article 2(3).

¹² Mowak, 2005, p. 13.

¹³ Mowak, 2005, p. 47.

safe environment, education, and play, as well as the respect for parental responsibilities.¹⁴

At the time the UNCRC was adopted, it was stressed that when applying the provisions of the UNCRC, different factors must be taken into account and that its provisions may take on different meanings in different environments.¹⁵ Considering the overall changes that have occurred both on an individual and global level, the right to development today acquires an entirely new dimension and meaning.

It is well known that the earliest period of childhood is highly significant in human development and, as such, forms the foundation for acquiring and developing essential life skills and personal abilities.¹⁶ The first five years of life are so important for human development and have such a crucial impact on the child and the outcomes they later achieve that some authors argue that the state has a special interest in ensuring healthy development during this period, which is only possible if such care becomes an integral part of the legal system.¹⁷

The conventional mechanism for protecting children's rights should not be interpreted as a final and closed system. On the contrary, the rights of children, as defined in the UNCRC, represent only the starting point and the minimum framework for the protection of these rights, beyond which the contracting parties should in no case retreat in defending children's rights. The system of children's rights established by the UNCRC, after a prolonged and exceptionally complex process of harmonizing the text of the agreement, conditioned by numerous factors, including cultural ones, is only the foundation for the future development of the system for the protection of the rights of those on whom the world depends. This mechanism must primarily be interpreted in terms of its continuous improvement and raising the level of protection for the rights guaranteed by the UNCRC. The minimum consensus that the contracting parties reached in defining the rights protected by the UNCRC represents the lowest common denominator and thus the cornerstone shared by all legal systems, which are often quite incomparable in terms of broader societal frameworks, in which the protection of children's rights is achieved. In this sense, all rights in the UNCRC must be interpreted in a way that

¹⁴ General Comment No. 7, 2005.

¹⁵ Cohen & Kilbourne, 1998, p. 643.

¹⁶ Huntington, 2017, p. 758.

¹⁷ Huntington, 2017, p. 759.

the achieved level of children's rights in a given legal system is continuously improved, expanding the scope of action and protection of children's rights regulated by the UNCRC.

3 Children and the Internet

As highlighted, the UNCRC was adopted in 1989, which interestingly coincides with the year often cited as the birth of the Internet. It is clear and entirely expected that the creators of the UNCRC did not consider it necessary to regulate the protection of children's rights in this area of societal reality, as they neither could nor knew how to. Today, nearly 35 years after the adoption of the UNCRC and the emergence of the Internet, it is clear how vital it is to consider the protection of children's rights in the digital environment. However, it took more than 30 years for the Committee on the Rights of the Child to address this issue. The fact is, a large number of children today have access to the Internet and various types of content that can affect them in different ways. For instance, one study shows that 95 percent of teens have access to a smartphone, and 45 percent of teens say they are online "almost constantly".¹⁸ However, we must be cautious with statistical data, as a 2020 study conducted by UNICEF shows that as many as 33 percent of children do not have internet access at home. What is a fact is that access to the Internet mostly depends on the country's income group, the rural-urban divide, and household wealth.¹⁹ While it may be impossible to determine the exact number of children who have internet access, that number has undoubtedly reached significant levels by now.

*"Growing numbers of children are on social networking sites but many are not taking all necessary steps to protect themselves online."*²⁰

This was likely one of the reasons the Committee on the Rights of the Child addressed this issue. In 2021, General Comment No. 25 (GC25) on children's rights in relation to the digital environment was adopted.

¹⁸ Dworkin, 2021.

¹⁹ Amaro et al, 2020, p. 4.

²⁰ European Commission: DG Communication, 2011.

Although not legally binding, GC25 is a significant international framework that guides Member States on how to develop legislation and regulations concerning children's rights online, helping them to fulfil their obligations under the UNCRC. Among other things, it is stated that „the rights of every child must be respected, protected and fulfilled in the digital environment“.²¹ Furthermore, GC25 states that the four principles offer a framework for interpreting the implementation of all other rights under the UNCRC, and they should act as a guide for identifying the actions necessary to ensure the realization of children's rights in the digital environment.²²

Opportunities that the digital environment offers to children represent one of the crucial role in children's development. Children's lives are increasingly shaped by their online experiences, and that world can be completely distinct from the environment of their home and school.²³ With the advent of the Internet, children have been given the opportunity to more easily access numerous information and data, which can be significant for various aspects of their development.

On the one hand, the digital environment offers children opportunities for education, information, creative development and enables children to explore various subjects, discover new worlds, and foster their interests, but also to entertain themselves.²⁴ As digital natives, they are well-equipped to succeed in an increasingly digital and interconnected education system and future labour market. Furthermore, the usage of different digital tools can support children with disabilities in learning, connecting, communicating, and engaging in recreational activities online, as long as these tools are accessible. On the other hand, while acknowledging the many benefits of the Internet (which we believe far outweigh the drawbacks), it is important also to consider the potential ways in which the Internet can pose risks to children and their rights. The risks that tend to jeopardize children's rights can be marked as four big C. Namely, in the very text of GC25, it is stated that it is necessary to „raise awareness among children about the potential negative consequences of exposure to risks associated with *content*, *contact*, *conduct*, and *contract*“. Depending on the type of danger, children can have different roles. In this sense, when it comes to harmful content, children appear as recipients; in the case of contact, children act as participants. When it comes to conduct, children appear as actors, and finally, in the

²¹ General comment No. 25, 2021, I(4).

²² General comment No. 25, 2021, III.

²³ Ryan, 2024, p. 1.

²⁴ Đorđević & Jeličić, 2023, p. 84.

case of a contract, children are the consumers. The 4C classification also differentiates between aggressive, sexual, and value-related risks, as this approach helps maintain a balanced perspective on the various risks children may face.²⁵

4 Regulations that Deal with Children's Rights in the Digital Environment

The need to protect children from harmful content was recognized within the EU with the adoption of *Council Directive 2010/13/EU of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media service*, which includes specific rules for safeguarding minors from inappropriate content. This Directive is based on the principle that the less control a user has over media content, the more likely it is to be harmful and, therefore, subject to stricter regulations. It also addresses the protection of minors from harmful content in television broadcasting.²⁶ Two types of harmful television content are identified: the first is content that can seriously harm the physical, mental, or moral development of minors, such as pornography or scenes of gratuitous violence, and which should, therefore, be excluded from television programming. The second type includes content that may potentially harm minors' development, but can be shown during times when minors are unlikely to be watching. Under the legislation, content that could seriously harm minors is prohibited from being included in any (linear) broadcast program.²⁷ It may only be made available on demand in a manner that ensures minors will generally not be exposed to such content.²⁸ The main shortcoming of Directive 2010/13/EU was that it did not refer to content that is not shown through traditional electronic media, and which long ago began to represent the dominant form that young people follow. Bearing that in mind, the Commission proposed the revision of the Audiovisual Media Services Directive (AVMSD), and after negotiations between the co-legislators the European Parliament approved a report on the provision of audiovisual media services, and in 2018, the Council adopted the *Council Directive (EU) 2018/1808 of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in*

²⁵ Livingstone & Stoilova, 2021, p. 6.

²⁶ Đorđević & Jeličić, 2023, p. 84.

²⁷ Council Directive 2010/13/EU, 2010, Article 27(1).

²⁸ Council Directive 2010/13/EU, 2010, Article 12.

view of changing market realities finalizing the legislative process. The updated rules extended the scope of the application to cover video-sharing platforms as well. As it is stated video-sharing platforms “also have a considerable impact in that they facilitate the possibility for users to shape and influence the opinions of other users”. That means that services such as *YouTube*, *Facebook* and other social media services that share audiovisual content are also covered by the revised Directive (EU) 2018/1808.

Video-sharing platforms will now also have to put in place measures „to protect minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development” (Directive (EU) 2018/1808, Article 28b). Such measures consist of tools for users to report and flag harmful content, age verification or parental control systems. Namely, one of the measures proposed by the said Directive (EU) 2018/1808 implies “establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors”.

Furthermore, it is also important to mention Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment, adopted on July 4, 2018. These guidelines, addressed to all Council of Europe member states, provide recommendations on key principles, rights, operational measures, and international cooperation.

The guidelines aim to help states and other stakeholders develop a strategic approach to navigating the digital world, prioritizing children's safety. At the same time, these guidelines urge states to involve children in decision-making to ensure national policies reflect digital developments. These guidelines are relevant to a broad audience, including government bodies, professionals, civil society, businesses, and families. Among other things, in the *Preamble* it is stated that the digital environment is complex and subject to rapid evolution and is reshaping children's lives in many ways and that States have the primary responsibility to respect, protect and fulfil the rights of the child in a manner consistent with the best interests and evolving capacities of the child.

As this document points out, access to the digital environment is crucial for children's rights, and limited access due to poor connectivity can hinder their ability to exercise their human rights entirely. However, there are concerns about the impact on children's healthy development and well-being in the digital environment, including, but not limited to, risks of harm from excessive use, sleep deprivation, and physical health issues.

For the topic of this paper, paragraph 2.2. entitled 'Evolving capacities of the child', is particularly interesting, where it is stated that "the capacities of a child develop gradually from birth to the age of 18" and that "individual children reach different levels of maturity at different ages". Respecting this difference in the developmental path of each individual child, "policies adopted to fulfil the rights of adolescents may differ significantly from those adopted for younger children".

With the aim of protecting and promoting children's rights, the EU Strategy on the Rights of the Child was also adopted. This strategy provides policy guidance and a roadmap for EU Institutions and Member States to plan their actions and design programs focused on promoting and protecting children's rights in the coming years. The strategy addresses six key thematic areas to help children integrate into EU decision-making and increase their participation in its political and democratic processes. The fifth area, titled "Digital and Information Society," aims to ensure that children can safely use the Internet and access its opportunities equally. Among other things, it is stated that the growth of digital technologies offers children opportunities. However, it also exposes them to harmful content, such as hate speech and misinformation, due to inadequate controls and the risk of harmful interactions. Having that in mind, the European Commission urges Member States to support media literacy in education, helping children critically evaluate online content and identify disinformation and harmful material.

Finally, the relatively new 'EU Digital Services Act (DSA)'. Its main objective is to prevent illegal and harmful activities online, as well as the spread of disinformation. Furthermore, DSA aims to ensure user safety, safeguard fundamental rights, and promote a fair and transparent online platform ecosystem. The DSA applies to all digital platforms, including social media. Furthermore, very large online platforms or search engines are subject to additional regulations and for now, The European Commission has identified 19 platforms as such, including social media and

networking sites like *Facebook*, *Instagram*, *TikTok*, and *X* (formerly *Twitter*), as well as search engines like *Google* and *Bing*. Under this law, these platforms will be held legally accountable for unlawful user behaviour if they are aware of illegal content. This includes material such as child sexual abuse content, terrorist content, illegal hate speech, and illicit goods or services. Among other provisions, the law focuses on protecting children, requiring platforms to ensure a high level of privacy, safety, and security for minors using their services.

Article 28 is especially dedicated to the online protection of minors. In the first paragraph, it is stated that „providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service.“ Furthermore, providers of online platform must not display advertisements on their interface based on profiling using personal data of the service recipient when they are reasonably certain that the recipient is a minor.

5 Social Media as a Unique Threat to Children's Right to Development

All the abovementioned regulations deal with the issue of the protection of minors in the digital environment in a certain manner. However, sometimes the sole wish and even introduction of certain measures that are aimed at the protection of the children, are not enough.

The data shows that minors are at the great risks that can sometimes be fatal. Sometimes young people are not sufficiently aware of the consequences that their actions can cause. It can be harmful for other people, but it could be harmful for them as well.

It seems that most of the problems arise from social media, bearing in mind that children today start using social media at the age of seven²⁹ and that the average time young people spend on social media is more than five hours per day.³⁰ The need for regulation of social media was noticed within the UNESCO when Audrey Azoulay, Director-General of UNESCO, stated “*social media platforms have also accelerated and amplified the spread of false information and hate speech, posing major risks to societal cohesion,*

²⁹ Lewi, 2023.

³⁰ McKoy, 2023.

peace and stability.”³¹ UNESCO's action plan, developed through extensive global consultations and supported by an international opinion survey, highlights the urgent need for action. The survey reveals that 85 percent of citizens are concerned about the impact of online disinformation, especially as social media platforms have become the main source of information for a large majority of them.³²

It seems that existing regulations can do little to protect minors when dealing with the issue of social media. There is still a great risk of harmful content that children can be exposed to. Furthermore, unknown contacts that potentially can bring children into various dangerous situations is the real risk. The easy and rapid availability of electronic media, along with its wide variety, enables the widespread dissemination of unverified content, exposing users to fake news that leads to conflict between freedom of expression and users' right to access accurate and verified news. To balance these competing interests, professional and scientific circles emphasize the need for restrictions on freedom of expression.

Furthermore, the misuse of social media can increase the risk of children developing mental health issues, like eating disorders, anxiety and depression.³³ Other potential dangers include cyberbullying, online predators and inappropriate material. This was the reason for the multistate lawsuit was filed in the US District Court for the Northern District of California.³⁴ Among other things, Meta is accused of engaging in deceptive practices that violate several state consumer protection laws, including falsely claiming that its products are not harmful to young users and are not designed to promote addictive use. Additionally, it alleges that Meta engaged in unfair and unconscionable practices by designing its social media platforms with addictive algorithms that contribute to anxiety, depression, and body image issues among adolescents, while also failing to warn about these risks.³⁵ Furthermore, social media platforms may bypass conscious thought and affect brain functions, potentially fostering addiction and self-harm. The states involved in the lawsuit against Meta see it as their responsibility to protect children by restricting these purportedly deceptive practices.³⁶

³¹ Huard & O'Hagan, 2023.

³² Huard & O'Hagan, 2023.

³³ US Public Health Service, 2023, p. 7.

³⁴ *People of the State of California v. Meta Platforms*, 2023.

³⁵ *Ibid.*

³⁶ *Ibid.*

The Eurochild 2023 report on children in need across Europe, titled "Children's Rights: Political Will or Won't?", highlights that the three primary concerns regarding children's online safety are cyberbullying, child sexual abuse and exploitation, and the digital impact on children's mental health. These issues were reported to be increasing, with severe consequences for children's development.³⁷ In addition to this, one study found that adolescents who spent over three hours a day on social media were twice as likely to experience negative mental health outcomes, including symptoms of depression and anxiety.³⁸ Some researchers believe that excessive social media exposure can potentially lead to addiction-like changes in brain structure, similar to those seen in substance or gambling addictions. Problematic social media use, such as compulsive behaviour, is linked to sleep issues, attention problems, and feelings of exclusion in adolescents.³⁹ Additionally, the fear of missing out (FOMO) on social media has been associated with negative mood, depressed feelings and general unhappiness.⁴⁰

Beyond the negative effects of prolonged social media use on children's development, the content children are exposed to is also a significant concern.⁴¹ In addition, to define harmful content, we could say it is „any piece of online media (e.g. video, photo, text post, audio, etc.) that has the potential to cause harm or injury to an individual or group of people.“⁴² While social media offers a sense of community for some, different studies found that certain platforms display live depictions of self-harm, which can eventually lead to normalization of such behaviours. Social media can also fuel body dissatisfaction, disordered eating, social comparison, and low self-esteem, particularly among adolescent girls. All mentioned, together with exposure to hate-based content, as well as misinformation, represent serious threats to the safety and healthy development of children.

³⁷ Aboubadra & Palomares, 2024, pp. 3-4

³⁸ Riehm et al., 2019, p. 1267.

³⁹ Kelly et al., 2019, pp. 59-60.

⁴⁰ Przybylski et al., 2013, p. 1842.

⁴¹ One issue that won't be covered here due to space limitations but deserves significant attention is sharenting - the practice of parents posting pictures of their children from the very start of their lives. The reasons for this can vary, from a desire to share the happiness they experience with their children, to economic motives, such as earning money. The impact of such behaviour should not be underestimated, as there have been cases where the publication of photos without the children's knowledge has been linked to the development of depression and anxiety later in life.

⁴² Gamble, 2022.

6 What Can We Do, or What Has Already Been Done?

Thanks to Sigmund Freud, Erik Erikson, and Jean Piaget, who laid the foundation in the field of developmental psychology, the concept of childhood has become a significant area of research, leading many scholars to focus specifically on childhood itself. However, early childhood development has also captured the attention of legal theorists, for whom three aspects are of fundamental importance. First, the understanding that early childhood is a critical period for acquiring cognitive and non-cognitive skills; second, that during this period, the relationship between children and parents begins to develop; and third, that the deficiencies a child experiences during this time can have lifelong consequences.⁴³ The fact that this period is of exceptional importance for every individual, shaping and determining their future in various ways, should be enough of an impetus for states to recognize its significance and ensure that child protection during this time receives adequate legal articulation. In this regard, some authors have even emphasized the need to create a new field of law, *early childhood development and the law*.⁴⁴ One of the consequences of studying the childhood period is the understanding that children mature gradually and, accordingly, should be granted certain rights even before they fully transition into adulthood, or cease to be children under the law. In other words, it is well established that children are not born with a full set of rights but acquire them as they grow. Giving a young person too much responsibility or autonomy before they are ready to manage it may have counterproductive effects.⁴⁵ Judgments about the appropriateness of conferring or restricting rights are often based on assumptions about minors' maturity; today, these judgments are informed by developmental science.⁴⁶

Suppose there are rules regarding children's rights to decide about schooling, medical treatment, or work. In that case, it should not be difficult to accept that children may not always understand the extent of harm their actions can cause to others or themselves, including how harmful content on social media can impact their health and development.

⁴³ Huntington, 2017, p. 767.

⁴⁴ Ibid.

⁴⁵ Ryan, 2024, p. 4.

⁴⁶ Scott, 2024, p. 304.

In addition to the special protection that needs to be provided to very young children, which has already been highlighted by the Committee of Ministers and pertains to preventing premature exposure to the digital environment⁴⁷, special attention must be given to the limited use of social media, considering all that has been mentioned. By regulating the types of media children consume, the law can influence how young people perceive the world and their place in it.⁴⁸

There are already some good practices around the world concerning these issues.

Florida recently passed a law banning children under 14 from having social media accounts and children aged 14 and 15 will be permitted to have accounts with parental consent.⁴⁹

In France, the Education Code from 2018 introduced a ban that applies to the use of mobile phones and other electronic communication devices, such as tablets and smartwatches, within schools and colleges. The same law also permits high school boards to implement, through internal regulations, a ban on the use of these devices by students.⁵⁰ Furthermore, France is set to trial a mobile phone ban in schools for students up to age 15, aiming to provide children with a “digital pause.” Nearly 200 secondary schools will participate in the experiment, requiring students to surrender their phones upon arrival. This goes further than the 2018 law, which prohibited phone use on school premises but allowed students to keep their devices.⁵¹

Across Europe, phone bans in schools have been a topic of debate. State-level policies regarding smartphones in German schools vary widely due to the country's federal system. Federal regulations permit each state to set its own educational

⁴⁷ In the cited *Recommendation CM/Rec(2018)7* it is stated that „specific measures and policies should be adopted to protect infants from premature exposure to the digital environment due to limited benefits with respect to their particular physical, psychological, social and stimulation needs” (para. 55).

⁴⁸ Ryan, 2024, p. 4.

⁴⁹ Nottingham & Fung, 2024.

⁵⁰ France Education Code, Article L511-5.

⁵¹ A commission established by French president raised concerns about the harmful effects of excessive screen exposure on children's health and development. A 140-page report released in March 2024 highlighted a strong consensus on the negative impacts of digital devices, including disrupted sleep, increased sedentary behavior, lack of physical activity, and a higher risk of obesity, as well as vision problems. The report recommended a staged approach to children's mobile phone use: no phones before age 11, phones without internet access between ages 11 and 13, and phones with internet but no social media access until age 15. It also advised that children under three should not be exposed to digital devices, as they are deemed unnecessary for healthy development (Willsher, 2024).

policies, leading to diverse approaches to smartphone use in schools. But for example, Bavaria has enforced a comprehensive ban on mobile devices since 2006, though exceptions are made for educational purposes.⁵²

In 2021, the Norwegian Parliament has officially adopted several amendments to the 2009 Marketing Act, presupposing that all edited photos must be characterized as such in order to reduce one of the problems, social media causes to children and that is Body dysmorphic disorder. This means that if an influencer shares promotional content in which their body shape, size, or skin has been altered they are required to label the content with a standardized notice created by the Ministry of Children and Family Affairs.⁵³

The Netherlands introduced a quasi-ban in secondary schools this year, and Italy has implemented various phone bans since 2007, reimposing them in 2022.⁵⁴ In February 2024, the Department for Education (DfE) in England issued non-statutory guidance recommending that schools limit mobile phone use, although it did not mandate an outright ban.⁵⁵ The guidance highlighted concerns about online bullying, distractions, and excessive screen time impacting children's well-being. Schools must have a behaviour policy that outlines banned items, and headteachers have discretion over how to implement mobile phone restrictions. In October 2024, the Labour government supported this approach, emphasizing the negative effects of phone use on learning and well-being.

In Scotland, the government issued guidance in August 2024, stating that a national ban was not feasible but allowing schools to impose their own restrictions.⁵⁶ Similarly, Northern Ireland's Department of Education recommended in September 2024 that pupils avoid using phones during school hours and not bring them to primary schools.⁵⁷

⁵² Atkins, 2024.

⁵³ Abraham, 2021.

⁵⁴ Willsher, 2024.

⁵⁵ Mobile phones in schools: Guidance for schools on prohibiting the use of mobile phones throughout the school day, 2024.

⁵⁶ Beck, 2024.

⁵⁷ Beck, 2024.

There are several issues that future regulations must address, one of which should be prohibiting social media use for minors under a certain age. The impact of social media on children's health and development is significant, creating an obligation for society to mitigate its negative effects, at least until children reach a certain level of maturity and receive adequate information on its safe use. Moreover, the use of social media after a certain age should be allowed only with the consent of a caregiver, usually the parents. However, this approval has to be meaningful and not established merely *pro forma*, as is the case now.

Furthermore, similar to TV channels and their programs, a rule could be established to categorize profiles based on their content. If a profile is not suitable for children of a certain age, it should be set to private, meaning it cannot be accessed without the owner's approval.

Finally, given that large platforms like *Instagram* and *TikTok* cannot effectively monitor all posts for appropriateness, a potential solution could involve limiting the number of users or restricting the number of posts per day. This approach would enable more effective content oversight and help reduce the spread of harmful, unchecked material.

7 Conclusion

It has become more than evident that the use of mobile phones, or any similar devices, can have numerous harmful consequences for the proper development of children, with social media, as one of the main sources of information for children, representing the most dominant source of negative influence. By not understanding the potential risks these devices pose, we allowed children to start using mobile phones and social media without first warning or educating them on how to use them properly. Now, when the harmful consequences have become completely clear, we have turned to relatively weak attempts to limit or ban their use. Of course, such an endeavour cannot succeed overnight, nor can it be effective if applied only in certain areas. It is essential to take global steps and work together to do everything possible to protect the best interests of children, and healthy development is certainly in their best interest. Of course, there will always be the issue of profit for companies that create platforms designed to attract as many users as possible, but this will once again place us before the question: "Are we truly guided by what is in

the best interest of children, or by interests that adults define as best, which often reflect their benefit or profit?"

Even though, there are always will be the ones who will argue that „in an age where social media is, for many, the predominant form of news, expression, and assembly, allowing any country or any government agencies within a country to ban it is a violation of children's rights“⁵⁸ we have to ask ourselves which rights are truly violated, and which are actually protected by the introduction of restrictions?

In today's world, can we truly claim that children's rights are being adequately protected?

The protection of children's rights must remain at the forefront of our efforts, but it's not enough to simply have policies and regulations in place. The challenge lies in finding a balance. A balance between providing children with the freedom and opportunities they need to grow, learn, and thrive, and safeguarding them from harm. This balance requires thoughtful consideration, not only from governments and institutions but also from parents, educators, and society at large.

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⁵⁸ Magid, 2015.

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CHALLENGES AND PERSPECTIVES OF SUSTAINABLE DEVELOPMENT FOR CHILDREN AFFECTED BY ARMED CONFLICTS IN AFRICA: A CASE STUDY FROM THE DEMOCRATIC REPUBLIC OF THE CONGO

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Children are extremely vulnerable in times of conflict and crisis. In 2022, more than two-thirds of the world's children were living in a conflict-ridden country. The arguments raised in this contribution are contextualized and introduced into the broader reflection on the merits of the adoption, in 1989, of the Convention on the Rights of the Child (CRC). Our findings and recommendations aim justly to highlight how the implementation of this instrument shaped the African system in protecting the child, and explore the ways in which children's rights and armed conflict interact, as the situation in the Democratic Republic of the Congo is still attesting to it.

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1 Introduction

This paper focuses on the specific outcomes that the conference aims to achieve:

- a) Reflecting on the Past: Assessing the impact and achievements of the CRC since its adoption in 1989, and highlighting significant milestones and success stories in the implementation of children's rights globally;
- b) Looking to the Future: Examining the evolving landscape of children's rights in the face of contemporary global challenges and discussing the implications of sustainable development on children's rights, in particular;
- c) Exploring the ways in which children's rights and armed conflict interact, thereby affecting children as a distinct vulnerable group. To study the interactions between these factors led us to consider the situation in the Democratic Republic of the Congo (DRC). The methodology research is based on data from a number of sources, including reports, a review of existing literature, scholarly works, and the Indicators Database of the United Nations and other non-governmental organizations. The paper also examines the implementation of the 2030 (United Nations), 2040 & 2063 African Agendas for Sustainable Development. This involves monitoring their content and impact on children's rights, particularly in the DRC. The main conclusions lead to some recommendations. The discussion paper is non-exhaustive.

Children are extremely vulnerable in times of conflict and crisis. “In 2022, more than two-thirds of the world’s children were living in a conflict-ridden country”.¹ The arguments raised in this contribution are contextualized and introduced into the wider reflection on the merits of the adoption, in 1989, of the Convention on the Rights of the Child (CRC). Four general principles are the major focuses of this important text of international law: non-discrimination, the best interest of the child, the right to life, survival, and development, and participation and inclusion of the child. Accordingly, the Treaty underscores the special protections afforded to children and emphasizes that the best interests of the child be a primary consideration in all actions concerning them.² It has become a crucial pillar in the recognition and protection of the children; idealistically, wherever they are. Shortly after, in Africa, the Charter on the Rights and Welfare of the Child (ACRWC/the

¹ See the table below (Peace Research Institute, Oslo).

² Cf. the UN’s Children and Armed Conflicts (CAAC) Agenda.

Charter) has been adopted by the 26th Ordinary session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU), in Addis Ababa (July, 1990). This instrument grants many important rights for the welfare of the child³, specifically survival and development (Article 5), protection against child labour (Article 15), protection against child abuse, torture (Article 16) and armed conflicts (Article 22). These human rights are linked with the four principles derived from the CRC, namely the Non-discrimination (Article 2), Best interest of the child (Article 3), Right to life survival and development (Article 6), Right to be heard (Article 12). Chapter 2 of that ACRWC established within the Organization of African Unity a Committee in order to promote and protect the rights and welfare of the child.

Paradoxically, the African continent presents many situations that violate these rights. One of the huge contexts of violation concerns armed conflicts that opened the door of the negation/violation of the rights previously cited.

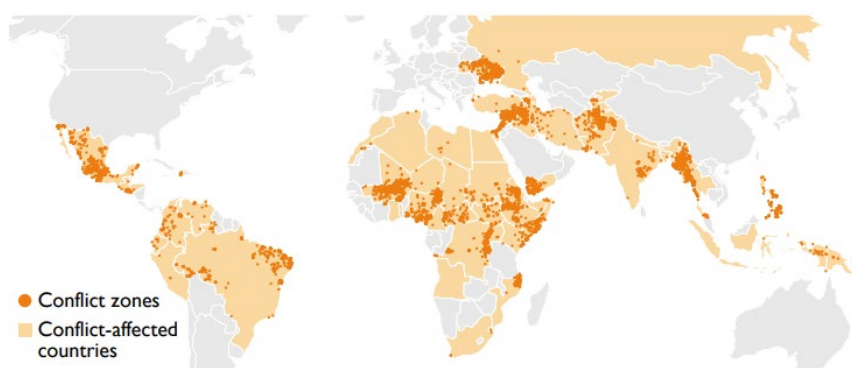


Figure 1: Conflict-affected countries and conflict zones, 2022

Source: Conflict trends, *Ibidem*

Our findings aim justly to highlight how the implementation of the CRC/ACRWC shaped the African system in protecting the child, and they tend to provide some answers in terms of specific norms and mechanisms of protection. Yet, despite this progress, the situation of armed conflicts shows that some other significant milestones are needed. A case study from the Democratic Republic of the Congo will clearly demonstrate the contemporary challenges children are currently facing,

³ Kaime, 2014, pp. 637-638.

inter alia, one of the world's worst humanitarian and food insecurity disasters, and how it has become the second largest internally displaced people's crisis globally: 25.4 million people are food insecure, including 13.2 million children. 7.3 million people are currently displaced, 3.7 million are children.⁴ It seems that the analysis requires some necessary discussions and recommendations on sustainable development by assessing future prospects for African children: economic and social stability, education, health, social protection, and environmental issues.

2 Reflecting on the Past: a Logic of Compatibility with the Proclaimed Universal Principles

The preamble to the ACRWC makes some important statements regarding its conception of the rights and welfare of the child. Firstly, it identifies the Charter's foundation as the principles of international law on the rights and welfare of the child as contained in the declarations, conventions and other instruments of the Organization of African Unity and the United Nations. Significantly, the Charter specifically mentions the CRC. Secondly, the Charter states that the concept of the rights and welfare of the child should be inspired and characterized by the virtues of African cultural heritage, historical background, and the values of African civilization. In other words, the Charter requires that the rights and welfare of the child, which are derived from universal sources, must be alive to the reality of African children".⁵ That is why Tokho Kaime examined the cultural-based critiques of the international human rights paradigm generally and children's rights in particular, with specific reference to Africa. In this sense, it seems that there were gaps between what was provided for in the Charter and the concrete analysis of the effectiveness of the rights proclaimed, even though the Charter, and its subsequent texts intended to act as an innovative bridge between international law and African regional law.

⁴ Save the Children, 2024.

⁵ Kaime, 2014, p. 121.

2.1 The African System on Children Human Rights: a Very Continuum of the CRC

The ACRWC entered into force on 29 November 1999, ten years after its adoption. The implementation was evidence that the new system of protection of the rights of the child gained a subsequent level of acceptance and crystallized the way in which continental organs and member states deal with children. In fact, under the Children's Charter, "children are no longer viewed as objects of concern and sympathy, but are accepted as autonomous rights holders".⁶

Under the Children's Charter, "children⁷ are no longer viewed as objects of concern and sympathy but are accepted as autonomous rights holder"⁸, as expressed in the CRC, which is actually the source of inspiration for the African System on Children's Human Rights. In the Preamble of the ACRWC, we note, for instance, that the African Member States of the OAU:

- Consider that the Charter of the OAU recognizes the paramountcy of Human Rights and the African Charter on Human and People's Rights proclaims and agrees that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind, such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;
- Reaffirming adherence to the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the UN CRC; and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child;
- Recall the Declaration on the Rights and Welfare of the African Child (AHG/ST. 4 Rev. I) adopted by the Assembly of Heads of State and Government of the Organization of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia, from 17 to 20 July 1979;
- Recognized the need to take all appropriate measures to promote and protect the rights and welfare of the African Child;

⁶ African Union, *Africa's Agenda for Children 2040. Fostering an Africa Fit for Children*, p. 2.

⁷ Article 2 of the ACRWC: "*A child means every human being below the age of 18 years*".

⁸ *Africa's Agenda for Children 2040*, p. 2.

- Reaffirm their adherence to the principles of the rights and welfare of the child contained in the CRC;
- Underscore with concern that the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity, they need special safeguards and care;
- Furthermore, they recognize that the child, due to the needs of his physical and mental development, requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity, and security.⁹

To put in force these declarations and principles, the African Committee of Experts on The Rights and Welfare of the Child (ACERWC) was set up and mandated to monitor the implementation of the Charter as well as promote and protect children's rights in Africa.¹⁰ The ACERWC, consisting of 11 members, has been created as a supervisory body to monitor States' implementation of its provisions. Reflecting the mandate of the African Commission on Human and Peoples' Rights (African Commission), it performs its supervisory function by examining State reports.

Reflecting the mandate of the African Commission, the Children's Committee performs its supervisory function by examining state reports, considering individual communications, and undertaking investigations. In this respect, the African pendant provides for more intrusive monitoring, compared to the UN Committee on the Rights of the Child, which is only mandated to examine State reports submitted under the CRC. The African Children's Committee held its first meeting in 2002. Initially severely under-resourced and largely unknown, the Committee made a slow start. The Committee was without a fully functional Secretariat for the initial years, until its first substantive Secretary was appointed in 2007. Since then, the African Children's Committee has worked hard within the OAU/AU structures to assert its legal authority as the continent's leading children's rights body.¹¹ The system just described is theoretically somehow a ground-breaking one.

⁹ African Charter on the Rights and Welfare of the Child, p. 7 - 8.

¹⁰ ACERWC is an African Union Organ.

¹¹ Africa's Agenda for Children 2040, p. 4.

2.2 A Ground-Breaking System

The African system shows a new way of protecting or thinking about the rights of the child, as established by its Agendas, which contain some plans and actions for States and people. Indeed, in Africa, Sustainable Development¹² policies is operated by Africa's Agenda for Children 2040, which fosters an Africa Fit for Children.¹³ Implementation takes place in five phases:

- a) "The Agenda is implemented in each State party, on the basis of a national implementation plan, guided by the overall Action Plan, for each implementation phase;
- b) The end dates of each of the five implementation phases are 2020, 2025, 2030, 2035 and 2040;
- c) Each State party reports to the African Children's Committee at the end of each phase;
- d) Implementation should be aligned with States' other international obligations and commitments;
- e) AU member States should align their national implementation plans and the various Action Plans with their commitments and obligations under AU Agenda 2063, the SDGs and other international treaties".

The Africa's Agenda for Children 2040 stated that "Africa is set on a course towards a different and better Africa" and that the vision "that inspires this course is captured in the African Union (AU)'s Agenda 2063. This instrument clearly states that the ideals of Agenda 2063 will not be achieved without young people and children in particular. Thus, the latter must be the engine of Africa's renaissance. The continent must thus ensure the future progress, peaceful coexistence, and well-being of its sons and daughters. In order to enable them to take charge of Africa's future, their full potential must be unleashed in the full enjoyment of their rights.

¹² The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, provides "a shared blueprint for peace and prosperity for people and the planet, now and into the future". The 17 Sustainable Development Goals and 169 targets demonstrate the "scale and ambition".

¹³ Cf. 2030 Agenda for Sustainable Development, 2015, p. 1.

The Africa's Agenda for Children 2040 lists ten aspirations to be achieved by 2040:

- a) Aspiration 1: The African Children's Charter, as supervised by the African Children's Committee, provides an effective continental framework for advancing children's rights. The African Children's Charter is the primary AU treaty dealing with children's rights.
- b) Aspiration 8: Children benefit from a child-sensitive criminal justice system.
- c) Aspiration 9: Every child is free from the impact of armed conflicts and other disasters or emergency situations.
- d) Aspiration 10: African children's views matter.

By 2040:

- a) Armed conflict on the continent is significantly reduced;
- b) The proliferation of arms, in particular small arms and light weapons, has been halted;
- c) Armed forces deployed during hostilities are proactively supported by military training, which includes specific modules dealing with issues such as the identification of children, the verification of age, and the handover referral system of children to civilian authorities at the earliest possible instance;
- d) There are no child soldiers; no child is recruited into the armed forces or plays a direct part in armed hostilities;
- e) The social, cultural, economic and political determinants of conflict and violence are addressed through changing of attitudes and behavior;
- f) Basic services are restored in States facing conflict and instability; children's well-being, reflected in low infant mortality rates and extensive access to health care and education, is the worst in States undergoing protracted conflict and instability;
- g) Children, in particular the youth and adolescents, play a key role in peace-building and prevention so as to draw attention to the structural and more immediate causes of conflict as they relate to children;
- h) Children involved in and affected by armed conflict are reintegrated into communities and provided with adequate psychosocial support;
- i) Children's rights are integrated into peace-making, peace-building and preventive actions;

- j) Children are equipped to be resilient in the face of disasters or other emergency situations;
- k) Separated and unaccompanied children are prioritised and provided with special protection.

Concerning Agenda 2063, it enumerates the following ‘aspirations’ for the Africa “we want”:

- a) A prosperous Africa based on inclusive growth and sustainable development;
- b) An integrated continent, politically united, based on the ideals of Panafricanism and the vision of Africa’s Renaissance;
- c) An Africa of good governance, democracy, respect for human rights, justice and the rule of law;
- d) A peaceful and secure Africa;
- e) An Africa with a strong cultural identity, common heritage, values and ethics;
- f) An Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children;
- g) Africa as a strong, united, resilient and influential global player and partner.¹⁴

Africa has made some progress on SDG 17 and the related Agenda 2063 goals, but significant gaps remain. In some instances, the current trend needs to be reversed in order for Africa to achieve SDG 17.¹⁵ The CRC and many African instruments are setting a substantial normative framework relating to the rights of the child in Africa. Over the decades, the African continent has been riddled with wars, often involving child soldiers, and always adversely affecting the rights and well-being of children¹⁶. “Internal and external conflicts remain significant obstacles to Africa’s development, impacting economic growth and social well-being. Climate change exacerbates these issues, worsening food insecurity and poverty across the continent”.¹⁷ Conflicts

¹⁴ Africa’s Agenda for Children 2040, p. 2.

¹⁵ Such as: strengthening domestic resource mobilization, attracting private investment, expanding regional and international cooperation, boosting intra-African trade through the AfCFTA, developing regional value chains and diversifying exports, enhancing debt sustainability and leveraging innovative financing instruments are key to mobilizing resources for the SDGs.

¹⁶ See *The Prosecutor v. Dominic Ongwen*, case n° ICC-02/04-01/15-1819-Red 06-05-2021 1/139 ECT. The International Criminal Court (ICC) found Dominic Ongwen, a former child soldier who became a commander of the Ugandan rebel group The Lord’s Resistance Army (LRA), guilty of war crimes and crimes against humanity.

¹⁷ 2024 Africa Sustainable Development Report. Reinforcing the 2030 Agenda and Agenda 2063 and eradicating poverty in times of multiple crises: the effective delivery of sustainable, resilient and innovative solutions, Table 2, p. 19.

affect the right to sustainable development of the child. Children suffer disproportionately from the effects of war. They bear the brunt of the conflict, risking their lives, losing their homes, being separated from their families, and being exposed to sexual violence, mines, unexploded ordnances and improvised explosive devices and recruitment to armed groups. The number of armed conflicts in Africa increased 37 percent, (from 75 to 98) during the 2015–2022 period, representing about 53.8 percent of global conflicts”.¹⁸

3 Looking to the Future: Looking for a Possible World Without Conflicts

In recent years, the impact of conflicts and climate change in conflict-affected countries has emerged as a critical concern.¹⁹ Our findings underscore how the implementation of the CRC/ACRWC designed the African system to protect the child, and how it tends to provide some answers in terms of specific norms and mechanism of protection. Yet, despite this progress, the situation of armed conflicts shows that some other significant milestones are needed. A case study from the Democratic Republic of the Congo will strongly reveal the contemporary challenges children are currently facing in this country. Moreover, the study will try to suggest necessary recommendations on sustainable development by raising several important questions regarding the impact of conflicts and the lack of a rejoicing fulfilment of these rights in the African context.

3.1 Children’s Fundamental Rights, Lives, and Futures Detrimentially Affected by Conflicts: Studying the DRC Case

Significant gaps remain in order to fulfill Agenda 2040 and 2063 goals. In some instances, the current trend needs to be reversed in order for Africa to implement all the policies.²⁰ As examined, the CRC and many African instruments are setting a substantial normative framework relating to the rights of the child in Africa. In these

¹⁸ *ibid.*, p. 17.

¹⁹ Office of the Special Representative of the Secretary-General for Children and Armed Conflict United Nations Secretariat New York (2023). Climate Insecurity Impacts on Children and Armed Conflict. A Discussion Paper, NY 10017, USA, see “Preface”.

²⁰ Strengthening domestic resource mobilization, attracting private investment, expanding regional and international cooperation, boosting intra-African trade through the AfCFTA, developing regional value chains and diversifying exports, enhancing debt sustainability and leveraging innovative financing instruments are key to mobilizing resources for the SDGs.

analyses, we can note a lack of effectiveness of the guarantees granted by the international and regional instruments protecting children's rights. In the context of the African human rights system, it implies the denial of the right to sustainable development for children, and the main elements of such a right.²¹ Thus, our analysis examines specific issues regarding children's rights in Africa, within the particular contest of the DRC.

3.2 Context and Background of the Situation in the DRC

To understand the scope and magnitude of the effects that armed conflicts have, both in the short, medium, and long term on the rights of the children, such the recruitment and use of child soldiers by parties to armed conflict in violation of international obligations applicable to them and all other violations and abuses committed against children in situations of armed conflict, let us a brief insight on the situation in the DRC.²²

3.3 Country Insights

The Democratic Republic of Congo is Central Africa's largest country with a surface area comparable with Western Europe, and one of the world's most resourced countries.²³ This State presents one of the most challenging conflict and post-conflict peace processes in the world. "The country's complex web of political, societal, ethnic, and economic differences creates an extremely fragmented culture with justifiable cause for continued violence by its many group".²⁴

Table 1: Country Insights for Democratic Republic of Congo (2021)

Country insights World Health Organization	
Population	102,262,808 (2023, see the graphic <i>ex. infra</i>)
Total Area	2,344,858 sq km (11 th largest in the world)
Neighbors	Central African Republic, Congo (Brazzaville), Angola, Zambia, Tanzania, Burundi, Rwanda, Uganda, South Sudan
Life Expectancy	61.6 years (2021)

Source: WHO, 2024

²¹ Boshoff & Getaneh Damtew, 2022, p. 119.

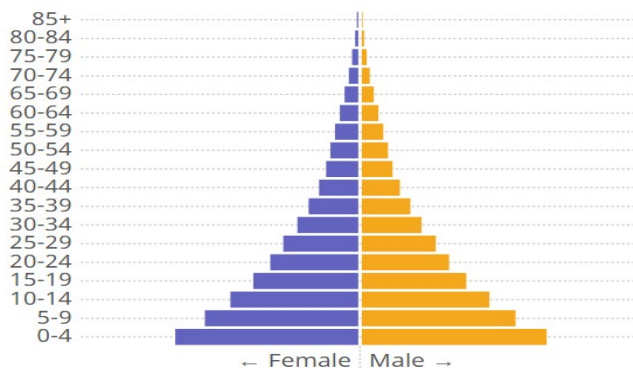
²² Security Council, Resolution 1612, 26 July 2005.

²³ World Bank Overview: Democratic Republic of Congo. Where We Work, 2020.

²⁴ Institute for Peace and Security Studies, 2021.

2023

Population by age and sex. Democratic Republic of the Congo


Figure 1: Population pyramid for Democratic Republic of Congo (2023)

Source: World Health Organization

Based on the study of the Institute for Peace and Security Studies, DRC's conflict can be split into two periods: before the peaceful power transition in January 2019, and after. The former is characterized by authoritarianism and militarized approach, while the latter has a more democratic and diplomatic outlook. Thus, although there are links and continuities from the past, a new context is beginning to evolve. The country is fragile and the eastern part is the most vulnerable.²⁵ The conflict situation is leveraged to employ child (cheap) labor for mining (about 40,000) children, and sexual and gender-based violence (SGBV) is widespread.²⁶ The number of people killed in the first half of 2020 is about three times that of what was recorded within the same time frame in 2019. Over 4.5 million people have been internally displaced: 1.6 million from Ituri, 1.9 million from North Kivu, and 1 million from South Kivu provinces. Some armed groups in South Kivu pledged to end the crisis in their controlled areas, but the conflict has intensified in Ituri and North Kivu provinces as of September 2020.

²⁵ UNSCR (2020). "Implementation of the Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region". Report of the Secretary General S/2020/272, <https://undocs.org/S/2020/272>.

²⁶ Human Rights Watch. World Report 2020: Events of 2019.

Beyond internal factors, the escalation of the conflict is also due to tensions between the DRC and neighboring countries such as Rwanda, even though it denies it.²⁷ In addition, the Congo Wars exposed soldiers from neighboring countries to the resources of the eastern DRC. These soldiers built and explored cross-border networks to fuel and leverage the conflict.²⁸

A brief list of armed groups and forces in the Democratic Republic of the Congo²⁹:

- The Armed Forces of the Democratic Republic of the Congo (FARDC) comprises approximately 134,000 personnel.
- Non-state Armed Groups: There are over 130 active armed groups in the DRC, both homebred and foreign, and their membership is young. These groups cooperate, clash, and experience internal crisis.
- The main armed groups include Allied Democratic Force (ADF) formed in 1998, Democratic Forces for the Liberation of Rwanda (FDLR) formed in 1994, and Mai-Mai Militias (a community-based group formed in the 1960s but reappeared in force in 1993).
- The conflict between the Congolese government and the M23, a rebel movement largely drawn from Congolese communities of Rwandan origin, took place in eastern Democratic Republic of Congo in areas close to the Rwandan and Ugandan borders between early 2012 and late 2013. It was the product of a failed 2009 peace deal between the DRC and an earlier rebel group, which formed the nucleus of the M23.

3.4 Conflict in Eastern DRC is Having a Devastating Impact on Children's Education and Ecosystem

Children's lives are being turned upside down as they leave behind their homes and schools. They face violence, hunger and disease every day. The DRC is currently facing one of the world's worst humanitarian and food insecurity disasters and has become the second largest internally displaced people's crisis globally: 25.4 million people are food insecure, including 13.2 million children; 7.3 million people are

²⁷ DRC's Eastern Neighbors: The rivalry among Uganda, Rwanda, and Burundi as well as their internal crises prove to be a threat to the DRC.

²⁸ Institute for Peace and Security Studies, 2020, pp. 3 - 4.

²⁹ Institute for Peace and Security Studies, *id.*, p. 8.

currently displaced, 3.7 million are children. The increase in hunger and disease is a result of the terrifying violence that has been escalating since March 2022. This conflict has killed thousands and caused massive amounts of people to flee their homes. Between January and April 2024 alone, more than 900,000 people have been forced to flee their homes.

Olaitan O. Olusegun studied the specific ways armed conflicts harm the environment and the effects of environmental degradation on children. He noted that the environment is a great source of sustainability for humans and other aspects of the ecosystem. Unfortunately, the world, especially developing countries, has been hit by armed conflicts, which have significant implications for the environment and all forms of life that depend upon it for their existence. Such effects are, however, more profound on children, who are one of the most defenseless groups of persons in armed conflicts. Nuclear weapons, small arms, fires, destruction of forests, water pollution, and air pollution are all methods of warfare that destroy the environment with a severe impact on children.³⁰

Armed conflicts have both immediate and long-term consequences on the environment and the well-being of humans. They threaten the livelihoods, health, and security of the population and reduce opportunities for sustainable development. (idem, p. 158). For example, in Nigeria, the degradation of the environment through armed conflict has affected agricultural products in the Northern parts of the country and led to poverty in some areas.³¹

The susceptibility of children to environmental threats is diverse and varied. As an illustration, children have a higher risk of suffering from the impact of environmental hazards mainly because their bodies develop quickly, both physically and mentally. Any exposure to harmful substances limits their growth and development. They have delicate organs that cannot repair themselves effectively when damaged by harmful substances. Furthermore, “the harmful toxins children are exposed to as a result of armed conflicts are higher than those of adults, as children eat more, drink more, and breathe in larger quantities of air than adults, which results in greater harm to their health”.³²

³⁰ Olusegun, 2021.

³¹ Olufemi & Samson, 2012, pp. 12-13.

³² Olusegun, 2021, p. 160.

4 Key Recommendations for a Way Forward

The search for a better future requires a set of solutions in order to avoid the risk of recidivism in terms of violation of children's rights. So, the States, African States in particular, and the international community should reassert their will to protect the rights of the child and the desire to preserve them from the continuing misery they face. Children are entitled to rights as established under several national, regional, and international legal frameworks. They should be adequately protected and cared for to preserve their well-being. Therefore, the study should suggest the following propositions:

- a) Attaching crucial importance to prevention in order to prevent children from being targeted or collateral victims of hostilities during armed conflict. Parties to the conflict must respect the rules of international humanitarian law and other international instruments, sparing civilian populations and targets such as children.³³
- b) Operating post-conflict Assessment: the legal framework for their protection should be strengthened and enforced, while violators of these laws should be prosecuted. Working in the reintegration of children into their families, schools, communities, and in reducing the vulnerability of former child soldiers and street children. Addressing trauma and breaking isolation: incorporating basic psychological support for the affected children. Children and young people have specific needs and vulnerabilities in armed conflict or other situations of violence. These needs must be addressed more effectively.³⁴ So, post-conflict environmental assessment is also important as it helps to address the harm that could result from the damage that had been done to their environment during armed conflicts, as demonstrated previously.
- c) Rebuilding schools and educational systems in the affected areas. As stated by the AU, attacks against schools are “one of the six grave violations against children in conflict situations. Every boy and girl has the right to an education without fear of violence or attack, and every school should be a protected space for students to learn and fulfil their potential. As stated in the Safe Schools Declaration (2015) attacks against schools expose students and education

³³ Notably, the 1977 Additional Protocols to the Geneva Conventions codified the concept of “special protection” of children under international humanitarian law and introduced the legal standard that children under the age of fifteen should not be recruited or be allowed to take part in hostilities.

³⁴ Gussing, 2011, p. 4.

- personnel to harm, deny many children and students their right to education, and deprive communities of the foundations for greater prosperity”.³⁵
- d) Giving primary consideration to a child’s right to protection and that considers a child’s individual needs and views.³⁶
 - e) Recalling the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children.
 - f) Setting, in addition to the Day of the African Child celebrated on 16 June, a Day of the Child Victim of Armed Conflict in order to raise awareness among States and civil society, namely based on the concept of CABAC or another concept inspired by African local mechanisms based on “Child-sensitive” or “best-interests of the child”.³⁷

What is CABAC?³⁸

Children affected by armed conflict’ (CABAC) is a very broad category referring to the various groups of children that are adversely affected by armed conflict. There is no single universally agreed upon definition of the term, which has been used in various ways. The Movement’s 1995 Plan of Action on Children Affected by Armed Conflict promoted the principle of non-recruitment and non-participation in armed conflict of children under 18. Still, CABAC does not refer only to child soldiers. Children are the victims of serious violations of international humanitarian law, including recruitment into armed forces and armed groups. They are also victims of the indirect consequences of armed conflict and violence, suffering both physically and mentally. *In times of war or armed violence, children are at high risk of either losing their loved ones to death or being separated from them. Children and their families are often forced to relocate and move from place to place to escape conflict. Many children witness violence or themselves suffer violence or abuse. Children’s educational development is often interrupted.* CABAC has also been used to describe a school-based psychosocial programme as well as its accompanying manual.

CABAC is used to refer to children and young people who directly or indirectly suffer the consequences of armed conflict or armed violence. CABAC activities cover a wide range: nationwide campaigns aimed at promoting applicable law, instruction in humanitarian values and life skills, activities specifically targeting children living in high-risk communities, initiatives addressing the psychosocial needs of children, social reintegration programs for children released from armed forces or armed groups, and so on.³⁹

³⁵ African Union, “The Africa Platform on Children Affected by Armed Conflicts (AP CAAC) Condemns the Terrorist Attack on the Lhubiriha Secondary School in Western Uganda”, in 27 June 2023 (Addis Ababa).

³⁶ Cf. notion of “Child-sensitive” approach or of “best-interests of the child”.

³⁷ About these concepts, see above.

³⁸ The 2010-2011 CABAC consultation excluded tracing and reunification activities because these are areas in which the ICRC has already developed expertise, and of which it has a global overview. Furthermore, tracing does not target children specifically, but rather the population at large. That is why it was decided to leave aside such activities.

³⁹ Gussing, 2011, p. 9.

- g) Last but not least, the African Union must strengthen its diplomatic responses and put in place decisive means to get African States to respect and preserve the rights of the African child. It must also strengthen its commitment and diplomatic leverage in favor of peace in the DRC. It should also encourage emergency response to disasters in areas affected by conflict by generating exemplary solidarity among African States.

Our contribution tried to focus more on armed conflict as one of the major threats to our generation of children. Hence, digitalization is not yet a matter for these children; the first need is stability, peace, and security to allow them to move forward. We owe the best we can give to children. It is not only a legal and moral imperative: it is a responsibility to Humanity. For Every Child, A Sustainable Future: Stop Conflicts!

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75TH ANNIVERSARY OF THE GENEVA CONVENTIONS, 1949 AND THE RIGHTS OF THE CHILDREN DURING ARMED CONFLICT: AN ANALYSIS

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2024 marks the 75th anniversary of the four Geneva Conventions of 1949, providing an opportunity to reflect on their fundamental role in protecting people affected by armed conflict. There is a need to limit the means and methods of warfare. The underlying logic is that armed conflicts are triggered between states or among individuals. According to Jean Jacques Rousseau, "War is between the states. It has nothing to do with the individuals." Various international legal instruments have been adopted for the protection of civilians, including children and women. However, the protection guaranteed in these instruments is often violated by the occupying power or enemy combatants/forces. The paper hypothesizes that violations of the Geneva Conventions are frequent during armed conflict and must be addressed strictly. In this paper, an attempt has been made to explain the need to protect the rights of children during both non-international and international armed conflict. Secondly, the research delves into the pertinent question of whether the recruitment of children should be considered a violation of child rights. Thirdly, the paper seeks to hold perpetrators accountable for the violations of children's rights during armed conflict.

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1 Introduction

The Geneva Conventions celebrated the 75th anniversary of the four Geneva Conventions of 1949 in 2024. This is an occasion that provides us with an opportunity to introspect on whether the purpose of the Geneva Conventions has been successfully achieved or not. It is also a time to investigate modern warfare and the role of the Geneva Conventions in the contemporary era in protecting children during armed conflict. Children are the most vulnerable community during wartime, and it must be questioned whether the Geneva Conventions are sufficient to protect them during war.

According to a UNICEF report, more than 105,000 children were recruited and used by parties in conflict.¹ It is further reported by UNICEF that "child soldiers suffer extensive forms of exploitation and abuse. Combatant parties use children not only as fighters but as scouts, cooks, porters, guards, messengers, and more. Many girls are also subjected to gender-based violence".² On 26 February 2020, 15 children associated with armed forces and armed groups were released in South Sudan. However, the boys, ranging from 16 to 18 years of age, had been taken as prisoners of war during clashes in the northern parts of the country in 2019.³ This means children, as civilians, suffer more than armed personnel during war. Both boys and girls are recruited for armed conflict, and grave violations affect them differently.⁴ Due to cultural norms and stigmatization, sexual violence remains vastly underreported. The recruitment of children in armed conflict is a war crime under the International Criminal Court. The use of children during armed conflict is also prohibited under the Geneva Conventions. There is an urgent need to implement these conventions in a practical way to protect the rights of children during conflict. Further, children must be prevented from being abused during war.

Although various conventions and treaties aim to protect children in times of armed conflict—such as the United Nations Convention on the Rights of the Child (CRC), the Optional Protocol on the Involvement of Children in Armed Conflict (2000), the Geneva Conventions (1949) and their Additional Protocols, and the Rome Statute of the International Criminal Court (1998), these conventions are not

¹ UNICEF, 2021.

² UNICEF, 2021.

³ UNICEF, n.d.

⁴ Mansour, 2022.

practically implemented in letter and spirit. Furthermore, these conventions must address new challenges such as the impact of cyber warfare on children, the increasing sophistication of recruitment techniques used by armed groups, and the complex intersections between conflict, climate change, and the forced displacement of civilians and children. In addition, accountability for violations against children in armed conflict must be strictly enforced. Both the international and national justice systems must strengthen their capacities. To answer the first research question, the rights of the child under the Geneva Conventions and the measures required at the state level to protect those rights during internal and international armed conflict are explained as follows.

To understand the rights of children during armed conflict, it is necessary to define the types of armed conflict in which children may be involved. The first type is international armed conflict, in which two or more states are engaged in conflict. On the other hand, non-international armed conflict (hereinafter: NIAC) refers to a prolonged armed confrontation between government forces and one or more armed groups within a state. Moreover, the confrontation must reach a minimum level of intensity, and the parties involved must show a minimum level of organization.⁵ A declaration of war is not necessary in such conflicts. Moreover, the Geneva Conventions shall be applicable even if neither state declares war. In the case of internal or non-international armed conflict, the common Article 3 of the Geneva Conventions shall be applicable to all parties involved.

Jacques Rousseau aptly explained that "war is not a relationship between individuals, but between states". This means war has nothing to do with individuals, as armed conflicts are triggered between states due to "political, ethnicity or socio-economic reasons," leading to "terrible violence in the territories of such state where the conflicts actually take place". That is why the importance of the Geneva Conventions becomes more relevant during the war. Protected persons and property must be safeguarded. This includes civilians,⁶ prisoners of war,⁷ the wounded and sick,⁸ and medical personnel.⁹

⁵ UNDRR, 2020.

⁶ Who are not nationals of the country that is fighting against them.

⁷ Members of the armed forces or groups who are captured by the enemy.

⁸ People who are injured or ill, including those at sea.

⁹ People who provide medical care, including those who serve in ambulances and military hospitals.

The ultimate effect of war is destruction. The areas affected by conflict are often severely damaged. The entire social network, economic structure, and infrastructure of a state may collapse. This situation leads to unemployment, poverty, scarcity of food, and other necessities. In such conditions, the health sector is hit hardest. Combatants or enemy forces strike hospitals and medical staff, destroy roads and other transportation and communication systems, creating an acute shortage of medical staff, medication, equipment, and emergency services. This is done to lessen resistance among both forces and civilians. Mortality and morbidity remain high even years after the conflict due to its long-lasting effects, such as poverty and unemployment. Furthermore, in developing or least developed countries, the health sector is already under-resourced, and armed conflict further devastates it. Thus, armed conflict—whether internal or international—has a devastating impact on the healthcare system. To reduce the effects of war, various international legal instruments have been adopted for the protection of the life and health of soldiers, combatants, and civilians, including children and women. The four Geneva Conventions are the primary instruments regarding the protection of life and health. These conventions provide for the:

- i) Protection and care of wounded and sick military personnel, prisoners of war, and civilians.
- ii) Children and women have also been provided special protection through various treaties/conventions, such as the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974). However, despite the protection guaranteed in these instruments, the human 'right to life and health' is often violated by the occupying power or enemy combatants/forces. Women are raped, children are maimed, and medical staff are attacked and shot dead. This causes serious health problems and constitutes grave violations of human rights.

International Humanitarian Law (hereinafter: IHL) must be respected to protect and preserve the lives and dignity of people. Seventy-five years after the adoption of the Geneva Conventions, we are reminded of the global agreement that wars must have limits, and that, regardless of the circumstances, respect for human dignity and compassion must always guide our actions.¹⁰

¹⁰ ICRC, n.d.

News channels and media frequently report incidents where IHL is not respected, showing the horrific consequences: loss of life, family separations, and unspeakable suffering. Yet, by focusing on the victims of armed conflict and their needs, IHL does help prevent and mitigate some of war's worst consequences—although much more must be done to improve implementation and compliance. In this paper, the rights of children during armed conflict are explained with special reference to violations of international conventions. War is not an accident; it is a decision. Compliance with the customary international laws of war is mandatory to reduce and limit the effects of war. IHL should not be violated under any circumstances. Numerous conventions, such as the Convention on the Rights of the Child (hereinafter: CRC), have been accepted by most countries and are designed to protect children's rights. These conventions are discussed in detail in later sections of the paper.

1.1 Child Trafficking During Armed Conflict

Child trafficking during wartime is also a matter of concern. Children are displaced during wartime, and the separation from family and community leaves them in a vulnerable position. Children suffer psychological trauma through exposure to violence, loss of family members, and the breakdown of societal structures, leading to lasting mental health effects. The stress of living in war zones can cause depression, anxiety, and post-traumatic stress disorder (hereinafter: PTSD).

2 Protection of Children under the Geneva Conventions

The Geneva Conventions deal with the protection of children during wartime; however, some challenges need to be addressed. Children are more vulnerable during wartime, as they do not understand the intricacies of war. Geneva Convention IV (hereinafter: GC IV) is applicable to children during wartime, as it concerns the protection of civilians. The general protection of children is also required under the provisions of the Geneva Conventions.

2.1 General Protection of the Children

The general provision for the protection of children under GC IV applies when they are not taking part in hostilities. Additional Protocol I¹¹ (hereinafter: AP I) also deals with the protection of civilians; however, many states are not parties to AP I, so it does not bind them in the same way as GC IV. Armed forces are prohibited from attacking civilians, including women, children, older adults, and people with disabilities, during wartime. Moreover, "the right to life, the prohibitions on coercion, corporal punishment, torture, collective punishment and reprisals" (Articles 27–34 GC IV) are also guaranteed under the treaty. Further, as per AP I, the rules governing "the conduct of hostilities, including both the principle that a distinction must be made between civilians and combatants and the prohibition on attacks against civilians" (Articles 48 and 51) apply. In the case of non-international or internal armed conflict, children as civilians are protected under the common article of the Geneva Conventions I–IV.

2.2 Special Protection for Children

Special protection for children is provided under AP I of 1977, which states: "*Children shall be the object of special respect and shall be protected against any form of indecent assault*". Furthermore, "Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason" (Article 77 of AP I). This principle also applies to non-international armed conflict (Article 4, para. 3 AP II). Children are also granted protection related to evacuation from special war zones, assistance and care, identification, family reunification, etc., under the special protection.¹²

A major issue is the participation of children in hostilities. If children are recruited as combatants by national armed forces or other armed groups, a key question arises: should they be treated as civilians or combatants, and what kind of protection may be available to them? AP I places an obligation on all State Parties not to recruit children below the age of 15. Moreover, AP I explicitly "prohibits their recruitment

¹¹ Protocols additional to the Geneva Conventions of 12 August 1949.

¹² ICRC (2003) Legal Protection of Children during armed conflict. Retrieved from: www.icrc.org/sites/default/files/external/doc/en/assets/files/other/ang03_03_juridique_newlogo.pdf (accessed: 29 July 2025).

into the armed forces and encourages Parties to give priority in recruiting among those aged from 15 to 18 years of age" (Article 77 of AP I).

Meanwhile, Additional Protocol II (hereinafter: AP II) further prohibits both the recruitment and direct or indirect participation of children under the age of 15 in hostilities (Article 4 of AP II). Furthermore, children may not be arrested, detained, or interned under Article 51 of AP II. They are also exempt from the death penalty under Article 68 of GC IV.

3 The Convention on the Rights of the Child (CRC)

The CRC is a significant convention and has been ratified by all UN Member States, except the United States of America. The CRC also recognizes the fundamental rights of the child. These rights apply to children even if they take direct part in hostilities; however, it states that children below the age of 18 should not take part in hostilities (Article 1 of the CRC). Article 38 of the CRC specifically focuses on protecting children in situations of armed conflict. Furthermore, Articles 31 to 33 explain that children have the right to rest, be protected from exploitation, and "*the child has the right to rest and leisure, to play and freely participate in cultural life and the arts*" (Article 31 of the CRC). Article 32 of the CRC states that "*the child shall be protected from economic exploitation and from performing work that is hazardous to his/her life and development,*" while Article 33 of the CRC provides that "*the child shall be protected from illicit use of narcotic drugs.*" Nevertheless, children are sometimes trained as spies or used as soldiers, which constitutes a violation of IHL.

4 Statute of the International Criminal Court (ICC) and Protection of Children

The next issue is the recruitment of children, which constitutes a violation of child rights under international criminal law. The International Criminal Court (hereinafter: ICC) is a permanent court that establishes individual criminal liability when a crime defined under Article 5¹³ of the Rome Statute is committed. The ICC is a critical tool in protecting children during armed conflict, holding perpetrators accountable for crimes such as the use of child soldiers, sexual violence, and other

¹³ Genocide, War Crime, Crime Against Humanity and Aggression.

grave violations of children's rights. The Rome Statute was adopted in 1998 and entered into force in 2002. Its permanent seat is in The Hague, Netherlands. The statute contains specific provisions on the protection of children and is binding only on State Parties.

4.1 Protection of Children During Armed Conflict

The protection of children in armed conflict is a central concern of international law. The ICC has recognized the recruitment of children below the age of 15 as a war crime under Article 8 of the ICC Statute (Article 8, para. 2(b)(xxvi)). The recruitment of children in internal or international armed conflict is considered a war crime. Furthermore, the ICC has prohibited the use of children as soldiers during armed conflict. Recruitment of children is both a war crime and a violation of their rights. In the case of Thomas Lubanga Dyilo, he was prosecuted and convicted by the ICC in 2012 for recruiting children as soldiers.¹⁴

4.2 Children as Victims of 'Child Soldier'

The ICC has recognized gender-based violence as a war crime. The Court also adopts a child-centered approach, ensuring that children are heard—even if they were recruited as child soldiers or their rights were violated as civilians. Furthermore, "child victims and witnesses have provided testimony, and there are protections in place to ensure their safety and well-being." Reparations and rehabilitation receive due consideration under the ICC for victims, including child victims of war crimes. Reparations may take the form of compensation, rehabilitation, or community-based efforts to help children recover from trauma and reintegrate into society.

4.3 Challenges Before the ICC in Dealing with Child Soldiers

Thirdly, the paper addresses the accountability of perpetrators, which is a major challenge before the ICC. Despite its efforts, the ICC faces jurisdictional limitations when trying to hold perpetrators accountable.

¹⁴ International Criminal Court, 2021.

To ensure accountability, the ICC must obtain universal jurisdiction; otherwise, states not party to the ICC do not fall under its authority. No doubt, some exceptions exist.¹⁵ Secondly, it remains challenging to gather evidence due to ongoing violence and instability. Moreover, several states, including the United States and China, are not party to the ICC and resist its interventions. This complicates the ICC's ability to pursue cases. Additionally, some states refuse to sign or ratify the Rome Statute due to fears of political consequences for their leaders. These factors collectively hinder the ICC's ability to hold perpetrators accountable for crimes against children.

5 Conclusion

After analysing the many legal instruments available for the protection of children, it is clear that children remain the primary victims of war. Although international law prohibits the recruitment of children into hostilities, there is still evidence that children take direct part in conflicts—and suffer immensely as a result. States must take decisive steps to end this situation. Under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict "the States must ratify the treaties protecting children in armed conflict and take national measures adapted to their legal systems to implement these treaties". Whether in legislative or other form, these measures are intended to enable states to respect and ensure respect for the rules laid down by the treaties. It is recommended that priority be given to implementing the following rules.¹⁶

States must become parties to AP I and AP II of 1977 and ensure that no child below the age of 15 is arrested, detained, or interned for conflict-related reasons. Children must receive the special protection provided by international humanitarian law under Article 77 of AP I.

To protect children's rights, the death penalty should be prohibited for any offence committed by a child during an armed conflict (GC IV, Article 68, para. IV). Compliance with international humanitarian law treaties is essential to ensure full respect for children.¹⁷ Moreover, prevention is better than cure. Preventive strategies

¹⁵ Wagner, 2003.

¹⁶ See <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>, General Assembly resolution A/RES/54/263, adopted on May 25, 2000.

¹⁷ States are legally obliged to engage in dissemination activities (Articles 47, 48, 127 and 144 of, respectively, GC I, GC II, GC III and GC IV; Article 83 API; Article 19 AP II; and Article 6 of the Optional Protocol of 2000).

must remain at the forefront of child protection in armed conflict.¹⁸ These should include early warning systems, diplomatic interventions, and targeted programs aimed at addressing the root causes that make children vulnerable to recruitment and exploitation by armed groups.¹⁹ The international justice system must continue strengthening its capacity to investigate and prosecute those responsible for grave violations against children, while also supporting national justice systems in developing their capacities.²⁰ This dual approach to accountability serves not only as a deterrent but also as a powerful statement of international resolve.

Thus, the hypothesis stands confirmed: there is a pressing need to implement the Geneva Conventions in a practical and meaningful way. Otherwise, children will continue to suffer, despite the existence of conventions and the celebration of their 75th anniversary. The international community must remain vigilant in monitoring and responding to violations against children in conflict zones, while also working proactively to prevent future conflicts. The protection of children in armed conflict is not only a moral imperative but a crucial investment in humanity's future, requiring unwavering commitment from all stakeholders. Violence breeds violence. Breaking the vicious cycle of armed conflict is essential for building peaceful and resilient societies. Children have the right to be protected at all times, including during armed conflict.

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¹⁸ International Criminal Court, 2023.

¹⁹ United Nations, n.d.

²⁰ European Commission, 2024.

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ON THE PROTECTION OF CHILDREN'S RIGHTS IN CÔTE D'IVOIRE: FROM A THEORETICAL PERSPECTIVE TO AN EFFECTIVE LAW ENFORCEMENT

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In Côte d'Ivoire, the protection of children's rights is governed by a solid legal framework consisting of constitutional provisions, national legislation, and international instruments. This chapter examines the legal regime guaranteeing children's rights, with a focus on constitutional mandates relating to education, health, and protection from exploitation. It explores the implementation of these laws, including mandatory birth registration, parental responsibilities, and the prohibition of child marriage and labor. Despite legislative advances, challenges persist regarding their effective implementation, particularly with regard to statelessness and access to justice. The study highlights the role of national and international monitoring mechanisms in ensuring compliance with child protection standards. By analyzing the theoretical foundations and practical application, this chapter highlights the need to strengthen institutional mechanisms to translate legal provisions into concrete results for children in Côte d'Ivoire.

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1 Introduction

The protection of children's rights remains a pressing challenge globally, and in Côte d'Ivoire, systemic issues such as child labour, weak legal enforcement, and fragmented legislation continue to impede meaningful progress. Despite the ratification of key international instruments, most notably the Convention on the Rights of the Child (CRC), the country is still struggling in translating these commitments into effective practice remains inconsistent. This chapter examines the legal and practical dimensions of safeguarding children's rights in Côte d'Ivoire, highlighting the gap between theoretical frameworks and concrete enforcement mechanisms.

The analysis unfolds in three parts. First, the chapter provides a general overview of the legal regime governing child protection, assessing both domestic legislation and international obligations. Second, it examines national legal provisions, with a focus on the regulation of child labor in cocoa plantations, a sector where persistent violations demand urgent action despite existing interventions. Finally, the author concludes this chapter by evaluating the necessary conditions for strengthening child rights protection, emphasizing three key reforms: (1) the direct application of the CRC by Ivorian courts, (2) the adoption of a unified child protection code, and (3) enhanced multilateral cooperation to reinforce national efforts.

For these proposals to succeed, a coordinated approach is essential. The Ivorian government, judiciary, and international actors, including the ILO, UNICEF, and NGOs, must collaborate more effectively to ensure compliance with child rights standards. By closing legislative gaps, strengthening enforcement mechanisms, and fostering strategic partnerships, Côte d'Ivoire can move beyond theoretical commitments and deliver tangible, lasting protections for its most vulnerable citizens. The following discussion not only highlights existing challenges but also proposes solutions that can be implemented to secure a safer future for Ivorian children.

2 The Legal Regime of Child's Rights Protection: General Overview of the Applicable Law

From the outset, it is essential to note that in Côte d'Ivoire, the protection of children's rights is ensured by various legal instruments at both domestic and multilateral levels. At the highest level of the hierarchy of internal legal norms is the fundamental law of Côte d'Ivoire. This constitutional law, adopted in 2016,¹ has laid down provisions relating to the protection of children, particularly concerning their education.² Children's right to education is thus an obligation incumbent on the State and public authorities, who are required to ensure favorable conditions for its implementation. More broadly, the Constitution protects children's rights by stating that "the State and public authorities protect young people against all forms of exploitation and abandonment".³ In this respect, the Constitution unequivocally stipulates that schooling is compulsory for children of both sexes and prohibits child labor in any activity that endangers their health, growth, or physical and mental equilibrium.⁴ It also mandates measures to prevent their vulnerability through access to health services, education, culture, sports, and leisure.⁵ Furthermore, the constitutional law specifies that

»the State shall ensure the promotion and development of general public education, technical education and vocational training, as well as the expansion of all branches of education, by international quality standards and in line with the needs of the job markets«⁶

in a sense that it pertains to

»the State and public authorities to create conditions conducive to the civic and moral education of young people by taking all necessary measures to ensure the participation of youth in the social, economic, cultural, sporting and political development of the country. They help young people to enter working life by developing their cultural, scientific, psychological, physical and creative potential.«⁷

¹ Loi n° 2016-886 du 8 novembre 2016 portant Constitution de la République de Côte d'Ivoire, Ci-après Constitution de 2016.

² Constitution 2016, Article 10.

³ Constitution 2016, Article 34.

⁴ Constitution 2016, Article 16.

⁵ Constitution 2016, Article 32.

⁶ Constitution 2016, Article 10.

⁷ Constitution 2016, Article 34.

The enforcement of these constitutional provisions is effectively carried out following the adoption of the necessary legislative acts by Parliament. Once these acts are adopted by Parliament and promulgated by the President according to constitutional procedures, they become binding and mandatory in their application. They are subject to periodic review by the United Nations Human Rights Committee. In other words, the protection of children's rights is assessed and monitored by national and international institutions. In addition to the provisions of constitutional law, ordinary parliamentary acts also include specific provisions regarding children's rights, notably by clearly defining the legal status of minors. For instance, according to the law relating to minors, a minor is defined as "a person who has not yet reached the age of eighteen years",⁸ and parental authority is granted to the father and mother. This authority includes rights and obligations concerning the minor, namely: to ensure the custody, direction, supervision, maintenance, instruction and education of the child; to arrange for any educational assistance measures to be taken in respect of the child; to consent to the adoption or emancipation of the child under the conditions laid down by law; to administer the child's property and to dispose of the income from said property.

Concerning protective measures or educational assistance, the law on minors stipulates that "minors may be the subject of protective measures when their health, morality, or education are compromised or insufficiently safeguarded due to the immorality or incapacity of the father and mother or the person with custody rights".⁹ But suppose it is the father and mother who have parental authority over their child. In that case, the latter is entitled to the establishment of its filiation concerning its authors¹⁰ when it is born in¹¹ or out of wedlock.¹² In situations where a child is born out of wedlock, filiation is established concerning the mother by the mere fact of birth. However, if the birth certificate does not indicate the mother's name, filiation is established through an acknowledgment or a judgment.¹³ In the case of the father, filiation can only be proven through an acknowledgment or a judgment. This provision is of paramount importance because many children remain without any identity, making them stateless, and consequently living with no

⁸ Loi n° 2019-572 du 26 juin 2019 relative à la minorité, Article 1.

⁹ Loi n° 2019-572 du 26 juin 2019 relative à la minorité, Article 27.

¹⁰ Loi n° 2019-571 du 26 juin 2019 relative à la filiation, Article 1.

¹¹ Loi n° 2019-571 du 26 juin 2019 relative à la filiation, Article 2.

¹² Loi n° 2019-571 du 26 juin 2019 relative à la filiation, Article 19.

¹³ Loi n° 2019-571 du 26 juin 2019 relative à la filiation, Article 19.

recognition by society. This situation has changed by adopting the new legislation, making a child's birth registration mandatory. This provision is of paramount importance because many children remain without any identity, making them stateless and consequently living without recognition by society. This situation has changed through the adoption of new legislation, making the registration of a child's birth mandatory.

Regarding the law on marriage, it is stipulated that men and women under the age of eighteen may not enter into marriage.¹⁴ It is also stated that, by the mere fact of marriage, the spouses must feed, maintain, and educate their children. At the same time, the family must be managed jointly by the spouses in the interests of the household and the children.¹⁵ As for the law on inheritance,¹⁶ it stipulates that inheritance is opened by death or by a judicial declaration of death in the event of the absence or disappearance of the father, mother, or other ascendants. The latter may then distribute and divide their property among their children and descendants. It stipulates that inheritance is opened by death or by a judicial declaration of death in the event of the absence or disappearance¹⁷ of the father, mother, or other ascendants, and that the latter may distribute and divide their property between their children and descendants.¹⁸ The applicable multilateral legal instruments and their domestication by national legal systems have made it possible to observe that over the last three decades, significant progress in the protection of children's rights has been recorded on all continents, improving the lives of children in several respects, notably access to healthcare, education and food, and other measures of protection against various forms of violence and exploitation against them.

The assessment and monitoring of the Ivorian national legislation on child rights protection is conducted by a United Nations body named the Committee on the Rights of the Child (hereinafter: UNCRC), which, based on equitable geographical distribution, is composed of 18 independent experts elected by the States parties to the Convention on the Rights of the Child¹⁹ (hereinafter: CRC). Their mission includes monitoring the implementation of the CRC and its Optional Protocols,

¹⁴ Loi n° 2019-570 du 26 juin 2019 relative au mariage, Article 2.

¹⁵ Loi n° 2019-570 du 26 juin 2019 relative au mariage, Article 51.

¹⁶ Loi n° 2019-573 du 26 juin 2019 relative aux successions.

¹⁷ Loi n° 2019-573 du 26 juin 2019 relative aux successions, Article 1.

¹⁸ Loi n° 2019-573 du 26 juin 2019 relative aux successions, Article 129.

¹⁹ Convention on the Rights of the Child, retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (accessed: 29 July 2025).

namely those on the involvement of children in armed conflict, child trafficking, child prostitution, and child pornography.²⁰

The protection of children's rights in Côte d'Ivoire is periodically assessed by the UNCRC, which based its recommendations on a report submitted by the competent Ivorian authorities. It is worth noting that a ministry has even been created to address all issues concerning children's rights: the Ministry for Women, the Family and Children. The President of Côte d'Ivoire, His Excellency Mr. Alassane Ouattara, has gone a step further by making the protection of children's rights a government priority, introducing reforms and adopting policies, programs, and projects, and even providing specific provisions under the 2016 constitutional law regarding the protection of children's rights in many domains.

With respect to the reforms, many have been undertaken, focusing on issues concerning the age of the child, which ranges from 0 to 18 years for both boys and girls; the law on minorities; the law on inheritance; the laws on marriage and filiation; and the Penal Code Act and Penal Code of Procedure.

To ensure the effective enforcement of the law, numerous questions are generally raised regarding the application of reforms related to children's rights and their protection. One such reform, from a procedural standpoint, seeks to address the issue of directly invoking or pleading the CRC before national courts. In fact, since Côte d'Ivoire is a State Party to CRC, any ruling by a national court or tribunal based on the absence of legislation or the presence of legislation inconsistent with the CRC would not be valid. The reforms also address several critical issues, including the allocation of budget resources for child protection, private sector involvement in child protection initiatives, the mandatory registration of children at birth, and preventive measures to combat violence against children. Other reforms focus on the prohibition of corporal punishment both at home and in schools, the ban on the forced marriage of children, the fight against gender-based violence, the protection of children with disabilities, and efforts to prevent early pregnancies among young girls. Additionally, other violations of children's rights are being addressed, such as sexual violence, issues faced by migrant children, out-of-school children, stateless

²⁰ See more Committee on the Rights of the Child, 2000, p. 15 and ff.

children, children born out of wedlock, and the practice of genital mutilation among young girls.

Children who are victims of certain crimes often fall into categories commonly referred to as "abandoned children" or "children of the street," meaning children experiencing homelessness or precarious housing, out of the supervision or guidance of their parents, and engaging in various delinquent activities. This group of children is referred to as "minors in conflict with the law"²¹, and the law establishes special conditions for their detention. These provisions include defining the age of criminal responsibility and outlining the procedures for their interrogation during police investigations or judicial proceedings. If an individual aged 18 is the perpetrator of an offense or the victim of an alleged offense, the Public Prosecutor is responsible for prosecuting the case. However, such individuals are not subject to the jurisdiction of ordinary courts; instead, they may be brought before a juvenile judge or a juvenile court.²²

This ministerial circular governs the monitoring of proceedings during preliminary investigations and the handling of cases before public prosecutors' offices, as well as the oversight of investigations conducted by magistrates or juvenile court judges and the management of cases before trial panels. In this regard, Title VIII of the 2020 Code of Criminal Procedure (hereinafter: CCP) includes several provisions specifically applicable to minors involved in criminal proceedings, whether as perpetrators, accomplices, victims, or witnesses. In such cases, the judicial police officer, public prosecutor, or judge is required to notify the child and youth protection service to provide assistance.²³ The CCP stipulates: At all stages of the proceedings, a minor witness or victim under the age of sixteen may only be heard by judicial police officers or magistrates in the presence of their legal representative or an educator from the judicial protection of children and young people.²⁴ However, a minor under the age of thirteen may not be held in police custody without the authorization of the public prosecutor²⁵, and such a measure may not exceed 24 hours, except in criminal cases and with the authorization of the public

²¹ Circulaire du Garde des sceaux, Ministre de la justice, 26 septembre 2017, relative à la répression d'infractions commises par des mineurs communément appelés 'mineurs en conflit avec la loi'.

²² Code de procédure pénal, Article 783.

²³ Code de procédure pénal, Article 786.

²⁴ Code de procédure pénal, Article 790.

²⁵ Code de procédure pénal, Article 791.

prosecutor.²⁶ In cases where the young person is 18 years of age or older, they may be held in police custody.²⁷ For criminal offences not covered by criminal law, the juvenile judge, the juvenile court²⁸ or the juvenile criminal court²⁹ will, depending on the case, implement appropriate measures of protection, assistance, supervision, and education, with the understanding that a criminal sentence may be imposed on the minor, based on the circumstances.³⁰

While the law on minors defines 'minor' or 'minority' as anyone under the age of 18, it is the Penal Code (hereinafter: PC) that specifically outlines offenses committed against minors or children. It establishes several provisions for the protection and prosecution of violations of children's rights. In particular, the PC includes specific provisions defining crimes and offenses related to children's rights, such as cases of infanticide³¹, violence, and assault against minors under the age of fifteen or against a person unable to protect themselves due to their physical or mental State, or those who voluntarily deprive them of food or care to the point of compromising their health".³² Also punishable is anyone who exposes, or causes to be exposed, or neglects, or causes to be neglected, a child or a person incapable of protecting themselves due to their physical or mental State, in a solitary place.³³

Penalties are also defined in cases of child abandonment³⁴ or abduction,³⁵ with specific legal provisions addressing the severity of the offense and the protection of the child's well-being. These penalties include imprisonment, life imprisonment, and payment of a fine. However, the code specifies that abduction may carry the death penalty if it results in the death of the minor or if it causes a disability leading to a permanent incapacity of more than 30%.³⁶ Thus, a minor who was the victim of reprehensible criminal acts at the time of the offense and who has reached the age of majority may initiate legal proceedings within two years of reaching the age of majority, even if the statute of limitations has already expired.³⁷ If the minor is the

²⁶ Code de procédure pénal, Article 787.

²⁷ Code de procédure pénal, Article 794.

²⁸ Code de procédure pénal, Article 821.

²⁹ Code de procédure pénal, Article 817.

³⁰ Code de procédure pénal, Article 796.

³¹ Code de procédure pénal, Article 361.

³² Code pénal, Article 362.

³³ Code pénal, Article 363.

³⁴ Code pénal, Article 370.

³⁵ Code pénal, Article 365.

³⁶ Code pénal, Article 370.

³⁷ Code de procédure pénal, Article 784.

victim of violence or sexual assault, the Public Prosecutor can initiate public proceedings against the perpetrator(s).³⁸

The protection of children's rights in Côte d'Ivoire is overseen by various national institutions, primarily at the ministerial level, including the Ministry for Women, Family, and Children; the Ministry of Social Affairs; the Ministry of the Interior and Security; the Ministry of Justice; the Ministry of Health; the Ministry of Education; and the Ministry of Communication. Local and regional authorities, alongside associations, NGOs, and technical and financial partners, also contribute to addressing these issues.

In addition, the government has implemented a range of domestic measures aimed at preventing and addressing violations of children's rights. These measures include, but are not limited to: the policy of compulsory schooling for all children; the resocialization program for socially disadvantaged children; the facilitation of acquiring birth certificates and other identity documents; the establishment of care structures for children who are victims of violence or in conflict with the law; the constitutional guarantee of compulsory education for all children, regardless of gender; the prohibition and suppression of child labor; the State's commitment to preventing children's vulnerability and ensuring their access to health services, education, employment, culture, sports, and leisure; and the adoption of several legislative texts, including the 2016 law against human trafficking. The National Committee to Combat Violence against Women and Children; the Implementation Unit for the Program to Protect Vulnerable Children and Adolescents; the national coalition to combat child marriage; and the Child Protection Committees. The Ministry for Women, the Family and Children ensures coordination between all national institutions, non-governmental organizations, and other partners involved in child protection.

At the international level, Côte d'Ivoire has signed or ratified relevant international legal instruments related to the protection of children's rights worldwide. The measures to implement these international standards include the ratification of the Hague Convention on Protection of Children and Cooperation in Respect of

³⁸ Code de procédure pénal, Article 785.

Intercountry Adoption.³⁹ Additionally, other international legal instruments are in the process of being ratified, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁴⁰; the Third Optional Protocol to the CRC⁴¹, establishing a communications procedure; and the signing of bilateral agreements on trafficking and labor with neighboring countries (Mali, Burkina Faso, and Ghana). Côte d'Ivoire has also signed various regional agreements with eight other countries in the sub-region, notably concerning the establishment of a coordination mechanism for the implementation of national and international legal instruments, involving the Interministerial Committee to Combat Child Trafficking, Exploitation, and Labor. The enforcement and implementation measures in domestic law must be consistent with international legal instruments.

3 Example of an Enforced Law in Protecting Children's Rights: The Fight Against Child Labor in Cocoa Plantations

The economy of Côte d'Ivoire has long relied on agriculture, particularly the production of coffee and cocoa. The country remains the world's leading producer of cocoa. However, from 1960, the year of its independence, until 2015, Côte d'Ivoire struggled to transform its cocoa into chocolate due to a lack of industrialization in the cocoa sector. Recognizing the sector's vital importance to its social and economic development, the Ivorian government, in power since 2011, has undertaken significant reforms to industrialize the cocoa economy and promote the sustainable exploitation of Ivorian cocoa through economic diplomacy. Achieving this goal, however, requires addressing misconceptions, including the notion propagated by some international media that Ivorian cocoa is produced mainly through child labor in the fields. All things considered, while this may have been the case more than twenty years ago, it is no longer true today. The Ivorian government has implemented a range of institutional and legal measures, both

³⁹ Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, retrieved from: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69> (accessed: 29 July 2025).

⁴⁰ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers> (accessed: 29 July 2025).

⁴¹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children> (accessed: 29 July 2025); see also Happold, 2000.

preventive and repressive, along with diplomatic initiatives aimed at reforming cocoa agriculture in Côte d'Ivoire and eliminating child labor in cocoa fields by 2025.⁴²

Diplomatic efforts within the framework of economic diplomacy have focused on improving the image of Ivorian cocoa production, particularly addressing the negative perceptions around child labor, which some international media and NGOs have fueled through often disproportionate and sometimes unfounded criticism and propaganda. Domestically, the First Lady of Côte d'Ivoire has led efforts to successfully convince foreign partners and investors in the cocoa industry that Ivorian cocoa and coffee production are predominantly free from the use of child labor. Today, diplomats from Europe, Asia, the Americas, and United Nations officials have a better understanding of this complex issue. Several other ministries directly or indirectly involved in the cocoa farming sector - including the Ministry of Agriculture and Rural Development, the Ministry of Justice, the Ministry of Family, Women, and Children, the Ministry of the Interior and Security, the Ministry of National Education, and the Ministry of Youth Promotion and Civic Service—have taken regulatory measures to address child labor in cocoa fields. During international meetings in Abidjan and abroad, these ministries have explained the government's initiatives to foreign partners and the international community.

To better coordinate these efforts, the government has established the National Committee for Monitoring Actions to Combat Trafficking, Exploitation, and Child Labor, which plays a key role in monitoring and raising awareness of this issue. This Committee, chaired by the First Lady of Côte d'Ivoire, has consistently used opportunities in European and African capitals, as well as in Washington and at the World Bank, to reassure global leaders that children in Côte d'Ivoire are increasingly in school rather than in the cocoa fields, through concrete actions on the ground.

This diplomatic effort has proven successful, as it led to the signing of a partnership agreement between Côte d'Ivoire and the American government. In addition to the National Monitoring Committee, the presence of the Technical Committee for the Coordination of the National Strategy for Sustainable Cocoa and national NGOs, such as the Child Labor in Cocoa Coordination Group (hereinafter: CLCCG), is noteworthy. The CLCCG is a public-private partnership that brings together Côte

⁴² More on child labour in cocoa plantation see also Busquet Bosma & Hummels, 2021.

d'Ivoire, Ghana, the United States, and international companies involved in the purchasing and processing of cocoa and chocolate. The national strategy in place aims to ensure cocoa traceability and ultimately eliminate child labor from the cocoa value chain in Côte d'Ivoire. In this context, the strategy adopted by state actors, underpinned by a firm political commitment, is centered around fostering collaboration and aligning efforts across both public and private sectors, all working in unison to strengthen the integrity and sustainability of the cocoa value chain.

The diplomat, especially the Ambassador or Head of Mission, is responsible for assuring the authorities of the accrediting State that Ivorian cocoa complies with international standards and criteria for production and trade, highlighting that it is produced without child labor and does not contribute to deforestation.

4 Conclusion

The conditions for effectively addressing violations of children's rights in Côte d'Ivoire include, first and foremost, the obligation for Ivorian courts to directly invoke the provisions of the CRC, to which the country is a party. In fact, relying solely on national legislation regarding children's rights will not be sufficient when domestic law conflicts with international legal instruments to which Côte d'Ivoire is a signatory. A second critical condition is the adoption of a unified child protection code, which would have the advantage of consolidating all matters related to children's rights into a single legislative framework.

Finally, in the pursuit of eradicating child labor in the cocoa fields of Côte d'Ivoire, both from a practical standpoint and through economic diplomacy, it is essential first to establish precise and targeted national responses via well-defined strategies. In tackling child labor within the cocoa sector, multilateral diplomacy has significantly reinforced national efforts. Key contributions from multilateral institutions, such as the International Labour Organization, the United Nations Children's Fund, the World Bank, the European Union, and international NGOs, including Save the Children, the International Cocoa Initiative, and the Children of Africa Foundation, have been crucial to these initiatives.

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THE RIGHTS OF THE STILLBORN CHILD IN POLAND – STATUS *DE* *LEGE LATA* AND POSTULATES *DE* *LEGE FERENDA*

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The legal status of stillborn children is a subject of interest for lawyers specializing in various branches of law. Therefore, the studies organized by the Institute of Justice in Warsaw (Poland) involved experts in civil law, family law, criminal law, law on civil status records, and medical law. The research confirmed the dispersion of regulations concerning the legal protection of stillborn children and the necessity of respecting the inherent dignity of human beings. According to the Constitutional Tribunal's judgment of May 28, 1997 (K 26/96), „Human life at every stage of its development constitutes a constitutional value subject to protection. However, this does not mean that the intensity of this protection at every stage of life and under all circumstances must be the same. The intensity and type of legal protection are not a straightforward consequence of the value of the protected good”.

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1 Introduction

The discussion on how to handle the body of a child who has died before birth has been ongoing in Poland and other countries for several decades. Lawyers, medical professionals, ethicists, and even theologians grapple with questions such as: can human remains at an early stage of life be treated as mere medical waste, or do they deserve the same respect as adults or children who passed away, for instance, several years after birth? The answer to this question has far-reaching consequences, not only for parents who have suffered the tragedy of losing a child before birth.

The Institute of Justice in Warsaw, a research unit under the Polish Ministry of Justice, conducted studies on the legal status of stillborn children.¹ These studies involved lawyers specializing in various branches of law, including family law, civil law, criminal law, law on civil status records, and medical law, as well as experts in canon law and theology of the Catholic Church. The result of the research is a publication dedicated to the legal status of stillborn children, titled “The Legal Status of Stillborn Children”, which contains numerous postulates *de lege ferenda*.²

The primary issue faced by parents in cases of miscarriage or stillbirth is the lack of a single normative act comprehensively regulating these matters. Furthermore, the definition and regulation of basic terms in an annex to a ministerial regulation raise serious legal and practical doubts. A perspective that recognizes the human essence obliges both lawmakers and entities applying the law (bodies and institutions) to respect and protect the dignity of stillborn children and to provide appropriate legal protection and care to them and their parents.

The purpose of this study is to identify the necessary changes in the Polish legal system to respect and protect the status of stillborn children. This goal will primarily be achieved based on research conducted by the Institute, making the aforementioned publication the most frequently cited source in this study.

¹ More information on the website: www.iws.gov.pl.

² Sobczyk, 2024, p. 237.

2 Key legal terms

According to the provisions of the Minister of Health's regulation of April 6, 2020, on the types, scope, and forms of medical documentation and the methods of its processing³, “[a] miscarriage is defined as the expulsion or extraction from the mother's body of a fetus that does not breathe or show any other signs of life, such as a heartbeat, umbilical cord pulsation, or definite voluntary muscle movements, provided it occurs before the 22nd week of pregnancy (21 weeks and 7 days)”.⁴ The same regulation states that “[s]tillbirth is defined as the complete expulsion or extraction from the mother's body of a fetus that does not breathe or show any other signs of life, such as a heartbeat, umbilical cord pulsation, or definite voluntary muscle movements, provided it occurs after the 22nd week of pregnancy”.⁵

3 Civil Law

Polish civil law, specifically the Civil Code in Arts. 23 and 24, includes a catalog of personal rights of natural persons.⁶ The most important personal right for an unborn child is life. Protecting personal rights such as dignity, life, and health, as well as the status rights of the nasciturus, makes it possible to treat the unborn child as a patient, including maintaining a separate record of medical services provided to them. As Marek Andrzejewski rightly suggests, it is worth considering extending the nasciturus' catalog of personal rights to include the right to dignified birth, protection of genetic heritage, and family ties.⁷

³ Dz. U. 2020 poz. 666.

⁴ Załącznik nr 1 Kryteria oceny stosowane przy dokonywaniu wpisów w dokumentacji dotyczących czasu trwania ciąży, poronień, urodzeń żywych i martwych pkt 2 do Rozporządzenia Ministra Zdrowia z dnia 6 kwietnia 2020 r. w sprawie rodzajów, zakresu i wzorów dokumentacji medycznej oraz sposobu jej przetwarzania, Dz. U. 2020 poz. 666.

⁵ Załącznik nr 1 Kryteria oceny stosowane przy dokonywaniu wpisów w dokumentacji dotyczących czasu trwania ciąży, poronień, urodzeń żywych i martwych pkt 4 do Rozporządzenia Ministra Zdrowia z dnia 6 kwietnia 2020 r. w sprawie rodzajów, zakresu i wzorów dokumentacji medycznej oraz sposobu jej przetwarzania, Dz. U. 2020 poz. 666.

⁶ The starting point for recognizing that the personal rights of a stillborn child are subject to civil law protection is the acknowledgment that the child possesses legal capacity and the capacity to perform legal acts. The positions of legal scholars on this issue are not uniform; it is worth referring to the following publications in this regard: Mazurkiewicz, 2019, p. 9; Haberko, 2010; Smyczyński, 1989, pp. 3–28; Sokołowski, 2022, pp. 117–166.

⁷ Andrzejewski, 2024, pp. 16–18.

One of the personal rights of individuals is the right to burial, which in the case of the nasciturus means the right to be buried, as well as the right of the parents to bury their stillborn child. Another personal right is the remembrance of the deceased, understood as a set of entitlements forming the right to a grave, considered a personal right of the deceased's relatives and a subject of legal protection based on Arts. 23 and 24 of the Civil Code.

An example illustrating the rights of a child before birth is the condition known as Fetal Alcohol Syndrome (FAS), caused by alcohol consumption by pregnant women.⁸ Alcohol consumption during pregnancy, especially given the known effects on the child, can be considered a tort committed against the child, whether intentionally or negligently. The reprehensibility of behavior endangering a child has led to legislative proposals aimed at criminalizing such actions and mandating the placement of pregnant women who consume alcohol in treatment facilities.⁹

Although civil law provisions rarely address the burial of stillborn children directly, they provide a solid basis for advocating the formulation of detailed regulations on this matter within administrative law. The existence of civil-law protection of the unborn child's interests supports the argument for showing respect to the unborn human being in the face of death. As Andrzejewski notes, the coherence of the legal system favors the introduction of consistent regulations concerning the burial of stillborn children, ensuring the dignity owed to a human being from the moment of conception. The lack of such coherence, exemplified by the permissibility of abortion, cannot justify further inconsistencies in this protection.¹⁰

It is also worth noting that one of the key provisions of civil law concerning the unborn child is Article 927 § 2 of the Civil Code.¹¹ Its origins trace back to Roman law, where the possibility of inheritance by an unborn child, provided it was born alive, was introduced.

⁸ Andrzejewski, 2024, p. 18 and subsequent.

⁹ On the subject of FAS syndrome and legislative attempts to counteract this issue, primarily in Bernfeld et al., 2020.

¹⁰ Andrzejewski, 2024, pp. 31-32.

¹¹ More on this topic Longchamps de Berier, 2009, pp. 257–262.

De lege ferenda, it is therefore worth considering, in relation to civil law (specifically the Civil Code), extending the catalog of personal rights of the nasciturus to include the right to dignified birth, the protection of genetic heritage, and family bonds.

4 Law on Civil Status Records

Procedures for issuing death certificates do not adequately protect the rights of stillborn children and their families, particularly concerning determining the child's gender, which is necessary to obtain permission for burial. These matters are regulated in Poland by the Act on Civil Status Records (hereinafter: ACSR).¹² This act introduced various changes, including the form of the abbreviated birth certificate for a stillborn child, the content of this certificate with an annotation that the child was stillborn, and a clear basis for its issuance.

However, the current legal state regarding civil status records is far from perfect. As Piotr Kasprzyk observes, the first shortcoming of the ACSR is the lack of a possibility to bury the child without issuing a birth certificate when the child's gender is not determined. This solution disregards the individuality of the child, which is guaranteed in other legal acts, such as the Civil Code, through the personal rights afforded to the unborn child. Therefore, medical procedures should be introduced to quickly determine the child's gender, ensuring that the stillbirth record includes the child's gender, leading to the issuance of a complete birth certificate that accurately documents this information. This is essential for the integrity of the civil status record as a reference document.¹³

“It should be mandatory to include the child's gender in the stillbirth record based on, for example, reimbursed genetic testing conducted by medical facilities or a statement from the parents regarding the child's gender when preparing the stillbirth record. In today's era of progress and the availability of genetic testing, determining the gender of a stillborn child should not pose significant challenges. Furthermore, the death of the child should not be a barrier to determining its gender. Establishing the child's gender is both the right and duty of the parents”.¹⁴

¹² Dz. U. 2014 poz. 1741.

¹³ Kasprzyk, 2024, p. 53 and the following.

¹⁴ Kasprzyk, 2024, p. 61.

Kasprzyk also rightly proposes that, considering the feelings of parents who have lost their child, the registration of stillborn children should take place in the death registration department rather than the birth registration department of the relevant Civil Registry Office. This issue concerns the registration of the child's death. Therefore, it is worth considering amending the regulation of the Minister of the Interior of February 9, 2015, on the method of maintaining civil status records and collective civil status records¹⁵ to include the following provision: “The registration of stillborn children is carried out at the same location as the registration of deaths in the relevant Civil Registry Office”.¹⁶

De lege ferenda, in the context of civil status law, it is necessary to propose the introduction of medical procedures that allow for the rapid determination of the child's gender so that the stillbirth record includes the child's gender, ultimately leading to the issuance of a complete birth certificate. This is crucial for the integrity of the civil status record as a reference document.

5 Medical Law and Internal Hospital Regulations

In the 1960s, stillborn children accounted for 1.2 percent of all births, whereas today, this figure is only 0.3 percent.¹⁷ Regardless of the number of such family tragedies, Polish hospitals are obligated, under the Act on Medical Activities, to properly prepare the deceased body by washing and covering it with due dignity for its handover to the person or institution entitled to its burial. Considering that human life is the most valuable asset at any stage of development, including the prenatal phase from its inception, stillborn children must also be treated with respect and dignity. It is unacceptable for the tissues of miscarried fetuses to sometimes be treated as medical waste.¹⁸

According to section 3, item 5, part XV of the annex to the Minister of Health's regulation of August 16, 2018, on the organizational standards of perinatal care¹⁹, a patient must be allowed to say goodbye to their deceased child in the presence of close persons if they wish to do so. The woman may be accompanied by a staff

¹⁵ Dz. U. 2015 poz. 225.

¹⁶ Kasprzyk, 2024, p. 62.

¹⁷ Główny Urząd Statystyczny, 2021, p. 131.

¹⁸ Najwyższa Izba Kontroli, 2020, pp. 15, 42-50. More on this topic Sadowska, 2024, pp. 104-106.

¹⁹ Dz. U. 2018 poz. 1756.

member (psychologist, doctor, midwife, or nurse), clergy, social worker, or family members. Most women who have lost a child feel the need to say goodbye, to touch, hold, and spend time alone with the child, to welcome and simultaneously bid farewell. The literal wording of the provision indicates that the mother's right to bid farewell to her deceased child is initiated when the mother expresses such a need. However, it cannot be excluded that for various reasons, including lack of awareness of their rights, the woman might not inform medical staff of her desire to bid farewell to her deceased child, potentially resulting in this goodbye not taking place. Therefore, for obvious reasons, the woman should first be informed by medical staff about this right and the possibility of exercising it in the event of a stillbirth, including the opportunity to say goodbye to the deceased child in the presence of loved ones. According to section 3, item 8, part XV of the 2018 regulation on perinatal care, women in special circumstances are to be informed of their rights. Furthermore, the patient's right to information about their rights stems from Article 11, paragraph 1 of the Act of November 6 on Patient Rights and the Patient Ombudsman.²⁰ As Monika Sadowska notes, the obligation to inform patients about their rights is absolute and must be interpreted strictly, meaning that the information must be provided to every patient in a tangible and accessible manner; otherwise, it can be assumed that healthcare providers have only superficially fulfilled their statutory duty. Consequently, a woman who has given birth to a stillborn child should be informed by the healthcare facility of her rights so that she can relate them to her situation.²¹

De lege ferenda, in the context of medical law, it is necessary to advocate for even more precise regulations regarding the handling of the remains of stillborn children. Furthermore, hospital regulations should refine the principles regarding parents' (not just mothers') farewell to their child if they wish to do so. Regarding the aforementioned right to information, it should also be proposed that "Both parents – not just the mother – should be the recipients of information about their rights, including the right to burial in connection with the stillbirth".²²

²⁰ Dz. U. 2009 Nr 52 poz. 417.

²¹ Sadowska, 2024, pp. 117-118. A separate but equally important issue is the support for medical staff caring for women who have lost a child, in accordance with the principle that „helpers need help”. More on this topic is written by Kornas-Biela, 1999, pp. 179-200.

²² Sadowska, 2024, p. 119.

6 Criminal Law

The criminal law protection of stillborn children is limited to Articles 262 § 1 and 2 of the Penal Code of June 6, 1997.²³ According to these articles, anyone who desecrates human remains, human ashes, or a burial site is subject to a fine, restriction of liberty, or imprisonment for up to two years. As Łukasz Pohl states, “The Polish criminal legislator did not choose to create a unique, exclusive regime of protection for stillborn children. The adopted solution applies generally to every individual from the moment of their death”.²⁴

Given the above, the assumption of non-discrimination in the value of human life holds critical importance for the criminal law protection of stillborn children.²⁵ According to the Supreme Court, “The life of every human being, regardless of age, health condition, level of knowledge, culture, family status, or practical social utility, is a universal value without any qualifier and is subject to the same legal protection”.²⁶ Although debates among legal scholars persist, many authors argue that prenatal life is accorded the same value under Polish criminal law as postnatal life. As Andrzej Zoll notes, referencing a Constitutional Tribunal ruling, “Life, as an objective value, does not allow for differentiation in its valuation, meaning that every human life is equally valuable. Introducing any differentiation in the value of life among individuals can lead to consequences that are dangerous for a lawful state. In this sense, the life of a renowned artist or scientist and the life of a degenerate drug addict hold the same value as the subject of legal protection. Life is a process that lasts from the moment of conception to death (See the ruling of the Constitutional Tribunal, K 26/96).²⁷ Throughout this period, life is a value deserving legal protection”.²⁸

De lege ferenda, in the context of criminal law, it is necessary to propose maintaining the current provisions regarding the protection of human remains, ashes, and burial sites, as well as ensuring their proper application by authorized entities.

²³ Dz. U. 1997 Nr 88 poz. 553.

²⁴ Pohl, 2024, p. 65.

²⁵ In this context, it is worth referencing the work Williams, 1966.

²⁶ Judgment of the Supreme Court of 17 lutego 1989 r., IV KR 15/89, „Orzecznictwo Sądów Polskich” 1990, nr 5, poz. 234.

²⁷ Judgment of the Constitutional Tribunal z dnia 28 maja 1997 r., K 26/96, „Orzecznictwo Trybunału Konstytucyjnego” 1997, nr 2, poz. 19.

²⁸ Zoll & Zoll, 1999, pp. 213-214. Similarly Daszkiewicz, 2000, pp. 13-14.

7 Conclusion

The dispersion of legal protection for the remains (remnants) of stillborn children within the Polish legal system is significant. At this stage of cultural and legal system development, a single normative act consolidating these regulations into one law seems challenging.

Nevertheless, it is necessary to propose, in line with the recommendations of this study, amendments to the regulations to fully realize international and national guarantees regarding human dignity and children's rights.

Human dignity cannot be differentiated based on age, whether before or after birth. The duration of pregnancy or the manner of its termination does not negate the humanity of the lost child, given the inherent dignity that belongs to every individual and, consequently, the legal subjectivity of a human being from the moment of conception to natural death, regardless of the stage of life at which death occurs.

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MINIMUM AGE OF CRIMINAL LIABILITY OF CHILDREN

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Accusing the perpetrator of criminal responsibility makes sense only if he understands the significance of his actions. Since it is a generally accepted fact that children are not capable of developing culpable responsibility until a certain age, practically every criminal law in the world sets an age limit up to which criminal responsibility cannot be attributed to a child. Until a certain age, the child is not mentally developed and mature enough to be able to understand the consequences of his behaviour, and thereby, he develops guilt in the criminal law sense, which deserves the criminal law repression of the state. The question remains, what should be the age up to which the child does not answer for committing a crime? In this chapter, the authors examine this question. At the same time, we wonder whether it is fair and just that a child who commits a serious crime, while being aware that his behaviour is evil (so he actually understands the consequences of his action), is not criminally responsible just because he has not yet reached the objectively set age in the Criminal Code.

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1 Introduction

The Convention on the Rights of the Child¹ protects minors and children and obliges the signatory countries to adapt their laws so that they fully respect children's rights and pursue their benefits. This is particularly important when children are victims of abuse, exploitation or neglect by adults. However, the question arises as to what level of protection minors and children may get or deserve when they are the perpetrators, and others are the victims of their behaviour. The question is highly relevant as Europe has recently seen an increase in atrocities committed by minors or even children (torture, gruesome murders, school shootings). The protection of the child offender in criminal proceedings thus takes on a whole new dimension, as the victims of the offence must also be considered, as well as the need for the State to re-educate such a deviant child, if not by forcibly placing them in suitable institutions.

Criminal law, in its ideal dogmatic form, treats the individual in a completely non-discriminatory manner. This means that the personal characteristics of the perpetrator or the victim, be it nationality, skin colour, gender, sexual orientation, religious belief or other, do not influence the criminal assessment of the offence, except in exceptional cases of special offences, the so-called *delicta propria*, which stipulate that they can only be committed by a person with special characteristics (e.g., only by a civil servant, a doctor, a soldier, someone who holds a managerial or controlling position in a company, etc.).² In the latter cases, the legislator's decision is justified by a specific additional societal interest or the value of the good that justifies a special regulation for a certain type of person (e.g. unjustified wiretapping or recording under Article 137 of the Slovenian Criminal Code (hereinafter: KZ-1) is certainly more serious when committed by an official person who abuses his position than when committed by an offender who has no official status and does not abuse his position).

Politically enforcing the distinction between perpetrators and victims according to their personal characteristics in criminal law only leads to more injustice. The consequence of the special privileged legal position of a particular group leads to

¹ Convention on the Rights of the Child, 1989.

² Roxin, 2006, pp. 306-310.

unjust discrimination against other groups and almost always creates systemic anomalies in the law itself.

The same is true when criminal law deals with minors and children. Even if the emotional side of the individual and parental intuition are activated when dealing with children, this should not be the guiding principle when drafting criminal law provisions. Emotional arguments and emotional legislation are not only completely untenable in the eyes of criminal law dogmatics. Still, they are often also unjust and completely wrong from the perspective of the law as a systemic whole.

However, criminal law cannot completely ignore the status and age of the child. In this respect, criminal law should regulate at least two areas in particular. The first area is the age at which a child can be subjected to criminal repression - i.e. the age of criminal liability. The second area concerns the age of the child or minor in relation to sexual acts and associated sexual offences.³ The topic of this paper is the age of criminal liability of children. The authors will explain the orientations of the Convention on the Rights of the Child and the Council of Europe Guidelines on Child-Friendly Justice. We will discuss whether it is dogmatically justifiable to insist on an objective age limit of 14 years, as is the case in the Republic of Slovenia, when serious criminal offences have been committed by mature persons under the age of 14 who plan their acts and even check beforehand whether they will be held criminally liable for their actions. Do such mentally mature children really deserve to be outside of criminal repression? Or do only children, who are mentally immature and cannot distinguish between right and wrong, deserve such treatment? We want to point out at the outset that arguments in favour of lowering the age of criminal liability for children do not mean that the authors are arguing in favour of putting children in prison and taking severe repressive measures against them. The criminal treatment of a child can also mean a process of re-socialisation of the child and their placement in suitable professional institutions that re-educate or help them to become an acceptable member of society. Lowering the age of criminal liability for a child does not necessarily mean tightening an action of repression against the

³ This is primarily about determining the sexual maturity of the child, i.e. when he/she can validly consent to sexual intercourse and when sexual intercourse with a disproportionately older person is considered a paedophilic assault on a child, as well as the minor's capacity to consent to the production of pornographic images. Current age limit being 18 by all international standards, otherwise such material is considered child or underage pornography, which is prohibited under the Convention on Cybercrime and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating sexual abuse and sexual exploitation of children and child pornography.

child, but can also mean an opportunity for the State to provide professional and medical treatment to an extremely problematic child at a time when it is most important - at the time when he or she commits a serious crime and when the re-education of such a child can be most successful. This is usually done through educational measures and, if necessary, by placing the child in a special institution - and, therefore, not by imposing a custodial sentence.⁴

2 Minimum age of Criminal Liability for Children

Holding the perpetrator criminally liable only makes sense if the perpetrator understands the significance of his behaviour. The offender must understand the nature of his act and the consequences of his behaviour, and he must also be able to manage, control and understand his behaviour. To prosecute a person who is unable to understand their behaviour would be entirely contrary to modern criminal law doctrine and the basic principles of sanctioning.⁵

Since it is common knowledge that children up to a certain age are incapable of developing criminal liability, virtually all criminal laws in the world have an age limit up to which a child cannot be held criminally liable.⁶ The reason for this is that up to a certain age, a child is not sufficiently mentally developed and mature to understand the consequences of his behaviour and thus develop guilt in the criminal sense - i.e. an accusation of the reprehensibility of his behaviour that merits criminal repression by the State. Such a child is *doli incapax*, i.e. criminally incapable of guilt, because they neither understand the difference between right and wrong nor are able to comprehend the consequences that their behaviour has for others.⁷ More problematic is the question of the age at which a child becomes criminally liable and whether this age should be determined by the law on an objective basis (the law determines the age at which a child becomes criminally liable) or whether the mental maturity of the child and thus its criminal liability should be determined in each individual case (i.e. a subjective, concrete assessment).⁸

⁴ See also Gril, 2023, pp. 283-422.

⁵ Yaffe, 2018, p. 66.

⁶ McDiarmid, 2013, pp. 145-146.

⁷ Urbas, 2000, p. 3.

⁸ Šepec, 2021, p. 313.

The most dogmatically correct solution is to determine the age of criminal liability in each individual case. This is because the development of individuals can be very different, so some acquire the capacity for culpable thinking much earlier than others, i.e. before the age of 14, which is the legal age of criminal liability in Slovenia. No literature from the field of medicine and psychology concludes that all children are mentally mature and acquire the ability to distinguish right from wrong and to understand the meaning of their actions at the age of 14 (i.e. at midnight on the last day of their thirteenth year). This argument is reinforced by the fact that there is no consensus in comparative criminal law on the age at which a child becomes criminally competent. European countries set different age limits for the age of criminal liability: 13 years in France, 15 years in the Scandinavian countries (Sweden, Finland, Norway)⁹, 12 years in the Netherlands, 14 years in Germany, Austria, Italy, Serbia, Croatia and Slovenia. Common law in England has set the limit at just seven years, after which the legislator raised it to ten years. Between the ages of ten and 14, however, there is only a presumption of culpable incompetence, which the prosecution can rebut if it can prove that the child has "*mischievous discretion*", i.e. the ability to distinguish between right and wrong.¹⁰ It is clear from the above that the determination of the age of criminal maturity is a political issue that must be decided by the legislature in each country.

The objectively defined limits in the criminal laws of the individual countries, therefore, emphasise practical benefits rather than reflecting the personal maturity of children. In practice, it will not be too difficult to establish the actual age of the child at the time of the offence. Still, it can be quite challenging to establish the personal and mental maturity of the child in retrospect - i.e. how mature they were at the time the offence was committed. Another problem is that criminal law doctrine hardly deals with the age of criminal liability of children. Some textbooks omit the question of the age of criminal liability altogether.¹¹ Bavcon and colleagues, in their main criminal law book in the Slovenian legal space, devote an extensive fifth chapter to juvenile criminal law, which takes up almost a tenth of the entire book. As far as the age limit for criminal liability is concerned, they merely quote the legal text and State that "the law itself determines the age at which a minor may become the subject of an offence"¹², without further explaining why this particular

⁹ Horder, 2019, p. 158.

¹⁰ Siemester et al., 2016, p. 756.

¹¹ For example Novoselec & Bojanič, 2013; Jescheck & Weigend, 1996.

¹² Bavcon et al., 2014, p. 110.

age, as laid down in the law, is dogmatically justified. Article 40 of the Convention on the Rights of the Child deals with the child in criminal proceedings. The first paragraph of that article provides that States Parties shall recognise the right of every child accused of, charged with or recognised as having the capacity to commit a criminal offence to treatment consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and assumption of a constructive role in society.

According to the Article 40(2)(a), States Parties shall endeavour to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children who are accused, charged or recognised as having the capacity to commit criminal offences and, in particular, the establishment of a minimum age below which children are presumed to be incapable of committing criminal offences.

The Convention on the Rights of the Child, therefore, provides for special safeguards for children in criminal proceedings, including the establishment of an age below which children cannot be held criminally liable, but does not specify exactly what this age limit should be. It is, therefore, clearly left to the Contracting States to determine this limit. Although no age is specified, the Committee on the Rights of the Child recommends that the minimum age of criminal liability should not be below twelve years. However, this is the absolute minimum and should be revised upwards if possible.¹³

From a judicial perspective, an upgrade of the provisions of the Convention on the Rights of the Child is also based on the guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. They state in Article 23 that the minimum age for criminal liability must not be too low and should be set by law.¹⁴ Again, the document does not tell us what this "too low" limit should be. In setting this minimum limit, we can refer to the judgment of the European Court of Human Rights in the case of *T and V v. United Kingdom*, in which the Court held that 10- and 11-year-old children are not capable of participating effectively in a criminal trial. The European Court of Human Rights problematised the ability of children of this

¹³ CRC General Comment 10, 2007, paras. 30-35.

¹⁴ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, Article 23.

age to participate in discussions and found a violation of Article 6¹⁵ of the European Convention on Human Rights (right to a fair trial).¹⁶ The minimum age should, therefore, not be lower than 12 years. A similar interpretation can be found in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (hereinafter: The Beijing Rules)¹⁷ (Rule 4). Rule 4 of the Beijing Rules recommends that the minimum age should not be set too low and should consider emotional, mental and intellectual maturity. In accordance with this rule, the Committee has recommended that States Parties should not set the minimum age too low. It can be concluded from these recommendations that the Committee considers a minimum age of criminal liability below 12 years to be internationally unacceptable. Article 24 of the Committee of Ministers' guidelines also stipulates that alternatives to court proceedings, such as mediation, diversion (from court proceedings) and alternative settlement of disputes, should be encouraged whenever it can best serve the best interests of the child. States are, therefore, encouraged to look for alternative ways of prosecuting children and not to set the age of criminal liability too low. While international documents and recommendations do not explicitly state the age at which a child can be held criminally liable, it is fairly generally recognised and recommended that this age should not be lower than 12 years.

2.1 Legislation in Slovenia

The Slovenian KZ-1 sets the objective age of criminal liability at 14 years. Article 21 of KZ-1 establishes an irrebuttable presumption that children under the age of 14 are *doli incapax* and cannot commit a criminal offence. The provision is dogmatically controversial, as the mental immaturity of the child generally excludes guilt but not the offence as such.¹⁸ The limit is set purely objectively, which means that children are not criminally liable regardless of their actual mental maturity at the time the offence was committed. Even if the cognitive abilities of a child genius at the age of thirteen were already entirely at the level of an eighteen-year-old, and they were able to distinguish between right and wrong with complete clarity and were fully aware of the consequences of their conduct, such a child would still be criminally incompetent and could not be criminally sanctioned.

¹⁵ *T and V v United Kingdom*, case no. 24888/94, 16 December 1999.

¹⁶ European Convention on Human Rights, 1950, Article 6.

¹⁷ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (hereinafter: The Beijing Rules) (1985) General Assembly A/RES/40/33.

¹⁸ More detailed in Šepc, 2021, p. 315-316.

The reason why the legislator decided in favour of the age of 14 is based on a historical tradition. This limit was already set when the Criminal Code of the Kingdom of SHS was adopted in 1929.¹⁹ The same limit is also applied in the neighbouring countries of Croatia, Austria and Italy. The previous Criminal Code (KZ-94) also contained a similar provision. Still, it was defined in terms of sanctions and was dogmatically more correct in this respect, as it did not exclude the entire offence. The former Criminal Code provided in Article 71 that no criminal sanctions should be imposed on a minor who was under 14 years of age at the time of the commission of the offence (child).

There is no excessive ambition to analyse the best dogmatic approach to the age of criminal liability for children in the European context. However, it will be highly problematic to provide a convincing answer as to why criminal law should not deal with a 13-year-old, who is fully aware of his actions, researches criminal legislation online and after finding out he cannot be held criminally liable for his actions, commits an intentional and planned serious offence, simply because the code sets the objective age for criminal liability at 14 years.

Some recent cases in Europe and also in Slovenia show why the minimum age limit of 14 years is at least questionable.

3 Review of Recent Cases

3.1 Cases from Germany

Last March, the murder of a 12-year-old girl in Germany came to light.²⁰ The murder was committed by her 12 and 13-year-old classmates, who presumably acted out of jealousy. The perpetrators had planned the murder in advance and prepared the necessary accessories. The 12-year-old perpetrator had read the German Criminal code to find out at what age the perpetrator could not be prosecuted due to being a minor. The two perpetrators had lured the victim into the forest and initially tried to suffocate her with a plastic bag. When they failed to do so, the 13-year-old held the victim down so that she could not defend herself, while the 12-year-old stabbed her 75 times with a nail file. After the attack, the two peers pushed the victim down an

¹⁹ Bele, 2001, pp. 411-415.

²⁰ N. Š., 2023c.

embankment, where the girl bled to death from the stab wounds. As the girl was not at home and a search operation was launched for her, the girls uploaded a video to social media asking for help in the search, followed by a video of them joking and having fun. After their arrest, the girls initially denied the offence but later confessed to it due to inconsistencies in their stories.

One month after the murder, Germany was shocked by the torture of a 13-year-old girl, in which six minors were involved.²¹ For hours, a group of teenagers between the ages of 12 and 17 beat the victim on the head and nose, poured drinks over her and threw cigarette ash at her. The whole incident was broadcast on social media via a smartphone, and the victim could be seen on the video crying desperately, breathing in panic and begging for calm. The perpetrators pretended to help the victim in front of passers-by, but later continued the torture.

In the same month, the body of a 10-year-old girl was found in a child and youth welfare centre in Upper Franconia, Bavaria.²² The girl had been placed there because of domestic violence. However, she did not receive the promised rest because she became the victim of her 11-year-old flatmate. The girl was found naked and unresponsive in the morning. The investigation revealed that a 25-year-old man from the area had broken in through the bathroom window of the facility, committed a burglary, stumbled upon the 10-year-old girl, sexually assaulted her and escaped. A fight later broke out between the 10-year-old girl and her 11-year-old roommate, resulting in his murdering her.

3.2 Shooting Spree in Serbia

In Belgrade, a 13-year-old boy went on a killing spree in a primary school in May 2023. When the children returned to school after the May holidays, the history lesson was interrupted by gunshots. As he did not feel socially accepted, the perpetrator decided to organise a shooting spree during which eight of his classmates and a school security guard closed their eyes forever.²³ The investigation later revealed that the teenage perpetrator had planned his offence a month in advance. He had drawn up a plan for entering and leaving the school, the points at which he had to change

²¹ N. Š., 2023b.

²² N. Š., 2023a.

²³ D. L., M. P. & T. H., 2023.

bullet points, and a sketch of each classroom. He also had a list of priority targets and a list of classmates he wanted to kill.²⁴ After carrying out his plan, the perpetrator called the police in the schoolyard, confessed to the crime, had no regrets and repeatedly stated that he would do it again. The investigation also revealed that the boy had made sure before the rampage that he was not of criminal age, where he could be held liable for the offence under Serbian law.²⁵

3.3 T and V v. the United Kingdom

One of the most brutal examples of crimes committed by children is the murder of two-year-old James Burgler in England in February 1993. He was abducted by Jon Venables and Robert Thompson, who were ten years old at the time, in a shopping centre where he was staying with his mother. As James cried, passers-by stopped, and the two boys pretended he was their little brother. They then took their victim to the railway tracks where they beat and tortured him by throwing bricks and stones at him and putting batteries in his mouth. They mutilated him by throwing a 10kg railway track at him, causing the two-year-old to suffer ten skull fractures. The pathologist found 42 injuries at autopsy and was unable to determine which injury was fatal, but he died before the train hit him.²⁶ Both boys were tried in ordinary criminal proceedings and convicted of murder and kidnapping. They received an indeterminate sentence ("Her Majesty's pleasure") instead of a life sentence, which an English court cannot impose on anyone under the age of 18.²⁷

The European Court of Human Rights also dealt with the case and found no violation of Article 3 of the (prohibition of torture) and no violation of Article 5 of the European Convention on Human Rights (right to liberty and security). In principle, the European Court of Human Rights did not criticise the criminal prosecution of the two children or the sanctions imposed on them by the national Court. However, the European Court of Human Rights found a violation of Article 6 of the European Convention on Human Rights (right to a fair trial), as everyone must be guaranteed the right to a fair trial. The European Court of Human Rights questioned whether the 10- and 11-year-old children could effectively participate in the trial at all, considering the fact that the trial was held in public, the children were

²⁴ D. L., 2023.

²⁵ Čulum, 2023.

²⁶ Sommerlad, 2023.

²⁷ *T and V v United Kingdom*, case no. 24888/94, 16 December 1999.

separated from their parents, and the trial took place in a large courtroom full of angry spectators, creating an extremely hostile environment for the defendants. All of this affected the defendants and their ability to follow the evidence and make their own statements.²⁸ The European Court of Human Rights, therefore, problematised the two children's ability to participate in a criminal trial effectively.

3.4 Cases from Slovenia

A year ago, social networks were flooded with footage showing a group of primary school girls beating up their peer on the roof of a shopping centre in Celje.²⁹ The perpetrators first slapped the victim in the face, followed by kicks, scratches and blows to the head. A group of children of the same age, who witnessed and filmed the beatings, supported the offence, and threw tomatoes and eggs at the victim. The publication of the footage on the internet led to the footage being leaked to the police and the media, which in turn led to further threats being made to the victim about what would happen to her if any of the perpetrators were punished.

A recent incident confirms the alarming situation among increasingly mature young people at a primary school in Brežice.³⁰ In the early hours of the morning, the perpetrator entered the 9th-grade class and hit his fellow pupil. When the victim retreated, the perpetrator pushed him and caused the injured boy to hit his head on the edge of the desk, causing further injuries. The wounded boy managed to escape to the headmistress's office, from where he was taken to the hospital, and his condition remained poor for several days. The boy had a fractured skull and a cut on his forehead and under his eye. The perpetrator returned to the school premises a few hours after the attack and threatened other pupils, provoking the two police officers, who arrived later and accused them of being in no position to do anything to them. While there were several violent incidents at the school, the incidents escalated to the point where children no longer dared to cross the school threshold.

²⁸ *T and V v United Kingdom*, case no. 24888/94, 16 December 1999.

²⁹ Kodba, 2023.

³⁰ K. K. & M. S., 2024.

4 **Solution 1: Lowering the Age Limit of Criminal Liability**

The cases discussed illustrate the problem of an objective approach to the age of criminal liability. This is evident in cases where criminally liable individuals, who are aware of their wicked conduct and the consequences that their conduct will cause, sometimes even study criminal law and decide to act after being informed that they will not be subject to criminal law repression, commit a serious crime for which they cannot be held criminally liable according to the letter of the law. In such cases, victims and their family members are left without any legal protection and are left in the lurch by the criminal law. The above problem can be seen as collateral damage of an objective approach to the age of criminal liability. We maintain the view that the age of 14 is still the most appropriate age for most cases and that certain exceptions, where offenders are actually culpable below that age, are "swept under the carpet". On the contrary, we try to find a fairer and dogmatically more convincing legal regime. For the latter, two possible solutions are offered, the first of which is to lower the age of criminal liability.

The omission of criminal prosecution of a 13-year-old who plans a heinous crime, checks the criminal law beforehand to make sure they will not be sanctioned for committing the crime, and then carries it out does not seem very convincing, both professionally and politically. It is undeniable that such an individual, despite his young age, was able to understand the significance of his conduct and form a sense of guilt towards the crime. An objective assessment of the age of criminal liability in such cases is not appropriate from the point of view of justice for the victims of these crimes. There are no convincing and valid arguments as to why criminal justice should not judge such cases on a subjective level - i.e. whether a particular individual, despite his young age, was able to understand the meaning of his act and to form a sense of guilt towards his conduct. Such children do not deserve such privilege, as they are, in fact, on a personal and mature level, not children anymore. Slovenian legislators should start thinking about prosecuting individuals who mature in personality before the age of 14. The solution could be to amend Article 21 of the Slovenian KZ-1 and lower the minimum age limit to twelve. The complete abolition of the objective age limit and leaving the subjective assessment of a child's culpability in each specific case to the courts seems too radical for the Slovenian criminal justice system. This measure could lead to a significant increase in the prosecution of minor crimes committed by children (petty shoplifting, minor injuries in fights, etc.). It

would, therefore, make sense for the criminal justice system to deal with mature individuals over twelve years old only in cases of more serious crimes (e.g., those where a prison sentence of eight years or more is threatened). The latter could be addressed by amending the procedural legislation (the Criminal Procedure Act³¹) to allow the public prosecutor an opportunity mechanism not to prosecute offences with a sentence of less than eight years' imprisonment committed by children aged between twelve and 14.

Alternatively, we could adopt the English model, where for ages between twelve and 14, there would only be a presumption of culpable incapacity, which the prosecution could rebut if it could prove that the child was culpably competent at the time of the offence, and therefore able to distinguish between right and wrong.³² Given that the English approach is not consistent with our criminal law doctrine (we do not have a specific preliminary procedure for determining whether someone can be the subject of a criminal proceeding), the first solution seems much more sensible.

Sceptics of the proposed solution will point out that if there is a serious case involving an 11-year-old as the perpetrator, we will reconsider lowering the age limit again. Hence, such changes to the law are not desirable. In the defence of the proposed solution, we would argue the following. The minimum age limit of twelve is relatively safe, as in practice, there will be very few (if any) cases where children under the age of twelve will already be of full maturity. The right to a fair trial has already been highlighted in the case of *T and V v. the United Kingdom*³³ and Article 23 of the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice should also be considered. It will be challenging to argue that a person under the age of twelve can effectively defend themselves and participate in criminal proceedings. Such a child is often not capable of debating in a legal trial.

This solution, therefore, requires a two-stage assessment of the criminal liability of children. In the first stage, the age of criminal liability is lowered to twelve years, whereby the child is only prosecuted for serious offences (e.g., those punishable by a prison sentence of eight years or more) and not for less serious offences due to the opportunism of the public prosecutor. However, if the child commits an offence for

³¹ Zakon o kazenskem postopku (ZKP), Article 161.

³² Siemester et al., 2016, p. 756.

³³ *T and V v. United Kingdom*, case no. 24888/94, 16 December 1999.

which they can be prosecuted under the legislation, we move to the second stage. In the second stage, the Court determines in the criminal proceedings in each case whether the child in question was capable of recognising the meaning of their actions and whether they were, therefore, culpable. If the Court finds that this is not the case, the child can still be acquitted, as guilt cannot be invoked as the last essential element of the offence.

5 Solution 2: Criminal Liability of the Parents

As an alternative solution for a fairer and dogmatically more convincing legal system, the authors offer the solution of criminal liability for the parents. If children are not criminally liable, could their parents be held liable for the committed offences? Is it not the parents who are liable for the offence committed by their child due to their inadequate parenting? The solution could, therefore, be to prosecute the parents. This solution would not go in the direction of strict liability of parents in the sense of Article 142 of the Code of Obligations (hereinafter: OZ), as this solution would have too many negative effects on the rule of law and the fairness of proceedings in criminal law. Is there another way to establish parental liability in criminal law?

A look at Slovenian criminal law tells us that certain offences in the KZ-1 can be attributed to parents if their child commits a serious offence. If the child is neglected, Article 192 of the KZ-1 (Neglect and cruel treatment of a minor) comes into play for the parents if they commit violence against the child Article 191 (Domestic violence), if the child commits an offence with the parents' firearms Article 307 of the KZ-1 (Unauthorised manufacture and trafficking in weapons or explosives) could apply, and so on.³⁴ In Serbia, for example, the prosecutor's indictment for a 13-year-old's shooting in a school calls for a 12-year prison sentence for the father, who is charged with endangering the general public for teaching his son to shoot and for failing to properly secure the weapon that his son has used in the shooting. For the mother, the public prosecutor is seeking a two-and-a-half-year prison sentence for illegal possession of a firearm.

³⁴ Kazenski zakonik (KZ-1), Articles 191, 192 and 307.

Those mentioned above and similar offences in Slovenian KZ-1 are punishable with low prison sentences, but in reality, they are just workarounds that do not address the real problem. That is, poor parenting, condoning the child's deviant behaviour, neglecting the child, and failing to seek professional help, all of which ultimately lead to the terrible consequences of the child's actions. The child's crime is largely the result of the upbringing by the parents, who have neglected the child by neglecting his development. The child's crime is the result of the parents' (mis)behaviour. A legal sense of justice, therefore, calls for more serious criminal treatment and stricter sanctions for parents when their children commit serious criminal offences.

The solution can be found in the already established general dogma of criminal law - namely, the liability of parents as perpetrators and guarantors for the actions of their children. The guarantor's duty exists between the guarantor and the goods that the guarantor is obliged to protect, or towards the source of danger that is within the guarantor's sphere of influence.³⁵ Thus, the duty to protect family members is one of the typical forms of establishing a guarantor's duty, in the context of which parents are obliged to protect their children from external dangers and, at the same time, to protect others from dangers that their child may cause them.³⁶ Parents who deliberately starve their child to death are not only liable to prosecution for the offence under Article 192 (neglect of a minor and cruel treatment) or Article 193 of the KZ-1 (breach of family duties), which carries relatively light sentences of up to three or two years' imprisonment, but also for manslaughter under Article 115 or even murder by deception under Article 116(1) of the KZ-1, which carries a minimum sentence of 15 years' imprisonment.³⁷ By willfully (or negligently) neglecting their duty of supervision over the welfare of their child, the parents have effectively caused the child's death, so it is only appropriate to hold them liable for that death. The same logic can be applied to the liability of parents when their child commits a serious offence against their peers (specific grievous bodily harm, manslaughter, murder, torture, etc.). Suppose the child's crime is due to the parents' failure to fulfil their duty of care (in the form of inadequate parenting, lack of supervision and remediation of deviant behaviour and patterns). In that case, it is only reasonable and fair to hold them liable for their child's crime as well. Through

³⁵ Bavcon et al., 2014, p. 165.

³⁶ Novoselec & Karakaš, 2021, p. 258.

³⁷ Kazenski zakonik (KZ-1), Articles 192s, 193, 115 and 116.

their legally deviant conduct, the parents have actually contributed to the commission of an offence by their child, who is otherwise criminally incapable.

In this case, the parents are only liable for their own inaction. It must be proven that the child committed the offence precisely because of their poor parenting and inaction, lacking the behaviour one would expect from a caring parent. This is not strict criminal liability because parents who cannot be blamed are not held criminally liable - for example, a father who has no contact with his child and fails to parent the child or parents who sought professional medical help for their child when they noticed deviant behaviour and tried to "cure" it but were unsuccessful.

In April this year, a US court in Michigan found Jennifer Crumbley, the mother of a son who killed four classmates in a shooting rampage in 2021, guilty of involuntary *manslaughter*.³⁸ The parents bought a gun and took their 15-year-old son to a shooting range to learn how to shoot. The prosecution's indictment sought to establish the parents' direct liability for the killing. It put forward the following arguments: 1) knowledge of the deterioration of their child's mental health (the child had sent several messages to his mother mentioning that devils and ghosts were in the house and had repeatedly asked her for help, but his mother had only laughed at him), 2) the purchase of a gun and its inadequate care, 3) the mother's failure to respond to a call from the school on the day of the shooting informing her of her child's poor mental State and suggesting she take him into treatment (at school he drew a picture of a gun, people being killed and notes asking for help). This case comes very close to the criminal liability of parents as perpetrators and guarantors for the actions of their children.

6 Conclusion

The insistence on the objectively fixed age of criminal liability of 14 years, even if the juvenile perpetrator is already mentally mature and of criminal age, means that a horribly planned and premeditated crime (mass murder at school, torture and brutal beatings of a peer, even with fatal consequences) remains without a perpetrator and prosecution. The victims of such crimes remain without any legal security and without justice for the perpetrators who have harmed them. The rule of law and

³⁸ Levenson & Valle, 2024.

criminal law fail the victims and deny their subjectivity as victims of a serious offence. By failing to prosecute the perpetrator, the State sends the message to the victims of a criminal offence that they are not worthy of criminal protection for the harm they have suffered. In the absence of a legal remedy, the State is also not in a position to take measures against the juvenile offender to prevent him from repeating the offence. Such a criminal justice approach is unacceptable; therefore, we propose two possible solutions.

The first is to lower the age of criminal liability in Article 21 of the Slovenian KZ-1 to twelve. However, in order to avoid excessive prosecution of petty crime, it makes sense to provide the public prosecutor's office with an optional mechanism in procedural legislation not to prosecute offences with a custodial sentence of less than eight years committed by children between the ages of twelve and 14. We are, therefore, dealing with a two-stage assessment of the criminal liability of children. In the first stage, the age of criminal liability is lowered to twelve years, and the child is only held liable for more serious offences (e.g., those punishable by imprisonment of eight years or more) and not for less serious offences, which is due to the opportunism of the public prosecutor. However, if the child commits an offence for which they can be prosecuted under the legislation, we go to the second instance. In the second instance, the criminal Court examines in each individual case whether the child in question was really capable of recognising the meaning of his actions and whether the child was therefore culpable. If it is found that this is not the case, the child can still be acquitted, as guilt, as the last essential element of the offence, cannot be proved.

The second solution is possible within the framework of the already established general dogma of criminal law - namely, the liability of parents as perpetrators and guarantors for the actions of their children. Suppose the child's offence is attributable to the parent's failure to fulfil their duty as guarantors (in the form of inadequate parenting, failure to monitor and eliminate deviant behaviour and patterns, and failure to seek professional help). In that case, it is only reasonable and fair to attribute their child's offence to them as well. Through their legally deviant conduct, the parents have effectively contributed to the commission of an offence by their otherwise non-culpable child.

Readers of this chapter will wonder whether lowering the minimum age of criminal liability of children who have committed a criminal offence would not increase criminal repression. First of all, it should be pointed out that the criminal treatment of a child can also mean a process of re-socialisation of the child and their placement in appropriate professional institutions that re-educate the child or help them to become a regular member of society. The lower age of criminal liability of the child, therefore, does not necessarily mean a tightening of State repression against the child but can also mean an opportunity for the State to provide professional and medical treatment to an extremely problematic child at a time when it is most important - at the time when he or she commits a serious crime and when the re-education of such a child can be most successful. This is usually done through educational measures and, if necessary, by placing the child in a specialised institution - and therefore, not by imposing a custodial sentence. In the end, lowering the minimum age of criminal liability can be for the benefit of the child when the latter is provided with special institutional care and where the parents have failed in the education and socialisation of their child.

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Zakon o ratifikaciji Konvencije o kibernetiski kriminaliteti in Dodatnega protokola h Konvenciji o kibernetiski kriminaliteti, ki obravnava inkriminacijo rasističnih in ksenofobičnih dejanj, storjenih v informacijskih sistemih, MKKKDP 2004, Uradni list RS, št. 62/04.

EVALUATION OF TURKISH JUVENILE CRIMINAL LAW IN THE CONTEXT OF THE CONVENTION ON THE RIGHTS OF THE CHILD

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Türkiye has ratified many international conventions regarding child rights and has regulated most, if not all, situations on the subject by law. However, it is obvious that there are many incomplete legal regulations and that the State does not fulfill many of its duties in daily life. Children cannot be adequately protected due to the statistical studies conducted in this field, the scandalous cases reported almost every week, and the negligence of official institutions in their duties. Many children are killed, severe acts of violence are committed against children by parents and teachers, both at home and in schools, children are subjected to sexual abuse at home and at school, in dormitories or nurseries, and the ages of the victim children are often very low. In addition, significant violations include the use of narcotics at very young ages, the abduction of children from their parents or siblings to prevent contact, the neglect of compulsory medical examinations and vaccinations, the failure to find missing children, and the failure to protect children involved in crimes, whether perpetrators or victims. In Türkiye, these violations against children preoccupy national courts and also supranational courts, and the number of cases is increasing day by day.

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1 Introduction

In order to accurately identify the developments and problems in this regard, it is necessary to look not only at legal regulations, but also at international agreements and legal policies of supranational institutions.

According to Article 10 of the International Covenant on Economic, Social and Cultural Rights¹ (ICESCR); States parties to the ICESCR shall provide the broadest possible protection and assistance to children while they remain responsible for their care and education. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment at work is harmful to their morals or health, or dangerous to life or likely to hamper their normal development, and should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law. Child labor is a violation of fundamental children's rights and a serious threat to children's health, education, development, and well-being. TURKSTAT Official Statistics show that at least 720 thousand children, that is, 4.4% of the child population, are working in Türkiye. Approximately half (45.5%) of working children, including those working on the streets, are in the service sector. 30.8% work in agriculture. 23.7% work in industrial manufacturing, especially in small and medium-sized businesses. Various studies show that child labor is also common among refugees. The leading causes of child labor in Türkiye include child poverty, deficiencies in social protection, and the informal economy. Approximately one-third (30%) of employment in Turkey is in the informal sector, and therefore, ensuring full compliance with children's rights is not easy.

According to Article 3 of the UN Convention on the Rights of the Child² (CRC) of 20 November 1989, the best interests of the child shall be the primary consideration in all activities concerning children carried out by public or private social welfare

¹ International Covenant on Economic, Social And Cultural Rights (ICESCR), General Assembly resolution 2200A (XXI), 16 December 1966 Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (accessed: 29 July 2025).

² Convention on the Rights of the Child (CRC), General Assembly resolution 44/25, 20 November 1989. Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (accessed: 29 July 2025).

institutions, courts, administrative authorities or legislative bodies. On the other hand, according to Article 14 of the Council of Europe Convention on Biomedicine³ (Oviedo Convention), the use of artificial insemination techniques to select the sex of the unborn child will be avoided, except in the case of preventing a severe hereditary disorder related to sex. However, in legal regulations, the welfare of children is generally not taken into account as a priority, and no legal regulation has been made to prohibit the misuse of artificial fertilization methods and tools to determine the sex of children selectively. There is also a problem in putting the relevant rules into practice. For example, in addition, although there is no medical necessity in Türkiye, boys are circumcised due to the religious beliefs and wishes of their families. Although there is no treatment in Türkiye, it is problematic to take heel-prick blood from newborn babies to diagnose genetic diseases. Although there is no medical necessity in Türkiye, vaccinating children is problematic.

In addition, Article 6 of the CRC contains the following regulation:

"(1) States Parties recognize that every child has the inherent right to life. (2) States Parties shall ensure to the maximum extent possible the survival and development of the child."

However, in daily life, in multiple pregnancies, after the legal abortion period has passed, other fetuses, other than the selected fetus are curetted in the womb, contrary to the law. Although this is a crime, the judicial authorities are not interested in the issue. Likewise, Türkiye has made a reservation to Article 20 of the Oviedo Convention, based on the erroneous article in the old Article 5 of the organ transplantation law dated 1979. For this reason, those under the age of eighteen cannot donate organs or tissues to save the life of their siblings. This ban causes many children to die because organ or tissue transplantation cannot be performed. There is no legal basis for bone marrow transplantation between younger siblings, and it is done illegally. On the other hand, contrary to the second paragraph of Article 20 and Article 18 of the Oviedo Convention, there is no provision prohibiting experimentation on embryos in Türkiye. Although this behavior was intended to be prohibited by a regulation dated 2011, this approach does not provide any protection against the obligation that prohibitions on human rights (such as

³ Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164) (Oviedo Convention). Retrieved from: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=164> (28 July 2025).

Freedom of Science and Art) should be made only by law, according to Article 13 of the Turkish Constitution.⁴

2 Turkish Criminal Procedure Code

Article 12 of the CRC introduced the following regulation:

"(1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

This provision is regulated under Turkish law, specifically in the Turkish Criminal Procedure Code (T - CPC).⁵ It states that individuals who, due to their young age, mental illness, or intellectual disability, are not capable of understanding the significance of the right to refrain from testifying, may be heard as witnesses only with the consent of their legal representatives. If the legal representative is a suspect or a defendant, he cannot decide whether these persons should refrain (T – CPC, Article 45(2)).

3 Turkish Criminal Code

Although specific provisions of the international agreements mentioned above are compatible with domestic Turkish law, others are not. The following section will first outline the relevant articles of the Turkish Penal Code⁶ (T – PC), followed by a discussion of recent examples of their implementation in practice.

Children who were under the age of twelve at the time of committing the act have no criminal liability. They will not be punished, but child-specific safety measures may be applied. Those children who were twelve years old but not fifteen years old

⁴ Constitution of the Republic of Turkey, retrieved from: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf (accessed: 28 July 2025).

⁵ Turkish Criminal Procedure Code (T - CPC) (Ceza Muhkemesikanunu). Retrieved from: https://sherloc.unodc.org/cld/uploads/res/document/tur/2005/turkish_criminal_procedure_code_html/2014_Criminal_Procedure_Code.pdf (accessed: 27 July 2025).

⁶ Turkish Penal Code (T – PC) (Türk Ceza Kanunu). Retrieved from: <https://www.wipo.int/wipolex/en/legislation/details/15936> (accessed: 27 July 2025).

at the time of committing the act cannot be punished if they cannot perceive the legal meaning and consequences of the act they committed, or if their ability to direct their behavior is not sufficiently developed. However, safety precautions specific to these children are applied. If the person has the ability to perceive the legal meaning and consequences of the act he has committed and to direct his behavior in relation to this act, the penalties to be given to these people will be mitigated to a certain extent. The penalties imposed on people who were fifteen years old at the time of the crime but not eighteen years old are reduced more than the above (T - PC, Article 31).

4 Child Protection Law

A person who has not reached the age of eighteen is a child, even if they become an adult at an earlier age. The investigation about the child is carried out personally by the public prosecutor in charge of the juvenile office. A social worker may be present with the child during the taking of the child's statement or other procedures regarding the child. When deemed necessary, the public prosecutor may request the juvenile judge to implement protective and supportive measures for the child (Child Protection law⁷, Article 3/1-a and 15). Detained children are kept in the juvenile unit of the police. Where the police do not have a children's unit, children are kept separately from detained adults (Article 16).

If children commit crimes together with adults, investigation and prosecution are carried out separately. In this case, although the necessary precautions are taken for the children, if the court deems it necessary, it may suspend the trial of the child until the outcome of the case in the general court. If it is deemed necessary for the cases to be carried out together, a decision to join them may be made in the general courts at any stage of the trial, provided that the courts find it appropriate. In this case, the combined cases are heard in general courts (Child Protection law, Article 17). Chains, handcuffs, and similar devices cannot be placed on children. However, in cases of necessity, law enforcement can take the necessary precautions to prevent the child from escaping and any danger that may arise to the life or physical integrity of the child or others. (Article 18) An arrest warrant cannot be issued for children under the age of fifteen for acts that require a prison sentence not exceeding five years

⁷ Child Protection Law (T- CPL), retrieved from: <https://www.lawsturkey.com/law/juvenile-protection-law-5395> (accessed: 27 July 2025).

(Child Protection law, Article 21). The juvenile court consists of a single judge. There is no public prosecutor present at hearings held in juvenile courts. In juvenile high criminal courts, there is a president and sufficient members, and the court convenes with a president and two members (Child Protection law, Article 25). Appointments are made to the courts, preferably among judges and public prosecutors who specialize in child law and are trained in child psychology and social work. In these appointments, priority is given to those who are willing and those who have previously held these positions (Child Protection law, Article 28).

There are serious problems in surrendering the child and establishing a personal relationship with the child, and parents resort to violence, child abduction, or acts of violence. Both parties commit crimes with a sense of revenge against each other during or after the divorce case or during the separation decision process, and use their children as weapons. The child is worn out mentally and physically. Parents who forget their duties towards their children create various injustices by taking advantage of the poor functioning of the judicial authorities and seeing the child as property that belongs only to them. In order to prevent these abuses, laws are constantly changing, and by protecting the rights of the child, efforts are made to both protect the child and establish a relationship between the parent and the child. Both laws and actual practices are inadequate, and the child is constantly harmed throughout this process. The fact that divorce cases last for decades leads to many crimes being committed against both the child and the parents, and many other damages to the parents' private lives. With the latest Article 39 of the law numbered 7343 dated 24.11.2021, an addition to the T - CPL (such as Articles 41A and 41D) was made, and the emergence of new problems was tried to be suppressed to a certain extent. The important part of this new law can be summarized as follows:

»Decisions or injunctions issued by family courts regarding the delivery of a child or establishing a personal relationship with a child are carried out in accordance with the provisions of this Part by the legal support and victim services directorates established by the Ministry of Justice, based on the best interests of the child. In order to carry out the judgments and precautionary decisions, upon the request of the directorate, a list of officials is created by the governorships, including the experts specified in the fifth paragraph, working in public institutions and organizations. If these experts are not available in sufficient numbers, teachers are also included in the list (Child Protection Law Article 41 / A). Procedures regarding the execution of writs or injunctions regarding the delivery of a child and establishing personal contact with the child are carried out in the delivery places determined by the directorate. For delivery procedures, upon the request of the directorate, governorships and municipalities determine suitable delivery locations, or they are created; The vehicle is allocated and the driver is assigned. Public institutions and organizations and municipalities are obliged to provide all kinds of support to the directorate

in determining, creating and furnishing delivery venues, ensuring the security of these venues and providing delivery services (Child Protection Law Article 41 / D).

5 Examples from Judicial Practices

Children's rights are violated in Türkiye on the issues mentioned above, not rarely, but very often. Almost every week, we witness another case in which the State not only fails to protect children (and women) adequately, but also fails to bring to light the case after the crimes are committed, and the perpetrators are not punished appropriately. Below, just the end Examples are shown of events that took place over a few years and that we became aware of mostly through the extraordinary efforts of the media.

5.1 Narin Güran Incident

The murder case of 8-year-old Narin Güran, who disappeared from the village where she lived with her family on 21 August, 2024 in Diyarbakır, and whose lifeless body was found 19 days later, was concluded about a month ago. There are many ambiguities, contradictions, and gaps in the final decision and its justification. The defendants filed an appeal against the decision. The lower court will conduct a re-examination. Although the dead child's mother, older brother, uncle, and a person they knew from the village were found guilty, it was not clear why and by whom the child was killed, and who helped. In addition to a series of forensic and police errors, social factors, the silence of all village people, many political discourses and statements in the press prevented the cause and main perpetrators of the incident from being revealed. Only the body was not found for about a month, even though it was a few kilometers away from where the child was killed and was searched with many tools and methods. By the time the body was discovered floating on the surface of the water, several weeks later, most of the evidence had already been lost. During the months-long investigation, many evidence investigations were not carried out or were carried out so late that nothing could be found. Tragically, during the course of the investigation, numerous other suspicious child deaths, within the same family and in the same village, were discovered by chance. Despite the passage of time, no tangible evidence was uncovered, and the suspicions of murder could not be conclusively ruled out.⁸

⁸ Merkezi, 2025.

5.2 Baby Sila Incident

A 2-year-old baby named Sila, who was sexually abused in Tekirdağ, died. Baby named Sila was raped and beaten many times. The baby's mother stated that she understood sexual abuse from her baby's diaper, but kept silent so that no one would find out. The abuse was discovered at the hospital. Five persons, including the baby's mother, were arrested regarding the incident. Mother B.Y., who lives in Malkara district, stated that her daughter Sila did not wake up and she took her to Malkara State Hospital. During the examination, the baby was taken to Tekirdağ Dr. with a diagnosis of brain hemorrhage and suspected sexual abuse. The police were informed. The baby was taken to intensive care and intubated after brain surgery. Within the scope of the investigation, B.Y. (Sila's mother), her cohabiting partner S.Ö., and their neighbors K.A., his 13-year-old son K.A., and 14-year-old G.K were taken into custody. The suspects were subsequently placed under arrest by a judicial order.⁹ K.A., the father of K.A., one of the children dragged into crime. After the detention review process, he was released on condition of judicial control by the Criminal Court of Peace. Sila baby's 5-year-old brother A.Y. was also taken under state protection. Tekirdağ Bar Association President Gürcün stated that it was determined by the forensic medicine report that the 2-year-old baby girl, who was brought to the hospital due to assault and treated in intensive care, was sexually abused. Baby Sila was kept under treatment for a month at Tekirdağ Dr. İsmail Fehmi Cumaloğlu died at City Hospital on 7 October, 2024.¹⁰

In the concrete incident, a lawsuit was filed against the mother B.Y. for the crimes of "Failure to Report the Crime", "Intentional Homicide through Negligence", "Destroying, Concealing and Altering Criminal Evidence". A lawsuit was filed also against S.Ö., the mothers's cohabiting partner, for "Failure to Report the Crime". An indictment was issued against neighbor K.A. for the crimes of "Qualified Sexual Abuse" and "Depriving a Child of Liberty for Sexual Purposes by Using Force".¹¹ The father of the baby, who was arrested after the incident, was found dead in the prison where he was held. It was claimed that the arrested father committed suicide in prison.¹²

⁹ Sputnik Türkiye, 2024.

¹⁰ Kadem, 2024.

¹¹ Merkezi, 2024.

¹² Köklü, 2024.

5.3 The Rape of a Nine-Month-Old Baby by the Father

Türkiye mourned baby Sila, who lost her life due to sexual abuse, as another case of abuse news emerged. According to media reports, a mother and father in Çerkezköy district of Tekirdağ were arrested for allegedly sexually abusing their 9-month-old baby. It was learned that this incident came to light when the mother shared the video recording of the harassment by the person she lived with. According to media reports, a mother in Veliköy District shared a video recording of her 9-month-old baby. When it was reported to the police that a person sexually abused her 9-month-old baby, the Çerkezköy Chief Public Prosecutor's Office launched an investigation into the incident. The baby's mother and father were detained as suspects.¹³

5.4 Newborn Babies Care Center - Newborn Crime Gang Case

In the indictment prepared against 47 defendants, 22 of whom are detained (including five doctors, three nurses, five healthcare workers), who allegedly acted together with people working at the 112 Emergency Call Center in Istanbul, referred baby emergency patients to the neonatal units of private hospitals with which they had previously agreed, causing their deaths and making unfair profits.¹⁴ The trial regarding the "newborn gang", which is described as the most significant health scandal seen in Türkiye recently, started on 18 November, 2024, in Istanbul. On 3 December, the court issued an arrest warrant for 10 more defendants. Thus, the number of detained defendants increased to 32.¹⁵ Istanbul Financial Crimes Fighting Branch Directorate teams, in the operation carried out within the scope of the investigation carried out under the coordination of Büyükçekmece Chief Public Prosecutor's Office, for the crimes of "establishing an organization for the purpose of committing a crime", "qualified fraud", "bribery", "committing intentional murder with negligent behavior" and "forgery of official documents". Doctor İ.G., one of the defendants in the Newborn Gang case, committed suicide by cutting his wrists in the prison where he was detained.¹⁶ The case is still pending.

¹³ Haberler.com, 2024.

¹⁴ BBC News Türkçe, 2024a.

¹⁵ BBC News Türkçe, 2024b.

¹⁶ Merkezi, 2025.

5.5 The Case of a Young Child's Death due to Drug Use

A 15-year-old boy was found dead in an abandoned building in Arnavutköy, Istanbul. One of the three people detained regarding the death of the child, whose grave was opened and an autopsy was performed, was arrested. According to the information obtained, 15-year-old Ş.G. left home by taking pocket money from his father. Witnesses reported that certain individuals provided him with drugs and subsequently left him in an abandoned building when he fell ill. One of the suspects, T.A., took Ş.G. to his house to bathe him after he fell sick. When Ş.G. could not be awakened, T.A. and another friend, U.D., brought him to the front of an abandoned building. Although they alerted medical teams, first aid was administered at the scene.

Ş.G., who was taken to the hospital, could not be saved and died. Residents of the neighborhood stated that there has been an increase in young people using drugs recently in the area where the incident took place, and asked for help from the official authorities. The father of the dead child, Ş.G.,¹⁷ stated that on the day of the incident, after taking 400 TL from him, his son was taken to someone else's house, where the owner of the house and his two friends made his son drink drugs, and after his son was forced to consume drugs, he was thrown onto the street by his friends and left to die. After the child's body was buried, his father suspected something and applied to the prosecutor's office again. Thereupon, the prosecutor's office decided to exhume the body again and perform an autopsy. The judicial process is still ongoing.

When this is evaluated together with the findings that drug use has decreased to very young ages in Türkiye in recent years and has become very widespread among students in middle school or high school, it reveals that the problem has reached a much more serious level. According to studies conducted among young people in Türkiye, the reported lifetime prevalence rates are approximately 4% for marijuana use, 4% for volatile substance use, and between 2% and 2.5% for Ecstasy use. Substance addiction in children and young people, usually between the ages of 12 and 18, and experimenting with alcohol or other substances increases with age.¹⁸ In addition, the following data taken from different sources will help to understand the

¹⁷ İstanbul Ses Gazetesi, 2024; Milliyet, 2020.

¹⁸ NP İstanbul Hastanesi, n.d.

problem better. According to the Türkiye Drug Report published by the Ministry of Internal Affairs in 2007, it was determined that the age of first use for inhalants was 11. For marijuana and ecstasy, the average age of first use was 16 and 17, respectively. In a study conducted among high school students, the rate of alcohol use in the past 12 months was found to be 35%, marijuana use 3%, volatile substance use 2%, and use of other substances 1%. In a study conducted 21 years ago in 2004 by another research group and with the participation of 3.483 high school students in the Istanbul sample, the prevalence of substance use among students was: 5.9% for volatile substances, 5.8% for marijuana, 4.4% for flunitrazepam, 3.7% for benzodiazepines, ecstasy 3.1% and 1.6% for heroin. According to the results of the report published by the Türkiye Drug and Drug Addiction Monitoring Center (TUBİM) in 2013, the rate of those who tried any drug, including marijuana, at least once (lifetime prevalence of substance use) was found to be 1.5% in the 15-16 age group. While the report does not provide new data on drug use in schools and among the young population, it is stated that only 5% to 8% of problematic drug users in Türkiye can access treatment and receive inpatient treatment. In another study conducted by a different group in 2006, it was determined that 86.9% of the children who applied to the addiction center were polysubstance users.¹⁹

5.6 Case of Violence Involving Teachers or Peers

Research results looking at the prevalence of peer bullying show that the rate of students who bully peers varies between 1% and 49.5%, the rate of students who are bullied varies between 5.5% and 56.5%, and the rate of students who both bully and are exposed to bullying varies between 1% and 10.34%. Teachers also widely use violence against students, and judicial and administrative authorities cover up the incident and generally do not punish the perpetrators.²⁰ Violence between peers appears in four different ways: physical, verbal, social, and cyber. These examples show that the duty assigned to the State regarding the protection of children from violence in Articles 6, 12, 15, 19, 26, 28, and 29 of the United Nations CRC has not been adequately fulfilled.

¹⁹ Baysan, Arabaci & Dikec, 2017, pp. 136-137.

²⁰ IMDAT, 2021, p. 11, 31.

5.7 Incidents Where People Were Killed and Their Bodies Destroyed After Sexual Assault

Similar events are encountered several times every week in the Turkish press. What is most concerning is that judicial authorities and the general public view see these cases as a reflection of growing societal desensitization and apathy. Because such incidents occur frequently and are often left unresolved, they become part of the so-called 'black numbers' of crime. These are cases that are never fully brought to light or officially recorded: 1.5-year-old E., whose body was found dismembered in a forested area; 6-year-old M., who his mother killed because she found out about his forbidden love; 8-year-old A., who went out to collect candy during Ramadan Feast and was killed after sexual abuse by her neighbors; siblings and their friends, who have not been found for 6 years; Miraç Çiçek, who has not been found for 4 years, and many others. How do these children disappear?²¹

Data on the causes of death of 2,467 children, excluding the 178 missing children featured on the news sites in question between 2005 and 2019, are as follows: additionally, according to the research conducted by experts on various press news, 2,645 child death news were reported between 2005 and 2019. According to media reports in Türkiye between 2005 and 2019, 30.0% of the dead or missing children were between the ages of 12 and 18; 49.3% were boys, and the majority (24.2%) died due to neglect. It was determined that the highest number of children's deaths occurred in 2018. Of 2,467 causes of child death in the year in question, regardless of age, the most common cause of death in the general group is neglect, followed by drowning and traffic accidents. In childhood deaths in Türkiye, the number of studies based on quantitative data on cases where the cause of death cannot be determined is insufficient. According to limited research, deaths between the ages of 0-1 in Türkiye are mostly due to pathological causes (74.0%), followed by murder (13.0%), accidents (9.0%), and negligence (2.0%). The majority of deaths between the ages of 1-7 occur due to accidents (71.0%), followed by pathological causes (17.0%). For example, according to a study conducted in the eastern region of the country (Elazığ province), 95 of 178 forensic cases (53.3%) were male, 83 of them were male, in a study examining forensic death cases between the ages of 0-18 that occurred in Elazığ and its surroundings between 2001 and 2007 (46.6%) are girls.

²¹ Hurriyet, 2024.

92.1% of these cases occurred due to unnatural causes of death. When the reasons in question are examined, the first place is accident (64.6%), the second place is suicide (18.5%), and the third place is murder (8.4%). The majority of children who died between 2005 and 2019 (24.2%) were due to negligence (neglect due to children's access to weapons; deprivation of basic needs such as shelter and access to food; mandatory checks by authorities such as manholes that need to be closed or doors that are not firmly mounted, etc. accidents outside the home, preventable domestic accidents, traffic accidents caused by children driving, followed by drowning (15.95%) and traffic accidents. It was observed that it was followed by an accident (12.9%). 6.7% (n=178) of these children are missing children.²²

5.8 Vaccine Rejection Cases

After the COVID-19 pandemic, it seems that the material has become unclear in the drug trial phase, especially among the public in Türkiye, about whether there is a vaccine or not. Since there is no supplement or other option for non-vaccine material, the government has granted emergency use permission to the material that is still in the experimental phase, as if it were a vaccine. This has led people, especially children, to be afraid of getting vaccinated as a result of possible side effects. The vaccines that patients do not want to be examined for are not only COVID-19 or similar diseases, but also treatment interventions taken from the newborn baby's heel for analysis or other childhood vaccines. Apart from the reasons mentioned above, the decrease in the level of education in the society and the incomplete or inaccurate social media information that people have acquired through individual efforts, as well as the lack of trust in vaccine studies, medical standards, relevant institutions and official institutional statements about side effects in Türkiye, have also been factors in people's change in this approach.

The questions people constantly ask on this subject are: should we be suspicious of vaccinations given to children from birth? Not only ordinary citizens, but also doctors and even lawyers are not sufficiently informed about the legal situation regarding compulsory vaccinations or medical interventions given to newborn babies for the purpose of preventing or diagnosing possible diseases. Reasons for vaccine refusal (n=92): i) thinking that the ingredients are harmful (46.7%); ii)

²² Erden et al., 2021, pp. 175 - 177.

inability to pay for paid vaccines (46.7%); iii) religious belief (thinking it is a sin) (22.8%); iv) not believing that the vaccine is helpful/necessary (22.8%); v) fear that other diseases may arise due to vaccines in the future (20.7%); vi) think that vaccines are produced by pharmaceutical companies for financial purposes (14.1%); other (17.4%).²³

A critical issue in this field is the unlawful prevention of heel-prick blood collection from newborns by parents—and in some cases, even by court decisions. Following families who oppose vaccinations, there is a growing trend of parents refusing heel-prick blood tests, which are essential for early diagnosis and treatment, based on beliefs that are entirely disconnected from science or rooted in personal or religious ideologies.²⁴ Although it is necessary and required by law to prevent many risky diseases, parents reject it due to their religious or superstitious views, and despite the explicit legal provision, the courts do not make the necessary decisions quickly and in the legally required manner. Recently, a court, contrary to the express provisions of the law and due to rumors among the public and religious beliefs of a person without scientific medical education, appointed a person as an expert who did not see this medical intervention and blood analysis on site, and the report he received illegally endangered the life of a baby. This decision was not finalized as the ministries of health and family participated in the case as interveners and objected to the court decision in the higher court. Currently, while this case is expected to be completed, the life risk for the baby continues. The case may take time. The court did not ensure medical intervention by issuing an injunction without waiting for the end of the case or by removing the parent's custody (just like in cases where Jehovah's Witnesses do not want blood transfusions to their children). In addition to setting an example of the State's violation of its duty to protect the child, this wrong attitude is contrary to both medical science and domestic law.²⁵ The issue has become a problem so frequently in recent years that several cases have been brought before the Turkish Constitutional Court through the individual appeal law, requiring the Constitutional Court to decide to resolve the issue in accordance with the law.²⁶

²³ Bozkurut, 2014.

²⁴ Ersan, 2023.

²⁵ See Saltik, 2024; Satil, 2023; Haberturk, 2022.

²⁶ Krş. AYM, 19.12.2023, *Uğur Ali Naki Yüreğicalı Başvurusu*, Başvuru No: 2020/22948; AYM, 29.06.2016, *Muhammed Ali Bayram Başvurusu*, Bireysel Başvuru: 2014/4077.

5.9 Cases of Child Abduction or Prevention of Contact Between Parent and Child

Regardless of whether both parents are Turkish citizens or only one of them is a Turkish citizen, when there are domestic problems or one of the spouses files for divorce, one of the frequently used methods is to kidnap the child from the other spouse, hide it, take it abroad, or hide it somewhere else and not show to the other spouse. As a matter of fact, Türkiye has been ruled on numerous occasions by the European Court of Human Rights that the failure of separated parents to have regular contact with their children, the abduction of children, and that this is a violation of both the welfare of the children and the parents' right to contact their children.²⁷

In fact, there are cases where not only the parents have contact with the child, but also the siblings are prevented from seeing each other due to the parents' obstruction and the State's failure to do what is necessary. Türkiye was also convicted on this issue by the European Court of Human Rights.²⁸

However, as the European Court of Human Rights has rightly determined,²⁹ the best interests of the child also include the child's development in a healthy environment. If contact with the family significantly affects the best interests of the child, the State must take measures to protect the child. Despite the State taking the necessary precautions, if a child abduction or children are prevented from meeting with their parents or siblings occurs, the official authorities must do what is required in a short time to solve the problem. In such cases, divorce usually takes many years, and the spouses live or work abroad. The problem should be approached with both criminal law and family law norms, and enforcement law and international law norms should be applied meticulously in order to implement court decisions properly.

²⁷ For some of the many decisions of the European Court of Human Rights against Türkiye, see *Önüş v. Türkiye*, app. no. 42981/04, 13 October 2009; *Anel v. Türkiye*, app. no. 28, 514/04, 17 February 2009; *Eskinazi and Chelouche v. Türkiye*, app. no. 14600/05, 6 December 2005; *Sophia Gudrin Hansen v. Türkiye*, app. no. 36141/97, 23 September 2003; *Cengiz Kılıç v. Türkiye*, app. no. 16192/06, 6 December 2011; *Kuşcuoğlu v. Türkiye*, app. no. 59765/00, 3 November 2011; *Küçük v. Türkiye and Switzerland*, app. no. 33353/06, 17 May 2011; *İlker Ensar Uyanık v. Türkiye*, app. no. 60328/09, 3 May 2012.

²⁸ *Mustafa and Armağan Akin v. Türkiye*, app. no. 32659/06, 6 April 2010; *Hansen v. Türkiye*, app. no. 36141/97, 23 September 2003; Giray, 2015, pp. 173-201.

²⁹ *Hansen v. Türkiye*, app. no. 36141/97, 23 September 2003.

These cases frequently occur outside Türkiye, and the issue is being resolved with the help of international law mechanisms as well as national courts. Many European countries have often been convicted on this issue by the European Court of Human Rights.³⁰ Undoubtedly, the fact that some States neglect their obligations regarding the protection of children is not an excuse for Türkiye or other countries. It is necessary to fight this problem internationally, and states should not act in a biased manner and should always decide in favor of the parent, who is their citizen.

The norms establishing this obligation of protection are aimed at safeguarding the child's welfare and best interests, which must remain a primary consideration.

6 Brief Assessments and Recommendations

Apart from the interim findings mentioned above, while examining the relevant problem, I would also like to touch upon the following problems and suggestions. Although Türkiye has ratified many international conventions and partially made legal regulations, children's rights are not protected in daily life, and many different types of children's rights are violated with increasing violence and number day by day. Without proper implementation and enforcement, international agreements and legal norms fail to function as effective protective laws and amount to nothing more than symbolic declarations, so-called 'paper tigers'. Not only the State, but also family members, especially close relatives, treat the child as an object, and since it is known that legal liability mechanisms do not work, every private or public institution or person contributes to the continuation of the violations and their effects, instead of preventing these violations or punishing the perpetrators. As the Turkish Constitutional Court rightly determined in a decision, part of the child's high interest is the child's development in a healthy environment. If contact with the family significantly affects the child's high interests, the State must take measures to protect the child.³¹

One of the important boundaries/barriers to parental custody is the best interests of the child. For this reason, the circumcision of boys or girls should be prohibited by law. Beatings, physical or psychological sanctions, cannot be accepted as a means or method within the framework of the parents' right to discipline and educate the

³⁰ For summaries and evaluations of convictions given in many different countries, see C & B Hukuk Bürosu, n.d.

³¹ See AYM, 09.03.2016, *Serpil Toros İtirazı*, Bireysel Başvuru Nr. 2013/6382.

child. The parents' power to protect the child and their rights does not preclude seeking their opinion on important actions or transactions.

A child born or adopted through artificial insemination has the right to know the birth mother and/or father. This right should be regulated and protected by national laws. The prohibition on the removal of organs or tissues from minors or children under 18 years of age in order to save the lives of their siblings violates, firstly, the best interests of the child whose life was saved by the transplantation of the organ or tissue and, secondly, against the best interests of the child who donated the organ or tissue.

How can we decide if there is more than one child in a family and if their wants or needs are in conflict? The wishes and advantages of the parents do not play a role. No attempt should be made to balance or harmonize the children's interests. Each child's custody and relationship with the parent, or in the best interests, should be considered separately. It is a fundamental guiding principle that leaves the judge wide discretion. However, it should be considered according to the circumstances of each specific child. Other guiding principles in favor of the child (such as stability, continuity, relationship with parents, caregiver regardless of gender, and opinion of the child) should also not be ignored.

The sharing of erotic or sex images/films of children by families or relatives is a big problem in Germany and Switzerland. The first examples were also in Türkiye. The problematic area that is ignored in Türkiye is that parents share all kinds of photos and personal information about their children on social media. This violates the principle of the best interests of the child. Although creating pornographic images of children or sharing them with others constitutes the crime of obscenity in Article 227 of the T - PC, this crime is a crime with a limited scope, mostly for the fight against child pornography. However, no regulation punishes or prevents parents' violation of children's personal rights via social media. The family's right to custody does not give the family the right to treat the child as an object. The aim that should not be overlooked here is to impose a duty to serve the best interest of the child.

The number of young girls married in Türkiye was 11.000 in 2022. This number was higher in previous years. The most striking statistic on this subject is that women under the age of 15 gave birth to 355 children in 2011. Reasons for child and/or

forced marriages, social factors such as lack of education, feudal life (Custom, Tribe), misinterpretation of religious information, effect of domestic violence, economic poverty, daughters' parents receiving bride price as if they were selling their children, harassment or rape, or an outdated sense of morality may be shown. These need to be eliminated with the help of other social disciplines and prevented through criminal law.³² However, in Türkiye, where there are more than 10 million refugees, the number of child marriages and the number of children becoming pregnant and having children is increasing. Polygamy is widespread among refugees. The legal age for marriage in Türkiye is 18. However, when children turn 17, they can marry with the permission of their families or legal guardians. Children aged 16 and over can get married with special permission from the court, in exceptional cases, and provided that there is a vital reason. Although sexual intercourse with people under the age of 18 is a crime, in judicial practice, if a religious marriage is held, it is treated as if it were a legitimate marriage.

Sometimes, the concept of 'awareness of injustice' in the last paragraph of Article 30 of the T - PC is misused, and the parties in such marriages are acquitted in criminal proceedings. Moreover, in most of these marriages, children marry not because they want children, but because their parents force them into marriage. On the other hand, although Article 104 of the T - PC criminalizes sexual intercourse between the ages of 15 and 18, this crime is subject to complaint. People who marry under family pressure do not complain, or the complaint is later withdrawn, and the case is dropped. This criminal law article can be used especially to popularize non-official (State) religious marriages with impunity. Although the age of marriage is gradually increasing today, child marriage is still a problem in Türkiye. This situation is a reflection of gender inequality that reinforces gender stereotypes against girls and hinders their education, jeopardizes their health, and exposes them to the risk of violence and poverty.³³

One of the new problems in this area is the sale of children on social media. People suffering from economic difficulties sell their unborn children as well as their born children. Social media is used as a tool here. Nowadays, the sale of babies made after illegitimate relationships through 'adopted baby' sites has again become the choice of families experiencing financial difficulties. For example, a mother in Kırıkkale

³² Kadem, 2014.

³³ UNICEF, n.d.; Akkus İlgezdi, n.d.

bargained for her 55-day-old baby girl by posting on her website as if she were selling a 'car' for 100.000 TL. Another mother announced that she had a 40-day-old baby and would give her baby to someone she trusted for a fee. A 23-year-old mother in Antalya sold her baby girl, who is 30 days away from birth, online for 110.000 TL. The woman, who shared the baby's doctor's check-ups and ultrasound photos, also put her unborn baby up for sale. At the same time, one family in Izmir said that they bought the baby from a university student by paying 45.000 TL. Another family admitted that they went to the Southeast two years ago and took a two-month-old baby. The crime of human trafficking is not a crime that fully meets this action. Here, the crime of changing the family line (Turkish - PC, Article 231) and sometimes forgery of documents (Turkish - PC, Article 204 *et seq.*) may be involved.³⁴ These actions must be regulated as independent crimes, and these actions must be prevented by making provisions in criminal law and the law regulating the internet and social media. Cyber investigation opportunities must be developed. Both these acts and child pornography are mostly carried out using the internet as a tool, and the lack of legislation in this area must be eliminated.

State child care centers in Türkiye are reported to have extremely poor conditions and fail to provide adequate protection in terms of shelter, safety, and education for children. The adoption agency is also widespread and does not function well. The foster family institution, which has been put into practice in recent years, has not been implemented with the required efficiency for either citizens or refugee children. A similar problem occurs when children under a certain age stay in prison with their incarcerated mothers, and there are very negative conditions in terms of the child's education, training, and socialization. For these reasons, state institutions need to be developed in this respect, as in modern countries, and foster motherhood and adoption institutions need to be encouraged and supervised. Even after the check, you sometimes have to change foster parents. If new foster parents are better suited to providing for the needs of a child, a change of foster family can be ordered, according to the BVerfG, because the child's well-being takes precedence over other interests. If new foster parents can respond better to a child's needs than the previous ones, the family change can be arranged in the best interests of the child. The German Federal Constitutional Court³⁵ rightly does not see this as a violation of fundamental family rights. The same practice should also be in Türkiye.

³⁴ See Ihmez, 2024.

³⁵ See BVerfG, 28.08.2023, Az.b1 BvR 1088/23.

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DATA PROTECTION RIGHTS OF THE CHILD IN THE DIGITAL ENVIRONMENT

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Protecting children's personal data from a digital perspective is essential for preserving their privacy and ensuring their online security. The European Union's legal framework ensures the children's data protection by mandating parental consent for processing the personal information of minors under the age of 16 (Article 8, par. 1, Regulation 2016/679). This guarantees that children's personal data is handled with the highest level of care. These protections aim to limit the collection of unnecessary data and provide clear information on how children's data will be used. In addition, platforms are required to implement measures to protect children from exploitation, exposure to harmful content, and unauthorized sharing of data. The authors trace the latest penalties that are imposed on well-known internet platforms concerning the protection of children's data by various supervisory authorities. In this paper, the authors analyse the practice of the CJEU and the ECHR related to the protection of children's personal data and conclude the main challenges and opportunities for solutions in the current digital reality.

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1 Introduction

The importance of protecting children's personal data has grown exponentially over the past decade. Studies show that more and more children aged 6-16 spend time online. The largest study conducted in Europe on this topic is made by the international network "EU Children Online".¹ The 2020 study stands out as one of the few comprehensive sources of information on how children and youth in Europe use the Internet.² Furthermore, the Bulgarian State Agency for Child Protection, together with the Bulgarian Security Academy, conducted a survey among nearly 1,000 students from school grades 6, 7 and 8, which shows that the preferred social network among children is TikTok, followed by Instagram and Snapchat. Over 61% of the children surveyed say that they use them more than five times a day. Including the time on them, 70.8% of the students are online for one to three hours every day. 31% spend two to four hours of their day online. The analysis shows that over 83% of children know how to set their privacy settings themselves. Compared to the last similar study in Bulgaria conducted in 2016, this one shows a trend towards increasing this use, and from an increasingly early age.³ In addition, it is observed that their skills for critical assessment, communication and cooperation are significantly lagging, most likely due to the slow adaptation of the education system to the new conditions and insufficient intervention and support from parents.

The above facts show that it is vitally important for children to feel fully protected in the digital environment, to conduct a comprehensive review of the law-making agenda, the existing case law on the key normative acts EU Charter of Fundamental Rights⁴ and European Convention on Human Rights (ECHR)⁵, among the actions taken by the individual administrative supervisory authorities to protect personal data in their defence. Accordingly, authors conclude about the challenges and future possible solutions to the maximum extent for the protection of children's personal data and the unique vulnerability of children, as well as their developmental needs.

¹ This is a research network surveying the kids digital participation.

² Smahel et al., 2020, p. 10.

³ Bulgarian Agency for Child Protection, 2023.

⁴ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT>

⁵ European Convention on Human Rights, available at: <https://www.echr.coe.int/european-convention-on-human-rights>

The legal framework at the EU, Council of Europe, UN level is decisive in protecting children's rights. Three legal instruments are essential for safeguarding children's personal data and their privacy rights, however, they have different legal bases, scope, and hierarchy. They set out the main criteria and guidelines for protecting children's personal data in the digital age.

2 Legal Framework of Children's Data Protection Rights under the General Data Protection Regulation, ECHR and Convention on the Right of Child in Digital Environment

GDPR⁶, ECHR and Convention on the Rights of the Child (CRC)⁷ serve as the primary framework governing the protection of children's personal data in the digital era. Although GDPR and ECHR have different legal status, scope and hierarchical value in the European legal system, they are of fundamental importance in deriving the basic principles on which the legal framework for the protection of children's personal data is based. The GDPR is adopted on the basis of Article 16 of the Treaty on the Functioning of the European Union (TFEU). Therefore, it is directly applicable and enforceable in all EU Member States in the field of data protection and is also related the principle of primacy.⁸ Meanwhile the ECHR has a wider scope. It is an international treaty developed by the Council of Europe and is binding on 46 Member States, including all EU Member States. Oppositely, the GDPR regulates all individuals' personal data protection in the EU, including children, and sets uniform standards for such data administration and protection. Controversy, the ECHR is legally binding on the States that have ratified it and provides a basis for individual complaints to the European Court of Human Rights (ECtHR). It guarantees that the fundamental human rights, including the right to privacy (Article 8), which in turn is the basis of data protection legislation. Also, it follows that the GDPR has a more direct and binding effect on Member States, while the ECHR provides fundamental principles that indirectly influence legislation. For example, the GDPR can be seen as a concretisation of the right to privacy enshrined in Article 8 of the ECHR. The GDPR is therefore a specialised and legal act with direct

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data. (2016). *Official Journal of the European Union*, L119, pp. 1–88 (GDPR).

⁷ Convention on the right of child was adopted by the United Nations in 1989 and entered into force on September 2, 1990.

⁸ Miąsik, 2023, pp. 201-224.

applicability for data protection at EU level, with advantage over national laws. The ECHR, in turn, is a fundamental international treaty that provides general principles for privacy protection and influences national and European legislation. While the GDPR deals with the details of data protection, the ECHR provides broader protection for fundamental human rights.

On the other hand, the CRC is also an international treaty. It is the most widely ratified international instrument for the protection of children's rights, except for the United States. Countries that have ratified the CRC are required to align their laws and policies with its principles and provisions. In most EU Member States, the CRC is binding at the national level upon ratification. It covers a wide range of children's rights, including the right to privacy (Article 16) and protection against abuse and exploitation, including in the digital space. The CRC provides a common framework for children's rights at the global level, influencing national legislation and international standards such as the GDPR and the ECHR. It does not have direct application, as the GDPR does, but requires implementation through national laws and policies. The GDPR provides specific and technical protection of personal data, including for children, while the ECHR and the CRC establish broader principles on the right to privacy and protection of children. The CRC is a fundamental international instrument that sets standards for the protection of children's rights, inspiring and complementing EU law, including the GDPR.

2.1 Legal Framework in the GDPR

The GDPR is a regulation with crucial role in the EU. It oversees the protection of personal data, including information belonging to children.⁹ Provisions specifically relating to children in the digital environment are consistently addressed in several provisions of the GDPR. Such a clause, which has an important role for child protection rights, is Article 8 of the regulation. In the event of processing of a child's personal data in information society services (e.g., social networks, applications), the regulation requires the presence of consent. The GDPR stipulates that the child must give consent if they are 16 years old. In some Member States, the age may be lower, but not below 13 years. If the child is under the specified age, consent is required from a parent or guardian. Another provision of the regulation is that

⁹ Voigt & von dem Bussche, 2024, pp. 9-36.

information on data processing must be presented in a language understandable to children. Controllers are also required to provide information on whether and how the principle of transparency is respected (Article 12 of the GDPR). Different controllers of children's personal data must design their services in such a way that they must have a high level of protection of personal data by default, especially for children (Article 25 of the GDPR). Besides, to minimize data collection and limit their processing. The GDPR regulates and encourages the creation of special codes of conduct for the protection of children's data, ensuring that they are easily understandable and applicable (Article 40 of the GDPR). As well, the European legislator grants the supervisory authorities the power to promote the creation of educational programs for the children's personal data protection (Article 57 of the GDPR). As a good example, the Bulgarian Authority prepares a manual on the rights of children while working with different digital platforms.¹⁰

2.2 Legal Framework in the ECHR

The right to protection of children's personal data in the ECHR is derived from the right to respect for private and family life (Article 8 of the ECHR). Children have rights against unlawful interference with their private and family life, among because of unlawful processing of personal data. Relating to the digital environment, this provision requires protection against unregulated surveillance, collection, and use of data.¹¹ Special care is required when processing data of groups exposed to vulnerability, such as children. Subsequently, freedom of expression comes (Article 10 of the ECHR). There, we guarantee the children's right to express their views, including surfing on different digital platforms. This right must be balanced against the need to protect against abuse and exploitation. Vis-à-vis the protection of children, the ECtHR has rendered judgments in cases brought under these provisions and based on them. It can be derived from principled statements that are of fundamental importance for the protection of children's personal data.

2.3 Legal Framework in the CRC

The CRC contains several specifics concerning data protection and children's digital rights. The right of the child to protection against random interference with his privacy, family, home or correspondence is proclaimed in Article 16 of the CRC.

¹⁰ Bulgarian Commission for Personal Data Protection, 2022.

¹¹ O'Mahony, 2019, pP. 660-693.

Controversial Article 17 of the CRC highlights the significance of the child's access to information, while demanding safety against risky content. We cannot forget that the general principles for the child's best interest (Article 3 of the CRC), right to participation and expression of views (Article 12 of the CRC) and prohibition of discrimination (Article 2 of the CRC) are proclaimed also. The CRC clearly states the principled maxim that the physical, psychological, and social well-being of children goes hand in hand with ensuring the defence of their data and secrecy.

To cut a long story short of the above legal analysis, it can be reasonably concluded that the three instruments are compatible with each other. The GDPR concretizes the principles of the CRC in the context of digital data. It is observed that parental consent for processing children's data under the GDPR reflects a specific measure in the execution of the conditions of the CRC in safeguarding the child's best interests¹². On the other hand, based on the principled formulation of the protection of privacy in the ECHR, the specific provisions for children in the CRC are specified and built upon. In conclusion, in the EU Member States, the GDPR has a direct and binding effect on national law, while the CRC influences through implementation, and the ECHR is fundamental in the European context. It can therefore be said that the GDPR provides specific and technical personal data protection, involving children, whilst the ECHR and the CRC determine wider assumptions on the right to privacy and the protection of children. The CRC is a fundamental international instrument that sets standards for the protection of children's rights, encouraging and balancing EU law, involving the GDPR.

3 Children's Data Protection Rights Under GDPR and Administrative Measures by National Authorities on Personal Data Protection

The breakdown so far shows that the regulatory act with the highest reasonable significance for child data subjects is the GDPR. Within its application period, guidelines for the forthcoming development of the legal approach are taken established on concrete cases of children's rights breach to personal data protection. They are obtained from practical cases of infringements of the children's right to personal data protection. Thus, authors present a brief overview, without claiming

¹² März, 2022, pp. 3805-3816.

to be complete, of the most prominent cases of violations documented by national supervisory authorities concerning the children's personal data.

Actuality reveals that children are progressively spending more time online and on their mobile devices, playing games or having fun. This is why platform giants have become notorious for their unregulated gathering and use of children's data with no identifiable consent. This evidence has indicated the necessity to reinforce the care and accountability of technology companies that process children's data. Here are several of the cases:

- a) First notable instance involved *YouTube (Google)* in 2019, where the platform was found to be collecting data from children under 13 years old who were using the platform. This data was then used for targeted advertising without obtaining verifiable parental consent, violating GDPR's strict rules regarding the processing of children's data. YouTube allegedly used cookies to track children's online behaviour, creating profiles to target ads, a practice that is explicitly restricted under GDPR. In response, YouTube implemented stricter policies, limiting data collection and ad targeting for content aimed at children. This case raised global consciousness about the threats of data misuse and the significance of parental consent.
- b) Another troubling example is *Clearview AI*, a facial recognition company that scraped images from social media platforms and public websites, including those of minors, without obtaining consent. The company incorporated this data into a vast biometric database, violating GDPR's principles of explicit consent and data minimization, especially for sensitive data like biometric information. Therefore, Clearview AI faced cease-and-desist orders from EU data protection authorities, who also imposed fines. The company was ordered to delete all data related to EU citizens, including minors, and cease further data collection activities in the EU.
- c) Similarly, *TikTok* came under inspection for its lack of proper age verification and transparency regarding children's data. Investigations in the UK and Netherlands revealed that TikTok's privacy notices and settings were not child-friendly, and children under 13 could easily create accounts without parental consent. This exposed young users to potential risks of tracking and profiling. The UK Information Commissioner's Office (ICO) fined TikTok £12.7 million

- in April 2023. In response, TikTok strengthened its age verification processes and improved its privacy settings to ensure better protection for younger users.
- d) *Instagram (Meta)* also faced issues with handling children's data. The platform, owned by Meta (formerly Facebook), was investigated by the Irish Data Protection Commission (DPC) for allowing children as young as 13 to create business accounts, which made their contact information publicly available by default. This violated GDPR's "privacy by default" principle, which mandates that platforms must prioritize high privacy settings for minors. Meta was fined €405 million in 2022, one of the largest fines under GDPR now. In response, Meta introduced more robust privacy measures, including making child accounts private by default and addressing the exposure of minors' personal information.
 - e) In conclusion, *Disney* was found to be collecting data from children through its mobile apps and online games without obtaining verifiable parental consent, violating GDPR's rules for users under the age of consent. Disney's apps used tracking technologies to gather children's behavioural data for analytics and targeted advertising without parental approval. Accordingly, Disney overhauled its apps and online services to fulfil the GDPR, implementing clearer privacy policies, requiring parental consent, and limiting data tracking features for children.¹³

These examples highlight the critical role of GDPR in protecting children's rights in the digital age. All serve as reminders of the dangers posed by digital platforms when companies fail to adopt proper data privacy practices. Tech companies must remain accountable for how they collect, process, and use children's data. The cases also underscore the requirement for strong, child-centric¹⁴ privacy measures and more vigorous enforcement of regulations like GDPR to confirm that children's personal information remains protected. The study of GDPR violations across platforms like *YouTube, TikTok, Instagram, Clearview AI, and Disney* reveal recurring issues in handling children's data. Common breaches include insufficient age verification mechanisms, lack of transparency in data collection, and failure to obtain verifiable parental consent, as mandated by GDPR. Platforms also often violate GDPR principles like "privacy by default" leading to public exposure of children's data and improper

¹³ FTC press releases or articles on the case from sources like The Verge or BBC News. The New York Times, Wired, or legal websites like Privacy International. The Guardian, TechCrunch, or official statements from the Irish Data Protection Commission. Articles from CNBC, Reuters, or TechCrunch.

¹⁴ Milkaite, 2021, p. 5.

targeting through behavioural advertising. Significant fines and regulatory actions have pressured companies to improve their policies, highlighting the necessity for tough protection for minors' confidentiality in a digital perspective.

4 Analysis of the ECHR Case Law on Children'S Data Protection Rights

The case law of the ECtHR has consistently recognised in its judgements the obligation of the State to keep the rights of children versus interference with their privacy by third parties in the online world. Likewise, the Court identifies children as a vulnerable group in cases involving targeted advertising, algorithmic decision-making, tracking, and surveillance. In this regard, the decisions analysed below are of fundamental importance for the potential protection of children's rights in the online world.

4.1 K.U. v. Finland¹⁵

The case of *K.U. v. Finland* of the ECtHR is of great importance for the children's personal data protection in the digital sphere. It sets the grounds for the positive duties of States to guarantee the protection of minors' privacy. This case establishes fundamental principles that States must take strengthened and proactive measures to protect children's rights online. The case concerned an incident in which a 14-year-old Finnish child took intimate photographs of himself and sent them to a man with whom he had established a connection online. These photographs were published online without the child's consent. This had serious consequences for their private interests. In this case, the ECtHR judged whether the State had concluded its obligations to protect the child's right to privacy and the protection of personal data online. Therefore, the State identifies itself as a violator of the pact, meanwhile, it, through its authorities, should have taken measures not only to recognise the perpetrators but also to guarantee that analogous cases do not occur again, ensuring the safety of children who are exposed to threats in the digital age.

¹⁵ *K.U. v. Finland*, 2008, app. no. 2872/02, 2 March 2009.

The ECtHR underlines two main principles:

- f) States must not only abstain from violating the privacy right of citizens but must also take active steps to protect these rights. Through the prism of children, who are predominantly at risk in the online sphere, States must guarantee the protection of their personal integrity and data.
- g) The ECtHR acknowledged that States must require adequate mechanisms to avoid harm caused by modern technological dangers such as cyberbullying, sexual exploitation and the infringement of the children's privacy. This includes creating policies that prevent the spreading of personal data and intimate images without consent.

So, the judgment explicitly highlights that the State has obligations to protect children's right to privacy and to take actions versus risks correlated to digitalization. In the digital age, where children are exposed to various types of abuse of personal data (such as the distribution of private photos, online violence, cyberbullying, etc.), states must provide effective legal protection. The ECtHR reports that states must take sufficient steps to provide legal protection for victims of online crimes, including through criminal and civil sanctions for those who execute such abuses. Subsequently, Council of Europe Member States, including those of the EU, are persuaded to develop stricter and more specific laws to protect children online. This includes establishing stronger regulations on the gathering and use of children's personal data online, alongside instruments to prevent online harassment and sexual exploitation. The judgment also suggests the necessity for learning and preventive programmes to inform children, parents, and schools about the risks associated with online activities and the significance of protecting personal data. The worldwide implications of the case relate to encouraging cooperation between different jurisdictions to protect children's personal data, especially when they are located outside the countryside where the breach occurred.

In conclusion, the aforementioned case law establishes an important precedent regarding the positive obligations of states to protect personal data and the children's right to privacy in the digitalization process. It highlights the prerequisite for active measures to protect children against the risks that may arise from technology and obliges States to guarantee that children's rights are adequately protected, including by creating legal frameworks and mechanisms to prevent online abuse. This case is

a substantial step in the process of legal protection for children in the modern digital world.

4.2 S.W. v. United Kingdom¹⁶

The case of *S.W. v. the United Kingdom* before the ECtHR analyses the right to privacy and the protection of personal data in the context of the digital perspective, with a distinct emphasis on the rights of the child and the protection of his or her personal data. Though this is not a case that straight concerns the processing of data online, it stresses the value of protecting personal data and the privacy of the most vulnerable groups, in particular children. The case concerns a woman known as S.W., who complained against the United Kingdom that the authorities had failed to take the required measures to protect her personal data and her right to privacy after sexually explicit intimate photographs were distributed without her consent. She alleged that she had not received effective protection from the authorities, even though these actions had seriously violated her right to privacy, including data protection. The present case is also applicable to children, although the case in question does not involve a minor. It provides an essential illustration of the responsibilities of States to guarantee the protection of personal data and the right to privacy, including for children. This is because of the expanding importance of digitalisation, where children and youth are at risk of misuse of their personal data. In the current case, ECtHR initiated that the United Kingdom had violated the applicant's right to privacy by failing to stipulate suitable instruments to protect her personal data and by failing to take the necessary actions to avoid the dissemination of her photographs without her consent. The Court emphasised that a State must not only avoid allowing violations of the right to privacy of its citizens, but also be obliged to actively take steps to protect personal information, particularly where vulnerable individuals are at risk of online abuse and exploitation. The Court further emphasised the importance of implementing adequate legal and technological tools to protect personal data in the digital environment. Such mechanisms include effective procedures for identifying, blocking, and removing unlawfully disseminated data, particularly where it contains sensitive information such as intimate photographs or videos. Although the case in question does not directly concern children, it sets out fundamental principles that are essential for the protection of

¹⁶ *S.W. v. United Kingdom*, app. no. 87/18, 22 September 2021.

data and the right to privacy of children in the digital environment. These principles oblige States to ensure effective protection of the personal data of all individuals, including children. In cases of dissemination of intimate images or other sensitive information, children may not only be legally vulnerable but also be exposed to serious psychological consequences. States should, therefore, put in place effective mechanisms to prevent such violations and take action to protect personal data both after such violations have occurred and preventively. This may include educational initiatives and the progress of a legal framework to protect children from online exploitation and misuse of their personal information. The exploration of this judgment plays a key role in creating new policies and legal instruments to protect children's personal data online. This includes introducing stricter requirements for platforms and services that collect information from children and requiring them to obtain clear and explicit parental consent for the processing of the specific data. The judgment could lead to the imposition of new security standards, such as mandatory age verification, effective parental consent mechanisms, and transparency about how data is collected and used. The Court also stresses the importance of raising public awareness, particularly among parents and children, of their rights to privacy and data protection. This includes promoting educational initiatives that teach children how to protect their personal information in the digital environment.

The judgment under this case of *S.W. v. the United Kingdom* establishes basic principles on the commitments of States to defend personal data and the right to privacy of citizens, including in the perspective of the Internet. Although the case does not directly concern children, its conclusions have serious implications for their safety in the digital space. The decision highlights the responsibility of states to provide effective tools to protect personal information and prevent abuses that may affect the most vulnerable groups, such as children. This highlights the significance of protective measures, increased awareness, and adequate legal protection for adolescents in the online environment, as well as the necessity for specific policies to guarantee their rights and security.

5 Analysis of the CJEU Case Law on Children's Data Protection Rights

Several key cases can be drawn from the case law of the CJEU, which are of primary importance for the protection of children's personal data and for the more efficient application of their rights. In view of the major principles outlined, the view

expressed in the scientific literature that the decisions of the CJEU serve as a fundamental model for the protection of personal data can be reasonably supported.¹⁷

5.1 Case Google Spain SL v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González¹⁸

In 1998, a Spanish newspaper published a notice of a public auction of assets related to the outstanding debts of Spanish lawyer Mario Costeja González. Even though the information was lawfully published, it remained available online long after his debts had been settled. In 2010, González discovered that links to these publications still appeared when searching for his name on Google, which he claimed violated his right to privacy. This provoked him to file a claim to the Spanish Data Protection Agency (AEPD), requesting that Google Spain and Google Inc. remove the relevant links from search results. The AEPD supported González's complaint, but Google challenged the decision, and the case went to the CJEU. The case raises several important questions. First, is Google subordinate to European data protection law, even though it is based in the United States? Second, is the search engine in charge of processing personal data included in search results? Finally, is there a "right to be forgotten" that allows individuals to request the deletion of data from the Internet? In its ruling, the CJEU ruled that European law is applicable. The argument is that Google Spain is part of the economic activity of Google Inc. in the EU, and the processing of data through the search engine is directly related to that activity. Google is, therefore, subject to European data protection laws, although the parent company is based outside the EU. The Court also concluded that Google, as the operator of a search engine, processes personal data when it reveals search results including personal information. Although Google does not control the content of the links published, it controls the way in which that data is presented in the results and is therefore liable for them. The CJEU also ruled that citizens have the right to request the removal of links containing personal data if the information is "inappropriate, outdated or excessive". However, this right should maintain equilibrium against the public interest in the information concerned. In the specific case of González, the Court found that his right to privacy balanced the public

¹⁷ Marin, 2023, pp. 211-217.

¹⁸ *Google Spain SL v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, case no. C-131/12, ECLI:EU:C:2014:317, 13 May 2013.

interest. The Google Spain case was a landmark in the development of EU data protection law, as it established the principle of the "right to be forgotten". This principle was later enshrined in Article 17 of the GDPR. Consequently, Google introduced a mechanism through which European citizens can request the removal of links from search results, which has led to the processing of millions of such requests. The Google Spain case clearly shows that technology companies have an obligation to respect the right to data protection and privacy within the EU. The ruling of the CJEU underlines that citizens' digital rights are not limited to control over the information they publish themselves, but also include the way in which their personal data is processed and disseminated through search engines. This judgment sends a clear message to the big tech companies that European data protection standards will be applied strictly and without exception.

The 2014 case of *Google Spain SL v AEPD and Mario Costeja González* has a significant, albeit indirect, impact on the protection of children's personal data. It establishes the principle of the "right to be forgotten", which is of particular importance for more vulnerable groups such as children in the digital environment. This principle is particularly relevant for minors and minors, who often do not fully understand the consequences of publishing information about themselves online. Many children share personal data or create digital profiles that can have long-term consequences for their reputation and privacy. The "right to be forgotten" allows children or their parents to request the removal of inappropriate or sensitive information that has become public, even if the children themselves posted it. Leaving children's personal data available online for long periods can lead to risks such as cyberbullying, discrimination or abuse. The decision in this case demonstrates the need to balance the individual right to the protection of personal data with the public interest in information. However, in the context of children, the GDPR explicitly stresses that their protection must be a priority. Article 17 of the regulation specifies that the processing of children's data requires additional care, and that data removal must be easy and accessible. Following the decision, Google and other platforms have introduced mechanisms to remove search results, which is of particular importance for children. Parents or legal guardians can now request the removal of information relating to their child, including publications by third parties without the parents' consent, such as photos or personal data.

The principles thus established create a basis for future court decisions on issues relating to children's personal data. In cases of inaccurate use of children's data online, these principles provide important safeguards. Furthermore, the case forces companies that process children's data to put in place measures to comply with the right to erasure, which is a fundamental element of protection in the digital environment. In conclusion, the Google Spain case highlights the importance of the right to control personal data, which is very critical for children. Assigned their weakness and the risk of long-standing negative effects, the perception of trustworthy mechanisms for using the "right to be forgotten" is an important step towards ensuring greater protection for children in the digital world.

5.2 Case C-311/18 Data Protection Commissioner v Facebook Ireland and Maximilian Schrems (Schrems II)¹⁹

Case C-311/18 between the Data Protection Commissioner, Facebook Ireland and Maximilian Schrems (known as Schrems II) plays a key role in regulating international data transfers, drawing precise supervision to the privacy risks associated with these practices. The case highlights the question of the legitimacy of transfers of personal data from the EU to the US and centres attention on the potential access of US security services to data of EU citizens. Impact on children: Children are particularly at risk in the perspective of transnational data transfers, as their digital footprints often start to form at an early age. This information can be used for marketing, tracking, or other unethical purposes if it is dropped into inappropriate hands. On 16 July 2020, the CJEU ruled that the Privacy Shield mechanism used to govern data transfers between the EU and the US does not meet the protection requirements set out in the GDPR. This ruling affects all users, including children, whose data may be administered by US companies. While CJEU confirms the validity of standard contractual clauses (SCCs) as a means of transfer, it stresses that companies must ensure that data recipients in third countries provide protection equivalent to that in the EU. US law allows government authorities to access personal data of foreigners without providing protection comparable to that in the EU, which highlights the need for stronger mechanisms. Platforms such as Facebook, which process large amounts of data, including children's data, are required to demonstrate that their transfers to third countries comply with the

¹⁹ *Data Protection Commissioner v Facebook Ireland and Maximilian Schrems* (Schrems II), case no. C-311/18, ECLI:EU:C:2020:559, 21 August 2020.

GDPR. Services that children frequently use must minimise the threat of unlawful access to data. Following the Schrems II ruling, companies must implement additional safeguards, such as storing data in the EU or encrypting it before transfer. Parents and children must be informed in a clear and accessible manner about how their data is processed and transferred. This case demonstrates the importance of transparency and highlights that protecting children's personal data must be a priority. The established principles require technology companies to guarantee that children – as the most vulnerable group in the digital world – are adequately protected.

5.3 Case C-210/16 *Wirtschaftsakademie Schleswig-Holstein GmbH v. Facebook Ireland Ltd.*²⁰

Case C-210/16 - *Wirtschaftsakademie Schleswig-Holstein GmbH v. Facebook Ireland Ltd.* is of fundamental importance in defining the obligations of data controllers, including when it comes to processing children's data. The judgment of the CJEU clarifies the obligations of all parties included in the processing of such data. *Wirtschaftsakademie Schleswig-Holstein* used a Facebook page for marketing purposes. The German data protection authority discovered that Facebook collected data by installing cookies on visitors' devices, without their consent or knowledge. Since social networks such as Facebook often attract children and young people, the handling of their data is a particularly sensitive issue. The main issue raised by the case relates to who is liable for defending the personal data of young users. On 5 June 2018, the CJEU ruled that responsibility for data processing is shared. As stated by the ruling, the administrator of the Facebook page (*Wirtschaftsakademie*) is considered a joint controller together with Facebook. This means that all participants who determine the purposes and means of processing must jointly ensure that they are in accordance with the conditions of the GDPR. They are obliged to inform users about the collection of data and how it will be administered, in compliance with the principle of transparency. The CJEU stresses that cookies can only be applied with users' explicit and informed consent. For platforms aimed at children, this requires additional safeguards. The GDPR requires parental consent for the data processing of children under a certain age (usually 16 in the EU). Administrators of pages must ensure compliance with these requirements by providing clear and

²⁰ *Wirtschaftsakademie Schleswig-Holstein GmbH v. Facebook Ireland Ltd.*, case no. C-210/16, ECLI:EU:C:2018:388, 5 June 2018.

accessible information to children and their parents. Platforms such as Facebook must review their practices to protect minors' personal data better. Organizations such as companies, schools, or other institutions that use social media to communicate with children must also comply with the GDPR regulations. They are required to implement appropriate mechanisms that ensure the safety and transparency of data processing. This case highlights the shared responsibility between platforms and administrators of social media pages. For children who use these services, the decision is of great importance, as it requires increased transparency, clear communication about data processing and protection against possible abuse. It stresses the necessity of highlighting the protection of young users in the digital world and reminds us that all players in the digital world have a role to play in guaranteeing their safety.

6 Endeavours and Chances for Protecting Children's Data Rights in the Digital Age and Main Conclusions

The modern digital environment poses major challenges to the protection of personal data, especially for children. With the penetration of Internet services into everyday life and the increasing use of digital technologies by youth, their data turn into particularly at risk to unregulated collection, misuse and manipulation. This problem is even more acute as children are often unaware of the risks connected with revealing private information online. This needs those existing regulations, such as the GDPR, be adapted to the ever-changing digital landscape. The presentation will analyse the main problems and opportunities for developing the legal bases linked to the protection of children's data. A significant issue is that children have difficulty understanding what information is collected about them and how it is administered. They often do not fully appreciate the dangers of sharing personal information, such as photos, location and preferences. Although the GDPR obliges platforms to provide understandable privacy policies, these are often complex and inaccessible to young audiences.

Furthermore, although the GDPR requires parental consent to process data on children under 16 (or those of a lower age in different countries), many platforms do not have trustworthy age verification methods in place. This allows children to circumvent the restrictions, leading to their data being collected unlawfully. Another crucial issue is the application of social networks and mobile apps, which often use

children's data for targeted advertising despite the GDPR explicitly prohibiting this. While some platforms are striving to comply with the law, significant gaps in their policies remain. International data transfers are also an important aspect. Large platforms such as Facebook, TikTok and Instagram collect data from children in the EU and relocate it to third countries where data protection standards may not be as high as those in the EU. The Schrems II ruling makes it transparent that these allocations need to be more strictly regulated. The GDPR expects the administration of children's data to be carried out under provisions of a high level of protection "by default", but many services provide privacy settings that do not provide sufficient security. This leaves children's profiles vulnerable to unauthorized access. Solutions include developing privacy policies adapted for children, using easy-to-understand formats, such as animations or interactive tools, to explain the concerns and status of personal data. Furthermore, it is vital to implement reliable age verification systems, such as biometric technologies or other innovative approaches. These measures can provide better protection for children's personal data and strengthen their safety online. Changing the approach to targeted advertising²¹ is a key step on enhancing the protection of children online. The ban on advertising directed at children must be strictly enforced and should include all forms of profiling and personalisation of content. Regulations such as the GDPR need to be revised to address new technologies and methods used to target children. This could mean introducing a ban on the use of algorithms that collect and analyse data to create advertising profiles for children, as well as compulsory transparency constraints on the data gathered and its purpose. Following the Schrems II ruling, greater emphasis needs to be kept on the protection of children's personal data in international transfers. This implies introducing strict regulations to control the relocation of personal data outside the EU to guarantee that this data is not bargained. It is also required to establish international agreements and standards that oblige third countries to apply data protection rules comparable to those in the EU. EU Member States should strengthen regulation of online platforms and introduce stronger penalties for non-compliance with children's rights. This could include a legal possibility for collective complaints on behalf of children, their parents or guardians, and a review of punishments to confirm that any breach carries serious consequences for those who breach the GDPR. In an era of rapidly evolving technologies and digitalisation, governments, regulators, online platforms, and

²¹ Morton & Treviño, 2021, pp. 50-71.

industry need to work together to ensure the welfare of children. Existing tools, such as the GDPR, present a robust foundation, but to be successful, they need to be altered to the realities of the digital age. Ensuring children's safety and privacy online is a key step towards ensuring a secure and ethical digital future.

7 Conclusion

The protection of children's personal data in the digital era is a priority for modern legal systems, with the EU and its Member States leading the way in producing laws and rules that respond to the new challenges occurring from the fast growth of technology. After examining key cases involving violations of children's rights to their personal data and analysing the legal framework, including the GDPR and other international instruments such as the ECHR and the CRC, we can draw important conclusions on the current state of data protection and on the options for improving the legal framework. The GDPR, as the main EU data protection regulation, provides a basis for protecting children by requiring parental consent for the handling of data of children under the age of 16 (or a lower age limit set by Member States). However, the application of these rules is not always effective, as several court cases (for example, those related to platforms such as YouTube, TikTok, and Instagram) have shown. The main problems lie in the fast progress of data collection technologies that outpace the pace of the legal system. While the GDPR provides safeguards, its implementation has been challenging, specifically regarding parental consent on online platforms, where children can easily circumvent age verification. The ECHR protects children's privacy but does not contain precise provisions on the protection of personal data in the digital age, emphasizing the need for legal modernization. The CRC also secures the right to privacy, but the performance of these rights remains challenging from the perspective of fast-developing technologies. Key challenges to protecting children's personal data include the lack of effective age verification mechanisms, unclear and incomprehensible information policies, targeted advertising and profiling of children, and issues with international data transfers. Many online platforms cannot ensure that children do not establish accounts without parental consent, which puts them at risk of data collection without their understanding. Privacy policies written in language that children do not understand also do not give adequate knowledge about the threats of data collection. Additionally, the use of data for targeted advertising violates the core principles of the GDPR. To improve the protection of

children's personal data, stronger age verification mechanisms, including biometric technologies, should be established. Law should be altered and written in language that children can understand, using innovations such as videos and interactive formats to help them understand how their data is collected and used. Companies should introduce information policies that not only explain children's rights, but also inform them about the potential risks of online interactions. A ban on targeted advertising to children should be introduced into the regulation of online platforms, which would prevent the collection of personal data for the aim of establishing marketing profiles. Targeting technologies should be strictly controlled and stopped when it comes to children. A global initiative is needed to protect children's personal data, including international agreements between countries and technology companies that ensure a level playing field regardless of jurisdiction. The design of universal standards for the protection of children's data, like those in the GDPR, could strengthen global protection and reduce the risks associated with international transfers of personal data. Legal norms need to be adapted to new technologies such as artificial intelligence, machine learning, and the Internet of Things. These technologies offer new opportunities for the gathering of personal data, but they also create new risks for children. The legal basis should contain instruments to refer to these new risks and to safeguard the safety of children. The problems related to the protection of children's personal data in the digital sphere are complex and multifaceted. Existing legal mechanisms, including the GDPR and international conventions, provide an excellent foundation for protection, but they require to be further improved and adapted to meet new challenges. The use of new technologies poses a number of risks to children's autonomy and psychological well-being. In this sense, AI-driven tracking can collect a large database of data on children's behavior, preferences, and interactions. On the other hand, profiling can lead to the manipulation of children's choices without them realizing it. Platforms then personalize content to maximize engagement, often at the expense of children's well-being. This constant scrolling can have an addictive effect and lead to children's impulsive behavior. As a result of algorithmic profiling, children can reinforce incorrect stereotypes about themselves, influencing their choices before they can critically evaluate them. There is a legal framework to protect children's rights in Article 8 and Article 22 of the GDPR, Article 8 and Article 10 of the ECHR and Articles 16, 17 and 31 of the CRC, but some improvements are needed. Such as obligations for large social platforms to account for shared content and mental health safeguards.

From the analysis, we can conclude that existing legal frameworks partially address the risks of AI for children, but stricter interpretations or new guidance are needed. The GDPR could introduce stricter prohibitions on algorithmic profiling of children, and the ECHR and CRC could provide legal challenges against manipulative AI in digital environments. The authors believe that strong platform transparency, ethical AI design, and child-specific protection are necessary.

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CHILDREN'S RIGHT TO PRIVACY IN THE VIRTUAL WORLD OF APPS

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The world has become increasingly globalized, with the exchange of goods and services spanning continents, often leading to clashes between differently regulated legal systems. A prominent example of such a conflict arises in the context of digital health applications and the processing of personal data within them. Although in the sense of human rights, the rights to privacy and data protection are guaranteed to every person with numerous national and international legal acts, and secondary law and sectoral legislation that delves into this field. In Europe, personal health data are mainly regulated with GDPR, whereas in US the field is fragmented and regulated by sectoral regulations. The issue occurs when we deal with the protection of personal health data in the virtual world of health apps, which in the US remains in the grey zone without proper legal safeguards. US HIPAA, which governs personal health data at the federal level, does not protect all data provided to a health app, not even data provided to unlicensed counsel offering services through it.

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1 Introduction

The right to privacy today represents a fundamental human right and, by extension, a child's right. The right to privacy falls under civil and political human rights and is defined as such in the most important international human rights treaties. This is, for example, reflected in the Universal Declaration of Human Rights¹ (hereinafter: UDHR)², the International Covenant on Civil and Political Rights³ (hereinafter: ICCPR)⁴, the European Convention on Human Rights⁵ (hereinafter: ECHR)⁶, the Charter of Fundamental Rights of the European Union⁷ (hereinafter: CFREU)⁸, as well as the Constitution of the Republic of Slovenia⁹ (hereinafter: CRS).¹⁰

The right to privacy is also enshrined in the Convention on the Rights of the Child¹¹ (hereinafter: CRC). The CRC defines the child's right to privacy in Article 16:

»1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.«

Article 16 of the CRC affirms the child's right to privacy, including informational privacy, personal and spatial privacy, and the right to solitude. It also emphasizes the right to protection from arbitrary or unlawful interference with the child's family,

¹ Universal Declaration of Human Rights: Uradni list RS, št. 24/18.

² See Article 12 of the UDHR: *»No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.«*

³ International Covenant on Civil and Political Rights: Uradni list RS, št. 35/92 – MP, št. 9/92.

⁴ See Article 17 of the ICCPR: *»1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.«*

⁵ European Convention on Human Rights: Uradni list RS, št. 33/94.

⁶ See Article 8 of the ECHR: *»1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.«*

⁷ Charter of Fundamental Rights of the European Union: OJ C 326, 26.10.2012, p. 391–407.

⁸ See Article 7 of the CFREU (respect for private and family life): *»Everyone has the right to respect for his or her private and family life, home and communications.«*

⁹ Constitution of the Republic of Slovenia (Slovene *Ustava Republike Slovenije*): Uradni list RS, št. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121, 140, 143, 47/13 – UZ148, 47/13 – UZ90, 97, 99, 75/16 – UZ70a, 92/21 – UZ62a.

¹⁰ See Article 35 of the CRS (Protection of the rights to privacy and personality rights): *»The inviolability of the physical and mental integrity of every person and his privacy and personality rights shall be guaranteed.«*

¹¹ Convention on the Rights of the Child (CRC): Uradni list RS – MP, št. 9/92.

home, or correspondence, as well as the right to protection of their honor and reputation. Finally, Article 16 of the CRC also requires State Parties to protect children from interference with or attacks on their privacy.

2 Children's Right to Privacy in the Digital Environment

The children of today are the first to be born into the digital age, and their parents are the first to be called 'digital children'.¹² Today's children leave their digital footprint from birth, some even before they are born (e.g., a parent shares a photo of a sonogram of their unborn child¹³). Parents, in such a way, shape children's digital identity/footprint through sharenting, and these disclosures can follow their children into adulthood.¹⁴ It is, therefore, all the more important that special attention is paid to protecting children's privacy.

The digital age and digitization bring numerous advantages to our personal and professional lives. However, there are many persistent and grave risks of violating the right to privacy. With the rapid development of technologies such as social media, online tracking, and the collection of personal data, privacy protection is becoming increasingly complex. Globalisation offers many new opportunities for effective networked activities, which is the main and most distinctive aspect of the digital age.¹⁵ Data about individuals is often collected without their informed consent or is exposed to abuse, increasing the risk of identity theft, surveillance, and manipulation. Furthermore, there are concerns about the influence that significant technology corporations have over personal data, as they often process and store data without adequate protection, leading to potential violations of individuals' privacy rights. Children are particularly vulnerable in this regard, as due to their youth and inexperience, they are often victims of privacy violations.

Children's data is collected and stored from birth onward. The collection, processing, storage, and use of personal data raise increasingly complex issues, which have also increased the intrusion into children's privacy. Smartphones, mobile data, accessibility to the internet, and other technologies have contributed to children

¹² United Nations – General Assembly, 2021, p. 13.

¹³ So-called *sharenting* ('the habitual use of social media to share children's news, images' - Aydoğdu, Şanal Güngör & Öz, 2023).

¹⁴ Livingstone, Stoilova & Nandagiri, 2019, p. 22.

¹⁵ Romansky, 2022, p. 93.

spending more and more time online today. Children use smartphones for educational purposes, especially in their free time. As a result, children can access information and content almost anywhere and anytime. Additionally, activities such as watching television, communicating with peers and relatives, listening to music, and seeking commercial information have also moved online.¹⁶

With the expansion of the digital age, the development of information technologies, and digital networks, children's privacy has become a central issue. Children's online privacy arises in many online spaces and activities. It develops within the framework of relationships between children and public entities, interactions between children and commercial entities, and relationships between children and other individuals.¹⁷ In their online activities, children often intentionally or unintentionally share a significant amount of personal data. Children's online data has become a valuable commodity for commercial entities, which today collect more information about children than governments.¹⁸

Children's privacy can be especially at risk in the home environment, in alternative forms of care, and in institutional settings, including schools and hospitals. Just like adults, children's privacy is increasingly threatened online as well. Threats to children's privacy can arise from the digital activities of others, such as peers, family members, caregivers, or strangers, from the collection and processing of data by public institutions, companies, and other organisations, as well as from criminal activities like hacking, blackmailing, identity theft, stalking, etc.¹⁹ Children's actions can also lead to a violation of their privacy. This is particularly at risk in the digital sphere, as children, due to their young age, lack of experience, and digital skills, are often unaware of the threats and dangers that lurk in various digital activities (e.g., playing games, seeking friendships or information, or browsing the web casually). Children unwittingly and unconsciously, but often also deliberately, provide their personal data in these online activities.

¹⁶ Smahel et al., 2020, p. 22.

¹⁷ Blecher-Prigat, 2023, p. 260.

¹⁸ Blecher-Prigat, 2023, p. 260.

¹⁹ Livingstone, Stoilova & Nandagiri, 2019, p. 28.

3 Children and Data Protection

At the EU level in the field of data protection, an important step was taken in 2016. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (hereinafter: GDPR) was adopted.²⁰ GDPR now also imposes stricter rules on how children's data can be collected and processed. Article 8 of the GDPR introduced additional obligations with the aim of ensuring a higher level of data protection for children in the context of the information society through information society services.²¹ Article 8 of the GDPR provides:

"1. Where point (a) of Article 6(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.

2. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

3. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child."

Article 8 of the GDPR, therefore, applies only if the processing of data a) relies on consent as a legal basis and b) if the Internet society service is being offered directly to a child.

Under the GDPR, the default age at which a person is no longer considered a child and can, therefore, give valid consent is 16. This was a new provision for the EU and brought many challenges. On the other hand, it has been in place in the US since 1998, when the Children's Online Privacy Protection Act (hereinafter: COPPA) was

²⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) (hereinafter: GDPR): *OJ L 119*, 4.5.2016, p. 1–88.

²¹ EDPB, 2020, p. 25.

passed. COPPA brought detailed rules for controllers collecting children's personal data.

The GDPR sets a uniform age limit of 16 years²², after which all children can be considered to be able to consent to the processing of their personal data. The age of 16 thus constitutes a *prima facie* threshold for independent decision-making of children.²³ However, the 16-year age limit under GDPR is not absolute. An exception is made because the GDPR allows Member States to set a lower age in their national law, which may not be lower than 13 years.

Regarding the age limitation of valid consent, the GDPR so provides flexibility.²⁴ Thus, it can be concluded that, as already mentioned, 16 years old is set as the age defined by the GDPR for children to provide consent without parental permission. On the other hand, a range between 13 and 15 years old is provided, allowing member states to set a lower age. Thus, the age limits vary and are:

- a) 13 years: Belgium, Denmark, Estonia, Finland, Latvia, Malta, Portugal, Sweden;
- b) 14 years: Austria, Bulgaria, Italy, Lithuania, Spain, Cyprus;
- c) 15 years: Czech Republic, France, Greece, Slovenia²⁵;
- d) 16 years: Croatia, Germany, Hungary, Ireland, Luxembourg, Poland, Romania, Slovakia, Netherlands.²⁶

²² Regarding the age limit of 16, which allows children autonomy under the GDPR, there are also criticisms. Critics base their arguments on the fact that setting the age limit at 16 constitutes a violation of children's rights under the UNCRC. The UNCRC guarantees children the right to access information, to express their views and to participate in the decision-making processes, the right to learn and to develop, etc. Article 8(1) of the GDPR in its effect bans children younger than 16 years to actively participate in many activities on the Internet, most of which are worthy means of communication and participation, although they bear some data protection risks (Krivokapić & Adamović, 2016, p. 209 – 210).

²³ Taylor et al., 2017, p. 377.

²⁴ EDPB, 2020, p. 26; Macenaite & Kosta, 2017, p. 189.

²⁵ So Article 8 of the Personal Data Protection Act (Slovene *Zakon o varstvu osebnih podatkov* (ZVOP-2): Uradni list RS, št. 163/22): “1) *A child's consent for the use of information society services offered directly to children or for services that can reasonably be assumed to be used by children is valid if the child is 15 years old or older. If the child is younger than 15, the consent is only valid if given or approved by one of the child's parents, their guardian, or a person with parental responsibility. When the information society service is provided free of charge, consent can also be given by the child's foster parent or the representative of the institution where the child is placed. In cases where the terms of service of the information society provider prescribe a higher age for the use of these services, the age specified in the provider's terms of service shall apply.* 2) *The child's consent from the previous paragraph must not be conditioned by excessive terms imposed by the controller, so that the child is required to provide more personal data than is necessary for the purpose of providing such a service.*”

²⁶ Caglar, 2021; Schofield, 2024.

In principle, age verification should not lead to excessive data processing. In other words, in some low-risk cases, it may be appropriate to simply require a new subscriber to disclose their year of birth or to fill in a form stating that they are (not) minors. However, if the processing involves a higher risk or if doubts arise as to the veracity of the user's statement, the controller should review their age verification mechanisms and consider introducing alternative verifications.²⁷

To obtain 'informed consent' from a child, the controller must explain in language that is clear and plain for children how it intends to process the data it collects. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility²⁸ over the child. In such a case, it is the parent that is supposed to consent, then a set of information may be required that allows adults to make an informed decision.²⁹ The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.

The GDPR parental consent requirement is a flexible standard of liability. To comply, it's enough to make reasonable attempts to obtain verifiable parental consent, rather than needing to obtain it in all cases.³⁰

Thus, controllers must identify the legal age of consent in the jurisdictions in which they operate by taking into account their target demographic. In particular, it should be noted that

²⁷ EDPB, 2020, p. 26 and 28.

²⁸ Parental responsibility should be aligned with the family law. In Slovenia, parental responsibility (Slovene *starševska skrb*) is defined by Family Code (Uradni list RS, št. 15/17, 21/18 – ZNOrg, 22/19, 67/19 – ZMatR-C, 200/20 – ZOOMTVI, 24/22 – odl. US, 24/22 – odl. US, 5/23, 34/24 – odl. US) in Article 6: 1) *Parental responsibility shall be the entirety of obligations and rights of parents to create, in accordance with their capacities, conditions for the comprehensive development of a child. 2) Parental responsibility shall pertain jointly to both parents.* Article 136 of the FC provides a further definition of the content of parental responsibility: »1) *Parental responsibility shall be the obligations and rights of parents concerning care for the child's life and health, upbringing, care and treatment, supervision of the child and providing for the child's education, as well as the obligations and rights of parents concerning representation and maintenance of the child and managing the child's property. 2) Parental responsibility may be restricted to or withdrawn from one or both parents by the competent authority subject to the conditions laid down in this Code.*«

²⁹ EDPB, 2020, p. 26.

³⁰ Macenaite & Kosta, 2017, p. 177.

"a controller providing a cross-border service cannot always rely on complying with only the law of the Member State in which it has its main establishment but may need to comply with the respective national laws of each Member State in which it offers the information society service(s)."

According to Recital 38 of the GDPR, children benefit from specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of children's personal data for marketing purposes or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to children. As such, Article 8 GDPR stipulates additional requirements for consent by children.

In principle, age verification should not lead to excessive data processing. In other words, in some low-risk cases, it may be appropriate to simply require a new subscriber to disclose their year of birth or to fill in a form stating that they are (not) minors. However, if the processing involves a higher risk or if doubts arise as to the veracity of the user's statement, the controller should review their age verification mechanisms and consider introducing alternative verifications.³¹

The principle of transparency requires that any information addressed to the public or the data subject be concise, easily accessible, and easy to understand and that clear and plain language and, additionally, where appropriate, visualisation be used. Given that children merit specific protection, any information and communication where processing is addressed to a child should be in such a clear and plain language that the child can easily understand.³² Transparency will, therefore, help them to make informed decisions about what personal data they wish to share.³³

The GDPR explicitly emphasizes that activities addressed specifically to children shall receive specific attention. As children are a particularly vulnerable group, it is important to promote public awareness and understanding of the risks, rules, safeguards, and rights in relation to processing (Article 57(1)(b) of the GDPR).

³¹ EDPB, 2020, p. 26.

³² GDPR, recital 58.

³³ ICO, 2018, p. 12; Taylor et al., 2017, p. 383.

When children reach the age of digital consent, based on their autonomy to consent to the processing of their personal data, they will have the possibility to modify or withdraw the consent given by the holder of the parental responsibility for the processing of personal data given prior to their age of digital consent (Article 7(3) of the GDPR). In accordance with the principles of fairness and accountability, the controller must inform the child about this possibility.³⁴

4 Mental Health Apps' Privacy Violations

The world has gone global, and because of it, the exchange of goods and services are moving from one continent to another, causing differently regulated legal systems and their provisions to clash. One of these examples is definitely connected to the issue of digital health apps and the processing of data within them. The latter influences children's lives on a daily basis – sometimes in a positive and sometimes in a negative way. Therefore, the second part of the article will highlight the grey area of the protection of personal health data in cases of health apps, particularly in the US regulatory system, and, in this sense, the position of children. The focus on US regulations is projected because of the very intriguing regulations of this field and because of their relevance to other countries and continents. Notably, in Europe as well as everywhere else in the world, we tend to use many US apps from US providers that apply privacy policies in accordance with their law.

Interestingly, the digital mental health apps market has been growing rapidly, and by 2030, it is predicted to be worth 17.5 billion dollars.³⁵ Although in the US, Children's digital data in particular is protected by the Children's Online Privacy Protection Act (hereinafter: COPPA)³⁶, its enforcement has so far been limited to large platforms (e.g., TikTok, YouTube) and not to all other actors on the market.³⁷ In addition, since COPPA is an extension of the American Privacy Rights Act, it cannot be assessed in any other way but in the sense of consumer protection and its aspects.

However, the consumer's aspect is not the only relevant aspect. It must be considered that some apps do not process "just" personal data, but also personal health data, which is a sensitive group of data that should be more strongly

³⁴ EDPB, 2020, p. 32.

³⁵ Cox, 2024.

³⁶ S.2326 - 105th Congress (1997-1998): Children's Online Privacy Protection Act of 1998. (1998, October 1).

³⁷ Mostafavi, 2020.

protected. In the EU, health data and other sensitive groups of data are protected by the provisions of GDPR that generally and wholly protect the field of data protection. In contrast, in the US, the regulation of this field is relatively fragmented, and data protection is therefore distributed among various acts covering different legal fields.³⁸ In particular, the protection of personal health data is mainly governed by the Health Insurance Portability and Accountability Act (hereinafter: HIPAA).³⁹ The issue is that HIPAA does not put its focus only on health data, but also on other healthcare aspects, for instance, on insurance, the prevention of healthcare fraud and abuse, guidelines for pre-tax medical spending accounts, etc., which may, on the sidelines, cause the lack of detail in some of the norms.

Regarding HIPAA's data protection, it protects only communication between a doctor and a patient, not also sessions with some kind of specialists without a license, or, in other words, with professionals who are not "real doctors".⁴⁰ Notably, many health or medical apps offer counselling, but not necessarily by professionals with a license or the required certificate. So, at this point, it is fair to lay down a question determining with which act these (health) data are exchanged between the "so-called specialist" and the app user on a certain app, regulated and protected by? This may be a small crack in the legislation, yet an important loophole in today's digitally oriented society. When the individual behind the screen is actually a child, such a loophole opens the door to even more dangers and possible damages.

Admittedly, when it comes to questions like the one referred to, besides the national and international regulations, the company's privacy policies and other types of typical contracts take a significant role. Unfortunately, people are often unaware of their importance and do not care about their content. When it comes to minors, children or teenagers, they give it even less time and consideration. Usually, users – even from the EU territory – automatically provide their explicit consent to the app's privacy policies (which are, in cases of US app providers, made in accordance with the US regulations), so they can simply and without any trouble enter into an app and start using it.⁴¹ While the GDPR provides stricter rules and implements the actual protection of including personal health data, it does not really matter if the

³⁸ Turnšek & Kraljić, 2024.

³⁹ HIPAA Administrative Simplification Regulation Text 45 CFR Parts 160, 162 and 164 (Unofficial version, as amended through March 26, 2013).

⁴⁰ Cox, 2024.

⁴¹ Turnšek & Kraljić, 2024.

user consents to the use of the privacy policy of an app, which then points to US regulations.⁴² This means that GDPR cannot apply in cases where explicit consent is given to other regulations. Consequently, the EU citizens cannot enjoy the rights and higher protection that is otherwise provided to them by the GDPR – their actions are then subject to the rules predicted under the typical contracts and regulations that are appointed by those.

5 Topical Cases

To provide a wholesome argumentation of the written, the article shall further on examine two cases of mental health apps, BetterHelp and Teenspace, and their privacy violations against children that were already brought to the attention of the media and authorities.

Firstly, Betterhelp is an app that offers mental health consultations to different social groups, including lgbtq+, various religious groups and also teenagers, but with a precondition of parental consent.⁴³ Secondly, Teenspace is a product of cooperation between the more significant mental health app Talkspace and the New York City Department of Health and Mental Hygiene. The latter was created in November 2023 with the purpose of enabling free online therapy and counselling for New York teenagers.⁴⁴ At first sight, both apps may seem as picture-perfect; however, that was not how the circumstances unfolded.

5.1 BetterHelp Case

In the case of BetterHelp, the app promised its users it would keep their data private many times – during the registration process as well as later when using the app.⁴⁵ That being said, its users had reasonable expectations that the app would actually do so. However, BetterHelp did not follow its promise, and it disclosed many of the confidential data to more prominent social platforms, including Facebook and Snapchat, all for advertising purposes.⁴⁶ What is more, BetterHelp shared that data

⁴² Ibid.

⁴³ Federal Trade Commission, 2023.

⁴⁴ Merod, 2024.

⁴⁵ The app promised to its users to keep their data private through statements like: “Rest assured – any information provided in this questionnaire will stay private between you and your counselor.” (see the the Federal Trade Commission's report).

⁴⁶ Federal Trade Commission, 2024.

with third-party advertising platforms to capitalize on these consumers' health information. On top of that, it often permitted these companies to use the information for their own research and product development.⁴⁷ The disclosed data included email addresses, IP addresses, and, more importantly, even answer given to very sensitive questions regarding their mental health status (e.g. if they are "experiencing overwhelming sadness, grief, or depression," if they're having thoughts they "would be better off dead or hurting in some way," etc.)^{48,49} While certain questions of the questionnaire were followed with false disclaimers, stating their health information would stay private between the user and their counsellor, the users were falsely deceived and manipulated by the app. Truthfully, these are the questions that some adults would not always choose to share with their friends and maybe not even with their family members. Hence, when it comes to a group of teenagers that is already hurting in some way and is in that phase in life where they are searching for their purpose and place in society, they often remain quiet and do not proceed to share such thoughts with anyone, let alone with major social media platforms. The reflection of such business was not only in the shape of legal violations or the company's monetary benefits, but also for their users, it was more about the manipulation, betrayal, and psychological damage. With that, users' rights to dignity, privacy, and data protection, not to mention the rights of many minors, were violated.⁵⁰

Another issue arising from this case is the fact that the app demanded that teenagers fill out these questionnaires before asking for parental consent.⁵¹ Admittedly, it cannot be expected that teenagers will pay attention or even understand the meaning of the missing legal safeguards. Nor is it realistic to expect them to foresee the possible consequences that may arise from sharing such sensitive data. In this case, the data shared were not sensitive only because of their health nature, but also because they were teenagers' data, data of a disadvantaged group of people unaware of the possible dangers. By stripping away the precondition of parental consent, the app disabled the likelihood of a minor having adult supervision. The purpose of

⁴⁷ FTC v. BetterHelp, inc. corporation, Compile, inc. and others. Case no. C-4796 - a complaint (2023, July 7), p. 2.

⁴⁸ Federal Trade Commission, 2023.

⁴⁹ FTC v. BetterHelp, inc. corporation, Compile, inc. and others. Case no. C-4796 - a complaint (2023, July 7), pp. 5-6.

⁵⁰ Turnšek & Kraljić, 2024.

⁵¹ FTC v. BetterHelp, inc. corporation, Compile, inc. and others. Case no. C-4796 - a complaint (2023, July 7), pp. 4-5.

adult supervision and parental consent is specifically to create a possibility for adults to prevent such situations from happening. A parent (or a guardian) may notice the missing safeguards or disagree with the sharing of such sensitive data with this particular platform.

By sharing such intimate information of its users with the mentioned platforms, BetterHelp gained 30.000 – 40.000 users per every three months, which makes it 120.000 – 160.000 new users per year. Of course, inside lines that resulted in enormous profits for the app⁵², as well as in huge human rights and children's rights violations for users. The latter may indicate that the app provider's interests were not entirely about helping the socially disadvantaged groups of people. It seems more likely that the leading interest was in making profits and expanding the business.

In the end, BetterHelp was charged by the Federal Trade Commission (particularly on the basis of Section 5 of the FTC Act⁵³, 15 U.S.C. § 45(a)) to pay 7.8 million dollars. Even though it may seem like a high amount of money at first sight, BetterHelp made incomparably more by making those privacy violations. In the year 2020, the company made over \$345 million in revenue, and a year later, in 2021, they made over \$720 million in revenue.⁵⁴ Arguably, the latter may question the efficiency of the sanctions imposed.

5.2 Teenspace App

Unfortunately, BetterHelp is not the only app, which violated or violates the privacy of its users. Another mental health app that made comparable violations is Teenspace. Regarding its privacy, Talkspace, as a provider of Teenspace, had some similar red flags. For example, its former employees argued that Talkspace did routine, yet unsubstantiated, examination of anonymized conversations between therapists and their clients with the purpose of extracting certain parts for marketing purposes.⁵⁵

⁵² FTC v. BetterHelp, inc. corporation, Compile, inc. and others. Case no. C-4796 - a complaint (2023, July 7), p. 4.

⁵³ Federal Trade Commission's Act. 15 USC Chapter , Subchapter I: Federal Trade Commission, n.d..

⁵⁴ FTC v. BetterHelp, inc. corporation, Compile, inc and others. Case no. C-4796 - a complaint (2023, July 7), p. 3.

⁵⁵ Kaur, 2024.

Teenspace was created later in 2023 and supposedly only for the teenagers' good sake. While the conversations between therapists and users were set to be protected by HIPAA, the data provided to this platform during the phase of registration did not share the enjoyment of its protection. Intriguingly, all users had to first go through a registration process, requiring quite many data (e.g., name, school, mental health history, gender identity),⁵⁶ among which not all should be classified as necessary just for registering. In fact, in the EU, that alone would constitute a breach of the "data protection principles" of data minimisation and/or purpose limitation, generally provided by the GDPR.

Additionally, the data provided during the registration process was not only left without the adequate protection of HIPAA (even though they did include personal health data), but also – teenagers gave these data without parental consent. The latter was required after the registration, not giving parents as responsible persons for their children the chance to review the privacy policies of the app prior to its usage.⁵⁷ The Teenspace app's improper use of parental consent is very similar to that of BetterHelp's. This research does not include enough cases to find a solidly established pattern of similar app providers making comparable violations. However, these two cases are certainly not the only ones to have such an unlawful model that runs against fair business practices.

Moreover, through an online "privacy-investigating" website⁵⁸ Parent Coalition for Student Privacy, discovered that when a student visits Teenspace's website, their personal data is shared with 15 ad trackers and 34 cookies, including big corporations such as Amazon, Facebook, Google, and Microsoft.⁵⁹ Admittedly, Teenspace targeted specifically teenagers, minors, and their personal health data and disclosed them to more significant platforms, even though the data disclosed presents one of the most sensitive groups of personal (health) data. Not only did Teenspace fail to provide sufficient protection for it, the app alone decided to actively make a breach and provide that data to numerous platforms. Given the city's Health Department's objective was to provide mental health counselling for minors free of charge, so

⁵⁶ Elsen-Rooney, 2024.

⁵⁷ Elsen-Rooney, 2024.

⁵⁸ An online "privacy-investigating" website they used was a so-called »Blacklight privacy tool«, which is a platform made by nonprofit newsroom, where anyone can examine any website and see if it holds any third-party's cookies, trackers, google analytics, Facebook pixel etc. (for more see: <https://themarkup.org/blacklight>).

⁵⁹ Admin, 2024.

anyone could afford it and benefit from it, such intentional data breaches may contest the true purpose of this 26 million dollars' worth partnership between the app and the city and suggest their agenda had some other aims or motives. Admittedly, the similarities between the two apps were not only in their ways of violating their users' privacy rights, but also in having the US Senators question their practices.⁶⁰ The latter, however, was not a sufficient tool for stopping Talkspace or BetterHelp from committing the alleged violations. That was approximately two years before the Federal Trade Commission took steps against the BetterHelp app, as well as two years before the proceeding against Talkspace.

Finally, a class action was filed against Talkspace for sharing an extensive scope of personal data (including personal mental health data even) of minors with TikTok,⁶¹ which raised an alarm regarding the services of Teenspace in general.⁶² A plaintiff was allegedly supported by thousands of Talkspace users whose rights were violated.⁶³ When this class action arose in August 2024, the extension of Talkspace – Teenspace's services and regulations was also starting to raise some concerns. Consequently, the Coalition for Student Privacy, New York Civil Liberties Union, and AI for Families all together expressed concerns to the New York City's Mayor, Health Commissioner, and the Deputy Mayor for Health and Human Services.⁶⁴ Although the matter is still ongoing, it may get a similar ending as BetterHelp's case.

6 Suggestions For More Effective Sanctions

Based on the examined topics and cases of BetterHelp and Talkspace/Teenspace, the larger platforms do not provide sufficient privacy policies nor respect for human rights and children's rights. At first, both apps were handled with a "softer remedy" (questioning by the senators) and then, one was served with financial sanctions and the other recently received a class action, which remains unsolved.

Considering BetterHelp's case, which was already concluded, the app made a settlement for far less money than it gained by making those violations. In other words, by doing those privacy violations and being charged, BetterHelp still stayed

⁶⁰ Warren, 2022.

⁶¹ Rizzi, 2024.

⁶² Rizzi, 2024.

⁶³ Courtney Mitchener v. Talkspace Network llc., US District Court Of California, Case 2:24-cv-07067, p. 6, para 23.

⁶⁴ Courtney Mitchener v. Talkspace Network llc., US District Court Of California, Case 2:24-cv-07067, p. 6, para 23.

in a few hundred million dollars in profit. The latter makes the sanction ineffective. Admittedly, the people whose rights were violated are entitled to certain refunds from the sanction imposed, which shall represent satisfaction for them. However, such a sanction cannot be understood as a deterrence measure for the misconduct. Deterrence measures should lead with the purpose of reforming the subject and his actions, but that did not happen in the present case. Admittedly, BetterHelp has improved and broadened its privacy policies, yet it has not stopped collaborating with third-party advertising platforms and earning money from disclosing users' data.

Considering the digital mental health apps market is in its rapidly developing era, it is of no surprise the companies' net worth is rising to unimaginable amounts. Therefore, when it comes to sanctioning, talking numbers in the light of financial punishment makes no sense. The most important element of their business are users – whether that means adults, children, teenagers or young adults – as they are the ones providing the very scalable data and direct payments to the app by paying additional packages or services. Therefore, the most efficient sanction for such violations and apps would not be monetary but to freeze their business until the correction of their unlawful business practice.

When it comes to the flooded market of mental health apps, users are used to use one app in particular, but if the one does not work for a while, they will quickly and easily find another comparable one. It is unlikely that the user, who seeks such services and opens an account at another app, will actually come back to the previous app, when they have already gotten comfortable with that newly chosen one. This way, the "frozen" app would start losing its users, but only until the privacy policies and the rightful respect for the privacy of its users were corrected. Then, the authority could unfreeze their app and enable its return to their normal business. If the app does not correct its policies and services in a reasonable time, that could lead to the loss of numerous users and, consequently, to high amounts of lost profit. The app provider would therefore be motivated to change his wrongdoing.

While a provider of a particular app might not feel deterred when he gets the obligation to cover a relatively low financial sanction (taking into account that it already gained more than it would without sharing users' data for advertising purposes), its attitude should be turning if it came to freezing their business and for

that limited time stop gaining new users, losing present users together with a loss of profit, daily revenue and more. Such an approach would cause apps to lose lots of money in the long run. In comparison, paying a one-time amount estimated at around a few million or approximately ten million dollars, when they are already making hundreds of millions of dollars, represents no deterrence and definitely no motivation to change.

In consideration of this, by implementing such sanctions, the state would not be imposing a specific number, as it is mainly seen in regulations, which could stir the opinions and raise doubts of the public. Nonetheless, the sanctions imposed are most of the times too low and, because of it, ineffective, not realizing their fundamental purpose – to deter and to reform the subject of misconduct.

Another solution to improve the effectiveness of the sanctions to some degree would be to propose them in the sense of a percentage of the annual turnover or revenue of the preceding financial year. For instance, this approach was already taken by the GDPR, which gives an option for the company to be served with a sanction leading up to the amount of 10 million euros or at the amount of two percent of the company's annual turnover of the preceding financial year – whichever is higher. With such an approach, the regulations are not imposing sanctions in a relatively small setting of the financial amount (e.g., from x dollars to y dollars), but allow the Tech Giants to be punished with higher sanctions and smaller players with smaller ones. Meaning, the smaller companies would be punished in accordance with their financial capacity, not to make them bankrupt, but still high enough to make them regret making the violations. However, in my opinion, the most prominent actors that turn billions of dollars yearly are still not getting the proper sanctions under the GDPR's approach. That is the reason why we believe this solution should improve the effectiveness of the sanctions to some degree.

Therefore, if we want to stop large platforms from making violations, the sanctions must change. Otherwise, the functioning of various apps will remain concentrated on making the most profits possible, the same violations will continue happening, and sanctions will be paid off repeatedly. That is why the decision-makers should first establish the purpose and the aim of the sanction and then consider about the most adequate steps to get there.

7 Conclusion

As personal data is becoming a new currency, the field is getting more valued and, with that, better protected. Even though the personal health data collected by or shared with an app (whether it is a medical app, fitness, or mental health app) during the registration process falls into the scope of a so-called grey area – not covered by the HIPAA – it does not mean this data is not protected at all. The example of BetterHelp shows that there are certain "watchdogs" besides the court who sense such privacy violations and impose sanctions, trying to prevent the continuance of such infringements. Furthermore, from the case of Talkspace, it can be learned that such app provider who is violating its users' privacy can be served with a class action lawsuit. Even though the cases of neither Teenspace nor Talkspace are not yet closed, by now the media has spread the news, as well as warnings about the privacy violations. In addition, we can see the US has recognised the importance of children's personal (health) data protection by the proposed amendments for the American Privacy Rights Act 2024 and Children's Online Privacy Protection Act.

Last but not least, data protection breaches are becoming a serious threat to our privacy and with that also to our rights in general. However, to have an actual breach, we must first have a provision in a legal act or code that is being violated. Since law always follows the footsteps of society, it is time that legal acts (or decision-makers) start to consider the technological development and innovations that come with it and regulate it accordingly. When it comes to disadvantaged groups of people, especially children that cannot really protect themselves by themselves, it is of significant importance that law does that for them.

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LABOUR LAW ASPECTS OF CHILD LABOUR IN THE INFORMATION AGE

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The article analyses the labour law aspects of child labour in the information age. It presents in detail the specific features related to the regulation of child labour and the possibilities of applying labour law legislation particularly to the work of children under the age of 15, pupils and students. Three sections are discussed: the normative regulation of child labour, the specific features of performing light work by children, the special protection provisions that apply to child labour, and the specific features related to digital child labour, which is emerging as a new form of work. The basic hypothesis in the article is that when defining child labour and the emergence of new forms of work, such as the work of information child influencers, it is necessary to regulate this appropriately in a way that takes into account the specific features of the situation of children who perform such work so that such work does not harm their safety, health, morality, education and development.

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1 Introduction

Childhood is a very important period of life, intended for the development of a child. It is a period in which a child's physical and mental development takes place. This is a time that should be dedicated to play, education, upbringing, gaining certain experiences, and learning about interpersonal relationships. Childhood should not be intended for work, obligations, worries about survival and obtaining financial resources. However, if we look at today's media and online platforms, the opposite is added. We see pictures, recordings, and films in which children present individual content to us, market products, and introduce us to life in a cute way. Online networks are full of images of children or children with parents who are trying to attract attention and sell certain products, content or services. At the same time, we do not even think that this is the work of children who are deprived of a normal carefree childhood, that we have new child stars who do not come from the land of dreams and movies, but from their home environment. The emergence of child stars and the emergence of new forms of work raises certain questions, namely, when does children's play become work, what does and does not constitute children's digital work, what is the role of parents in performing such work, and to whom and in what way is this work permitted.

The concept of child labour has changed throughout history and has been linked to individual forms of work. When defining the terms, it should be emphasised that the term child work is not the same as child labour. The following definitions have been given within the framework of UNICEF.¹ Child work is understood as the activities of children who help with various tasks. Therefore, activities that are partly intended to educate and promote responsibility are welcome as part of parental education. This includes forms of help with housework taking care of one's own space, such as cleaning and participating in various activities within the family, sports activities, decorating, and harvesting crops. More demanding forms of child labour occurred in family activities that were intended to earn money, such as agricultural activities within family farms. In accordance with international standards, child labour is defined as work that deprives children of their childhood, which causes children to fail to develop their potential and dignity and can be harmful to physical and mental development. Whether a particular activity is called child work or child

¹ Emezue et al., 2023, p. 40.

labour depends, of course, on several factors, such as the child's age, the type and hours of work performed, and the conditions under which the work is performed.

Article 1 of the Convention on the Rights of the Child² states that a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

In relation to the topic of the paper, the following will discuss child labour, which is not carried out based on an employment contract and covers categories of children up to fifteen years of age who perform non-classical forms of work. When reviewing the specifics of this nature of work, it is necessary to define the labour law aspects of child labour performed in the home environment and under the instructions or supervision of parents. The question also arises as to what the appropriate measures are or how not only to define but also to normatively regulate the implementation of such work so that children are protected. This must be set carefully so as not to interfere with the family environment, but at the same time be strict enough to enable the protection of children's health, prevent their exploitation and not interfere with the education and development of children.

2 Normative Characteristics of Child Labour Regulation

The importance of regulating the protection of children and establishing special protective provisions stems from the existing regulation at the international level, which sets out basic standards for the framework of child labour. Within the framework of the United Nations (hereinafter: UN), the UN General Assembly adopted the Declaration of the Rights of the Child³ on 20 November 1959, which set out in 10 principles the rights and freedoms that all children should enjoy. Because the Declaration was not a legally binding document, the UN adopted the Convention on the Rights of the Child (hereinafter: UNCRC)⁴ thirty-five years ago.

² *Convention on the Rights of the Child* (CRC), adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.

³ Declaration of the Rights of the Child, adopted at the 841st plenary meeting, 20 Nov. 1959 by the UN General Assembly (14th sess. 1959).

⁴ With the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia and the Act on the Notification of Succession to the UN Convention (Uradni list RS – MP No. 9/1992 (RS 35/1992), which has been in force since 17 July 1992, the Republic of Slovenia has succeeded to the United Nations Convention on the Rights of the Child. Retrieved from: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en (accessed: 28 November 2024).

Based on Article 32, para. 1 of the UNCRC, it is determined that the Contracting States recognize the right of the child to protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The obligations of the States Parties are particularly important, namely, under Article 32, para. 2 of the UNCRC, they are obliged to ensure the child's right to protection from unsuitable work through legislative, administrative, social and educational measures and to set a minimum age for employment, appropriate regulations on the number of working hours and conditions of employment, and appropriate penalties and other sanctions to ensure the effective enforcement of this article.⁵

Article 10 of the International Covenant on Economic, Social and Cultural Rights⁶ also requires the protection of children and young people from economic and social exploitation, and in particular states that the employment of children in work that is harmful to their morals or health, is dangerous to their life, or is likely to hinder their normal development, shall be considered a criminal offence. States must also set an age limit below which paid child labour is prohibited and punishable by law.

The International Labour Organization (hereinafter: ILO) has adopted several conventions and recommendations on child labour, which all share the common principle that the primary task of growing children is learning or training.⁷ The minimum age for child labour is set by the Convention (No. 138) Concerning Minimum Age for Admission to Employment⁸ and its Recommendation No. 146 on the Minimum Age for Admission to Employment, which obliges member states to eliminate child labour.⁹ ILO conventions set basic standards for the protection of

⁵ The monitoring mechanism that monitors the implementation of the UNCRC is the Committee on the Rights of the Child (hereinafter: CRC), which is a committee of 18 independent experts. It also monitors implementation of the Optional Protocols to the Convention, on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography (more information available at: <https://www.ohchr.org/en/treaty-bodies/crc>). States parties are obliged to submit regular reports on the implementation of rights. States must submit an initial report two years after accession to the UNCRC and then regular reports every five years. The CRC has the power to review reports and address its concerns and make recommendations to the State party in the form of "concluding observations", and it can also consider complaints.

⁶ International Covenant on Economic, Social and Cultural Rights: Uradni list RS, no. 35/92 – MP, no. 9/92.

⁷ Bagari, 2024, p. 1276.

⁸ Convention (No. 138) Concerning Minimum Age for Admission to Employment, Convention (No. 138): Uradni list RS – MP, št. 15/92, 1/97, 17/15.

⁹ Within the framework of the ILO, the following were also adopted: Convention (No. 90) Concerning the Night Work of Young Persons Employed in Industry (Uradni list RS – MP, št. 15/92), Convention (No. 182)

children at work and specific safety provisions related to the prohibition of individual forms of work.

The Member States of the Council of Europe have set out the following commitments for the realisation of the rights of children and young people in Article 7 of the European Social Charter and its Additional Protocol of 1988, namely a minimum age of 15 years for admission to work,¹⁰ which is raised to 18 years in the case of employment in work considered hazardous or unhealthy. The commitments of the member states in regulating child labour are that children who are still in compulsory schooling may not be employed in work which would prevent them from fully benefiting from their education, the working hours of persons under the age of eighteen years shall be limited in accordance with the needs of their development, in particular the needs of their vocational training, young workers and apprentices have the right to a fair wage or other appropriate remuneration, and vocational training of young people during regular working hours with the consent of the employer shall be considered part of the working day. In particular, in order to ensure the safety and health of children, it was stipulated that employed persons under the age of eighteen are entitled to at least four weeks of paid annual leave, that persons under the age of eighteen may not be employed at night, except in those professions for which this is prescribed by national legislation, that regular medical examinations are prescribed for persons under the age of eighteen who are employed in professions specified by national legislation, and that special protection is ensured against the physical and moral dangers to which children and young people are exposed, in particular against those which arise directly or indirectly from their work.

This directive obliges Member States to take appropriate measures to prevent child labour and to ensure that the minimum age for admission to employment or employment is not lower than the minimum age for the completion of compulsory full-time education as determined by national legislation and in no case less than 15 years, that children are protected from economic exploitation and from any work that is likely to harm their safety, health or physical, mental, moral and social development, or to jeopardize their education. This directive, therefore, sets out criteria for the entry into the work of children, just as in international instruments.

Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Uradni list RS – MP, no. 7/01).

¹⁰ The age of 15 is not absolute, but light work that does not harm the health, morals or upbringing of children is permitted.

Still, the special feature of this directive is that it sets out general obligations for employers where children or "young persons"¹¹ participate in the work process, it also determines the sensitivity of young persons. It lists the work where the work of young persons is prohibited.

In the field of child labour, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA¹² and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA¹³ are also important. These two directives regulate the most serious criminalisation of acts constituting child exploitation and child labour.¹⁴

Slovenia has included children's rights in its legal system at the highest level and has established children's rights as a special constitutional category.¹⁵ The status of children and their rights is regulated by the Constitution of the Republic of Slovenia (hereinafter: URS)¹⁶ in several places, depending on the type of status or right in question.¹⁷ Article 56 of the URS regulates the rights of children, stipulating that children enjoy special protection and care. Children enjoy human rights and fundamental freedoms in accordance with their age and maturity. Children are guaranteed special protection against economic, social, physical, mental or other exploitation and abuse. Such protection is regulated by law. Article 54 determines the rights and duties of parents to maintain, educate and raise their children. This

¹¹ The Directive defines three categories of children entering the work process, namely: "young person" means any person under the age of 18 years and to whom Article 2(1) of the Directive applies, "child" means any young person under the age of 15 years or who is enrolled in compulsory full-time education in accordance with national law, and "adolescent," which means any young person who is at least 15 years of age and not more than 18 years of age and who is no longer enrolled in compulsory full-time education in accordance with national law.

¹² Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (Official Journal of the EU L 335/1).

¹³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Official Journal of the EU L 101/1).

¹⁴ Šaloven, 2024.

¹⁵ Šelih, 2014, p. 21.

¹⁶ Constitution of the Republic of Slovenia (Slovene *Ustava Republike Slovenije*): Uradni list RS, št. 33/91-I, 42/97–UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121, 140, 143, 47/13 – UZ148, 47/13 – UZ90, 97, 99, 75/16 – UZ70a, 92/21 – UZ62a.

¹⁷ Kaučič & Grad, 2011, p. 151.

right and duty may be taken away from parents or restricted only for reasons specified by law.

The provision of para. 2 of Article 56 of the URS has been implemented in the labour law legislation, namely in the chapter Work of children under 15 years of age, pupils and students. This chapter is special, given that the Employment Relationships Act (hereinafter: ZDR-1)¹⁸ regulates employment relationships concluded with an employment contract. Work performed by children, or pupils and students, is not work performed based on a concluded employment contract; therefore, it is not an employment relationship. The protective provisions relating to children, pupils and students, however, fall within the scope of labour law, and are therefore included.¹⁹ In accordance with Article 211 of the ZDR-1, it is stipulated that the work of children under 15 years of age is prohibited. This prohibition is not absolute and follows international standards for exceptions to the general prohibition of work by children under 15 years of age, related to the field of activity. Children under the age of 15 may, exceptionally, for a fee, participate in the filming of films, the preparation and performance of artistic, scenic and other works in the field of cultural, artistic, sports and advertising activities. Children over the age of 13 may perform light work for a maximum of 30 days in a calendar year during school holidays, also in other activities, in a manner adapted so as not to endanger their safety, health, morals, education and development.²⁰ An implementing act determines the types of light work. In exceptional cases, children may only work with prior permission from the labour inspectorate.

The amendment to the ZDR-1D amended Article 212 to provide even greater protection for children under the age of 15 with special protective provisions regarding the work of children under the age of 15. The reason for the change was the findings of the European Committee of Social Rights, namely: the permissible number of hours of light work that children under the age of 15 can perform during

¹⁸ Employment Act (Slovene *Zakon o delovnih razmerjih* – ZDR-1): Uradni list RS, št. 21/13, 78/13 – popr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, v15/17 – odl. US, 22/19 – ZPosS, 81/19, 203/20 – ZIUPOPDVE, 119/21 – ZČmIS-A, 202/21 – odl. US, 15/22, 54/22 – ZUPŠ-1, 114/23, 136/23 – ZIUZDS.

¹⁹ Bagari, 2024, p. 1274.

²⁰ These types of light work that children from the age of 13 can perform are specified in the Rules on the Protection of Health at Work of Children, Adolescents and Young Persons (Uradni list RS, št. 62/15) and are listed by way of example. Light work includes office work, work in restaurants, work in agriculture, forestry and gardening, light printing and sewing work, tasks related to packaging and distribution, work in laundries, photographic work, etc.

school holidays has been reduced from seven to six hours and from 35 to 30 hours per week. An additional obligation has been established that children performing light work during school holidays must be provided with at least two weeks of uninterrupted rest.²¹ The work of pupils and students is also regulated in the Employment and Unemployment Insurance Act (hereinafter: ZZZPB)²² - used for the placement of temporary and occasional work of pupils and students on the basis of the transitional provisions of the Labour Market Regulation Act (hereinafter: ZUTD),²³ the Public Finance Balancing Act (hereinafter: ZUJF)²⁴ and the Vocational and Professional Education Act (hereinafter: ZSPI-1).²⁵

3 Child Labour in the Information Age

With the change in the way of working and the spread of the internet, a new job or profession called influencer²⁶ emerged, that is, an individual who created their own online space through which they could share their interests or beliefs with others without intermediaries. The matter developed into a profession when individual companies realized that the most effective ads were those that were part of the blog content and influencers became a de facto marketing profession.²⁷ The new job description for an influencer is adding stories, creating content, sharing everyday life moments, collaborating with international brands, receiving PR packages, modelling and earning money. What attracts the most viewers, what has the greatest impact on

²¹ Article 212 of the ZDR-1 also prohibits night work and provides for a daily rest period of at least 14 consecutive hours. Likewise, work performed by a child during the school year outside of school hours may not exceed two hours per day and 12 hours per week.

²² Employment and Unemployment Insurance Act (Slovene *Zakon o zavarovanju in zaposlovanju za primer brezposelnosti* – ZZZPB): Uradni list RS, št. 107/06 – official consolidated text, 114/06 – ZUTPG, 59/07 – ZŠtip, 51/10 – Supreme Court decision, 80/10 – ZUTD, 95/14 – ZUJF-C.

²³ Labour Market Regulation Act (Slovene *Zakon o urejanju trga dela* – ZUTD): Uradni list RS, št. 80/10, 40/12 – ZUJF, 21/13, 63/13, 100/13, 32/14 – ZPDZC-1, 47/15 – ZZSDT, 55/17, 75/19, 11/20 – Constitutional Court decision, 189/20 – ZFRO, 54/21, 172/21 – ZODPol-G, 54/22, 59/22 – Constitutional Court decision, 109/23, 62/24 – ZUOPUE.

²⁴ Public Finance Balancing Act (Slovene *Zakon za uravnoteženje javnih finanč*): Uradni list RS, št. 40/12, 96/12 – ZPIZ-2, 104/12 – ZIPRS1314, 105/12, 25/13 – Constitutional Court decision, 46/13 – ZIPRS1314-A, 56/13 – ZŠtip-1, 63/13 – ZOsn-I, 63/13 – ZJAKRS-A, 99/13 – ZUPJS-C, 99/13 – ZSVarPre-C, 101/13 – ZIPRS1415, 101/13 – ZDavNepr, 107/13 – Constitutional Court decision, 85/14, 95/14, 24/15 – Constitutional Court decision, 90/15, 102/15, 63/16 – ZDoh-2R, 77/17 – ZMVN-1, 33/19 – ZMVN-1A, 72/19, 174/20 – ZIPRS2122, 139/22 – ZSPJS-AA.

²⁵ Vocational and Professional Education Act (Slovene *Zakon o poklicnem in strokovnem izobraževanju* – ZSPI-1): Uradni list RS, št. 79/06, 68/17, 46/19, 53/24).

²⁶ In 2019, the word “influencer” was added to the Merriam-Webster dictionary and is defined as “a person who is able to generate interest in something (such as a consumer product) by posting about it on social media.”

According to Forbes, 54 percent of Americans aged 13 to 38 would become an influencer if given the opportunity (Masterson, 2021, p. 6).

²⁷ Schitton, 2018, p. 15.

consumers, and gives the content a certain authenticity and a sense of "family" are children in front of the camera, children in the role of actors, and comments. Today, influencers, who are usually part of upper-class, educated and sophisticated families, are now "sending their children to work" from the comfort of their own homes, turning them into "Kidfluencers"²⁸, which is the term for child internet stars. A child influencer or Kidfluencer is a child who, by posting content online on various social media platforms, creates a large number of viewers and followers and often earns money for sponsored content. This new term is a colloquial term used to refer to a child who is an influencer on social media. With such visibility and followers, children or, through them, parents expect contracts with major brands, and there is also no age limit for such work and appearance for children who participate in the creation of individual content.²⁹

When defining child labour in the digital age, new terms are also emerging for performers of such work or contractors who negotiate for content, namely Sharing - digital parenting (share in parenting) - parental publishing of content about children on social networks.³⁰

Although this social media work is relatively new, it has become a very important part of any brand strategy, and influencers have become important brand ambassadors. With many of these influencers giving their viewers an intimate insight into their private lives in order to gain more views and reach a wider audience, it is not surprising that children are increasingly becoming part of their parents' content on social media – which in turn has led to the development of the Kidfluencer phenomenon. From a labour law perspective, when creating online content, a child is not playing, but working, regardless of the parents' opinion. According to the ILO, child labour is often defined as: "work that deprives children of their childhood, their potential and their dignity and is harmful to their physical and mental development. It refers to work that is: mentally, physically, socially or morally dangerous and harmful to children or interferes with their education."³¹

²⁸ Whaibe, 2021.

²⁹ Feller & Burroughs, 2022, p. 577.

³⁰ There is now a phenomenon where parents start posting content even before their children are born. Siibk & Traks, 2019, p. 116.

³¹ Whaibe, 2021.

Regardless of parents' views and denials that creating content online is play, children are not fully mature physically and cognitively, so parents act as surrogate agents in carrying out the activity. In traditional child labour, children were sent to factories at a very young age to do hard labour in harsh conditions, and even regular workers did not want their children to be exploited in this way. Still, now the emergence and development of digital media have given rise to another form of child labour.³² Most social media platforms, such as Instagram and YouTube, require users to be 13 years or older to create accounts on their sites, meaning that individual restrictions on who and how can create content would not, from this perspective, result in child protection. As a result, most parents of "Kidfluencers" manage their accounts in order to maintain their online presence.³³ The emergence of the child star did not happen with the emergence of kidfluencers, but child actors had already appeared before. However, when comparing the work of a child actor or the digital work of a child, the difference is in the place of work, the pay for the work, the employer, and the working hours.³⁴

Given the above, the question arises whether digital child labour is a new form of work, when can we define the creation and display of digital content by children for work and what defines it. If we proceed from the definition of an employment relationship, which is defined as a relationship between an employee and an employer, in which the employee voluntarily participates in the employer's organized work process and, for payment, personally and continuously performs work according to the employer's instructions and under the employer's supervision. The essential elements of an employment relationship are therefore the employee's voluntary participation in the employer's organized work process, the performance of personal work, the performance of work for payment, the continuous performance of work and the performance of work according to the employer's instructions and under the employer's supervision. When defining digital child labour, the following elements can be highlighted: it is the work of a child in the role of appearing on online networks, it is related to obtaining financial resources and

³² Pan & He, 2023, p. 81.

³³ Masterson, 2021, p. 14.

³⁴ A child actor has a predetermined content of his role, the length of the work process is standardized, the work process takes place outside the home environment and the work is carried out under the guidance of professional directors and screenwriters. The case is different with a kidfluencer, who does not have a predetermined content of work, the length of the working day is not planned, the work process takes place in the home environment, the process of recording and creating content is led by parents. Child influencers have two employers, both the client and payer of the content, and the parents, who perform the contractually agreed content with the child.

promoting a product, which means that the work is performed for payment, the work is related to the frequency of publishing content, and the role of employers is played by parents, who supervise the preparation of content published on online networks.

4 Regulation of Child Labour in the Information Age

The phenomenon of Kidfluencers also raises questions about children's rights to privacy and identity. Many parents upload videos and images without even thinking that they are creating digital footprints that their children are not even aware of, let alone able to consent to. At the same time, it marks them for life. It is important to point out that the act of consent in carrying out such work is not optional. Children should freely agree to digital work, and if parents believe that they are too young to be able to choose, parents should reconsider their decision. The internet is eternal and as their digital identity is somewhat solidified, children may eventually be hindered from discovering and developing their own image. Thus, children should also be allowed to participate online and choose how they want to present themselves. Consent or free choice should be crucial. The reality is that parents usually think that it is normal to make decisions without first asking their child. However, a child should never be seen in the public eye, constantly creating content, without consenting to the action based on their knowledge of what that action involves and what its likely consequences are.³⁵

Below, I highlight new provisions that represent recommendations for regulating children's rights and their protection in the digital world. Thus, at its 86th session, the CRC adopted and on 25 March 2021 adopted General comment No. 25 (2021) on children's rights in relation to the digital environment,³⁶ which emphasizes that the rights of every child must be respected, protected and fulfilled in the digital environment as well. The CRC highlights four principles for determining the measures necessary to ensure the realization of children's rights in the digital environment: non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the views of children. The CRC recommends that states adopt legislative measures and comprehensive policies and strategies, collect data and conduct research, conduct independent monitoring, raise

³⁵ Whaibe, 2021.

³⁶ General comment No. 25, 2021.

awareness and train children, cooperate with civil society, and strengthen access to justice and legal remedies, all to protect children in the digital environment. The protection of children's privacy is also highlighted - any interference with it must be provided for by law, which takes into account the principle of data minimization, be proportionate and designed to take into account the child's best interests and must not conflict with the provisions and objectives of the Convention on the Rights of the Child. Data protection legislation must respect the privacy and personal data of children in the digital environment.

The first country within the European Union to have a specific law aimed at protecting children working in the digital environment was France.³⁷ In 2020, Law No. 2020-1266 of 19 October 2020 regulating the commercial exploitation of images of children under the age of sixteen on online platforms (LOI n° 2020-1266 du 19 octobre 2020 visant à encadrer l'exploitation commerciale de l'image d'enfants de moins de seize ans sur les plateformes en ligne)³⁸ was adopted, which defines the conditions for obtaining a permit to publish digital content with children, the possibility of renewing such permits, the obligations and status of parents in such child labour, and the transfer of money to a special fund managed by a public financial institution until the child reaches the age of majority.³⁹

To protect children working on various online media, various proposals have been made to regulate this area. As a first requirement, it would be necessary to introduce special work permits for "Kidfluencers" at the national level. Individual countries would thus be able to monitor which parents and guardians are generating profit from their children's activities on social networks, which would allow the collection of data to quantify the extent of the "Kidfluencer" problem and allow us to better understand some of the consequences, as well as greater control over the performance of digital work itself. Secondly, it would make sense to include normative bases that would apply and specifically refer to the issue of digital child labour and would follow recent and past cases in France. Among the normative bases, it would be appropriate to include requirements for the establishment of funds

³⁷ Quashie, 2024.

³⁸ LOI n° 2020-1266 du 19 octobre 2020 visant à encadrer l'exploitation commerciale de l'image d'enfants de moins de seize ans sur les plateformes en ligne (Journal officiel électronique authentifié n° 0255 du 20/10/2020).

³⁹ In matrimonial matters, special attention is given to the financial protection of children until they reach adulthood, which means that in France they want to prevent what in America is the Coogan trust model (Masterson, 2021, p. 26).

for "Kidfluencers" who are included in social media profiles that generate profit. This would serve a dual purpose: to ensure that children are not financially exploited and to discourage parents and guardians from activities where they are less likely to reap financial benefits.⁴⁰

Children spend long hours producing financially profitable content under the direction of their parents and guardians. These children lack personal, professional and financial protection. While we must continue to respect the autonomy of parental rights, they must always be exercised in the best interests of the child. As we move into a new digital age, legislators and policymakers must follow suit to protect children and raise awareness of the inherent risks associated with "Kidfluencers" and the proposals outlined above are for consideration in national regulations.⁴¹

5 Regulation of Child Labour in the Information Age in Slovenia

The report of the Labour Inspectorate of the Republic of Slovenia for 2023 shows that in 2023, 755 work permits related to the work of children under the age of 15 were issued. The vast majority of these were for child labour in the filming of commercials, videos and films.⁴² The year before, 659 decisions were issued, i.e. 96 fewer for the same content of work.⁴³ It is also worth noting that the Labour Inspectorate of the Republic of Slovenia fined an influencer who promoted products on Instagram with the help of his children. The fine was issued because the parents did not apply for permission from the labour inspectorate. A permit must be obtained from the inspectorate for the work of children under the age of 15. In this case, the offence was imposed on a family due to the recordings published on online platforms, which show that it was a promotion of a specific product in which children also participated. The family has a website and publishes content on Instagram, Facebook, and YouTube. The recordings published on Instagram are said to be controversial.

⁴⁰ Cezarita Cordeiro, 2021.

⁴¹ Masterson, 2021, p. 26.

⁴² Available at: https://www.gov.si/assets/organi-v-sestavi/IRSD/LETNA-POROCILA-IRSD/Porocilo_o_delu_IRSD_v_2023.pdf, p. 26. (accessed: 8 November 2024).

⁴³ Poročila Inšpektorata Republike Slovenije za delo za leto 2022, p. 29.

The provisions of Article 211 of the ZDR-1, which do not technically define digital work, but do list advertising activities, are now used by analogy to regulate the digital work of children under 15.⁴⁴ The procedure for regulating the digital work of children in Slovenia is now carried out in such a way that it is understood that before the start of the digital work of children, a procedure is carried out in accordance with Article 211 of the ZDR-1 and the procedural provisions of the Rules on the Protection of Health at Work of Children, Adolescents and Young Persons. It is thus envisaged that parents must obtain a permit from the Slovenian Labour Inspectorate before starting to record content, which is valid for a period of one year. The Slovenian Labour Inspectorate has the authority to require the parent to demonstrate that digital work will not endanger the health, development or safety of the child. If it is deemed necessary, the procedure may also involve the Social Work Centre or the School Counselling Service. The obligations that parents have when performing such work include compliance with working time restrictions, protective provisions regarding the prohibition of night work, ensuring appropriate payment for children and ensuring the right to daily and weekly rest.

Given the extensive nature of the phenomenon of digital child labour and the absence of any records of such forms of work, let alone monitoring of this content, it would be necessary to follow the legislation in France, which has adopted a *lex specialis* exclusively for this area, precisely because of the application of the existing provisions of labour legislation by analogy.

6 Conclusion

With the development of information technology and new online platforms, digital child labour has also emerged, a new way of advertising products and services. The reality is that digital child labour is a new form of work. When defining digital child labour, we can highlight the following elements: it is the work of a child in the role of appearing on online networks, it is related to obtaining financial resources and promoting a product, which means that the work is performed for a fee, the work is related to the frequency of publishing content, the role of employers is played by parents who exercise supervision in the preparation of content published on online networks, the work is performed in a home environment and thus there is no sharp

⁴⁴ The Labour Inspectorate of the Republic of Slovenia has already decided that the second paragraph of Article 211 of the ZDR-1 also applies to the above cases (Šaloven, 2024, p. 53).

division between private and professional life, work becomes play and play becomes work. Parents can publish content with their children in a way that includes them on their own social networks or that creates their own profile on social networks for the child. In the context of content preparation, children are presented attractively and are instructed to use pre-prepared sentences that are not very understandable to children when recording content for social networks. Currently, digital child labour is not regulated by any specific document, neither at the international nor at the EU level, although child labour itself is regulated.

Within the framework of ZDR-1D, the provisions of Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work⁴⁵ were implemented in a way that only the number of allowed working hours was reduced. This directive obliges Member States to take appropriate measures to prevent child labour and to ensure that the minimum age for admission to work or employment is not lower than the minimum age for the completion of compulsory full-time education as laid down in national law, but in no case less than 15 years, that children are protected from economic exploitation and from any work that is likely to harm their safety, health or physical, mental, moral and social development, or to jeopardise their education, and that digital child labour is not specifically regulated. The first country within the European Union to have a specific law aimed at protecting children working in the digital environment was France. Due to the laxity of the current provisions in labour law, I believe that it would be necessary to follow the example of the legislation in France and draft legislation in a way that would cover the specifics of such work, as well as how to contractually regulate such work, since the payment for advertising content is actually received by the parent and not the child.

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⁴⁵ Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (Official Journal of the EU L 216/12).

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THE IMPLEMENTATION OF CHILDREN'S RIGHTS IN CORRELATION WITH PARENTAL RIGHTS IN THE UPBRINGING PROCESS: THE POLISH PERSPECTIVE

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The subject matter of the present study is the examination of children's rights in correlation with parents' rights in the upbringing process. As it is assumed, the right of the parents to raise their children in accordance with their convictions belongs to the basic categories of rights that are guaranteed to parents and legal guardians at the normative level by the international community and the national legislator. The author analyses the current normative solutions in Poland from a national and international perspective. The first part of the study explains the basic concepts, i.e., family, upbringing, child or convictions. The second part presents the basic normative solutions applicable in the area of parental authority, education, and the rights to which a child is entitled. The whole study ends with a summary presenting conclusions of the analysis of the discussed issues.

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1 Terminological Remarks

The parental right to raise their children in accordance with their convictions is a fundamental category of rights guaranteed to parents and legal guardians at the normative level by the international community and national legislators. A detailed analysis of particular legal solutions involves their consideration from multiple perspectives. Indeed, the legislator's accurate guarantees at the normative level seem to be the primary issue. Consequently, adequate normative regulations should include both the interactions between parents and broadly understood authorities and institutions representing them, as well as interpersonal relationships. These regulations concern the rights towards third parties that may interfere with the upbringing process, as well as the correlation of mutual interests with the child being under parental authority.

The upbringing of a child is generally associated with their development within a family. However, some circumstances lead to the parents' divorce or separation; as a result, the upbringing process is somehow altered. A child may grow up in a new family of one of the parents, while the other parent influences their upbringing process through agreed-upon contact arrangements. Additionally, a joint custody arrangement may be established, whereby the child spends equal time with both parents, who jointly decide on their upbringing.

The term "family" is a normative concept in Polish law; however, neither the Act of 25 February 1964 – the Family and Guardianship Code (hereinafter: FGC)¹, nor the Constitution of the Republic of Poland² provides a legal definition of the term. The attempt to specify the definition of the "family" can be found in the Act of 12 March 2004, on Social Assistance (hereinafter: SAA).³ According to Article 6(14), the family includes persons who are related or not related to each other, together residing and hosting. Thus, the scope of individuals forming a family is not limited only to parents and their children. Furthermore, the Act of 28 November 2003, on Family Benefits

¹ The Act of February 25, 1964 – the Family and Guardianship Code [Ustawa z dnia 25 lutego 1964 r., Kodeks rodzinny i opiekuńczy] (consolidated text: Dz. U. - Journal of Laws of 2023, item. 2809).

² The Constitution of the Republic of Poland of April 2, 1997, [Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.] (Dz. U. - Journal of Laws of 1997, No. 78, item 483 as amended).

³ The Act of March 12, 2004, on Social Assistance. [Ustawa z dnia 12 marca 2004 r. o pomocy społecznej] (consolidated text: Dz. U. - Journal of Laws of 2024, item 1283, as amended).

(hereinafter: FBA)⁴ specifies the entities entitled to receive family benefits. According to Article 3(16), a family consists of spouses, parents, children, the child's actual guardians, children up to the age of 25, and children after the age of 25 with a certificate of a significant degree of disability if, due to this disability they are entitled to care benefits or special care allowance.

In European Union law, the definition of "family" is further clarified in Directive 2004/38/EC.⁵ According to Article 2, a "family member" means: (a) the spouse; (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State; (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b); (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b); Directive 2014/54/EU also refers to this definition.⁶

Polish Constitution proclaims in Article 18 the principle of protecting families, motherhood, and parenthood. Furthermore, everyone shall have the right to legal protection of their private and family life, of their honour and good reputation, and to make decisions about their personal life (Article 47 of the Polish Constitution). The State is obligated to take into account the good of the family in its social and economic policy. Families, finding themselves in complex material and social circumstances - particularly those with many children or a single parent - shall have the right to special assistance from the public (Article 72(1) of the Polish Constitution). Additionally, the rights specified in Article 72 of the Polish Constitution cannot be restricted even during states of emergency or martial law (Article 233(1) of the Polish Constitution).

⁴ The Act of November 28, 2003, on Family Benefits [Ustawa z dnia 28 listopada 2003 r. o świadczeniach rodzinnych] (consolidated text: Dz. U. - Journal of Laws of 2024, item 323, as amended).

⁵ Directive 2004/38/EC of the European Parliament and the Council of April 29, 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 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC, and 93/96/EEC (Official Journal of the EU L 158, p. 77).

⁶ Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (Official Journal of the EU L 128, p. 8).

Upbringing is a normative category included in the canon of rights granted to parents at the international and national standards of legal solutions. Although the legislator frequently employs the term "upbringing", its legal definition has not been defined. Therefore, to clarify the essence and scope of this concept, it is necessary to refer to disciplines other than law, along with doctrinal positions and judicial interpretations. Agnieszka Salamucha notes that, on the one hand, the term is central in pedagogy because it defines its subject matter. Still, on the other hand, pedagogy contains very few terms as ambiguous as "upbringing".⁷ According to Romana Miller, upbringing includes: searching for meaning in life, socialization, development, maturing for responsibilities, interpreting life experiences, guidance, involvement in personality formation, creation (self-transformation and environmental transformation) and preparing a human being for life in specific times.⁸

The legal doctrine and judiciary also specify the interpretation of this term. According to the doctrine, as interpreted in light of Article 48(1) of the Polish Constitution, upbringing means infusing and reinforcing a specific worldview, beliefs, value system, and moral and ethical norms in children through the conscious actions of parents.⁹ The purpose of upbringing is to shape young individuals according to the will of their parents and legal guardians. However, this is not an absolute right, as it is subject to limitations arising from the child's autonomy and the State's fundamental responsibilities.

According to the Constitutional Tribunal, upbringing is a category of parental rights. This duty includes not only the right to custody of the child but also the right to manage their belongings and represent them.¹⁰ The doctrine also emphasizes another aspect of upbringing: it is treated not only as a right but also as a duty that lasts until the child reaches the age of 18, allowing the child to demand appropriate upbringing from their parents.¹¹ If parents or legal guardians fail to provide such care, the child has a right to receive assistance provided by public authorities (Article 72(2) of the Polish Constitution). Some doctrinal views suggest that this issue should be framed more accurately as a state obligation.¹²

⁷ Salamucha, 2024, p. 31.

⁸ Miller, 1981, pp. 114–153, more on discussion of the concept of upbringing, see de Tchorzewski, 2018.

⁹ Florczak-Wątor, 2019.

¹⁰ Judgment of the Constitutional Tribunal of 21 January, 2014, SK 5/12, OTK-A 2014, No. 1, item 2.

¹¹ Florczak-Wątor, 2019.

¹² Mostowik, 2014, p. 28.

The term 'child' as a reference point for all parental rights must be interpreted within the framework of legal definitions. Under the Act of 6 January 2000, on the Ombudsman for Children's Rights¹³, a child is defined as any human being from conception to the age of majority (Article 2(1)). The Convention on the Rights of the Child¹⁴ (hereinafter: CRC) defines a 'child' as every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier (Article 1). In Polish law, this exception applies to a female who, after reaching the age of 16 and with court permission, enters into marriage, thereby attaining legal majority, which is not revoked even if the marriage is annulled (see: the Article 10(2) of the Civil Code¹⁵ in conjunction with the Article 10(1) of the Family and Guardianship Code).

The term 'convictions' has been clarified in the case law of the European Court of Human Rights (hereinafter: ECtHR) under Article 9 of the European Convention on Human Rights (hereinafter: ECHR) and Article 2 of Protocol No. 1 to the Convention.¹⁶ In the case of *Ejstratou v. Greece* (18 December 1996), the ECtHR stated that 'convictions' are not synonymous with 'opinions' or 'concepts' but rather denote views that attain a certain level of firmness, seriousness, coherence, and importance. Furthermore, they emphasized that the State must respect parental convictions, whether religious or philosophical, in the educational system. This obligation is broad and applies not only to curriculum content but also to the implementation of all educational functions. For the ECtHR, 'to respect' implies more than 'to acknowledge' or 'to take into account'; it involves the existence of positive obligations of the State.¹⁷

In the judgment of 18 March 2011, *Lautsi v. Italy*, the ECtHR, referring to the interpretation of the term *respect* in the context of Article 8 of the ECHR, noted that its meaning would vary significantly depending on the legal system of a particular State. Consequently, states enjoy a wide margin of interpretation when determining

¹³ The Act of January 6, 2000, on the Ombudsman for Children's Rights, [Ustawa z dnia 6 stycznia 2000 r. o Rzeczniku Praw Dziecka] (consolidated text: Dz. U. – Journal of Laws of 2023, item 292).

¹⁴ The Convention on the Rights of the Child of November 20, 1989, (Dz. U. – Journal of Laws of 1991, No. 120, item 526, as amended).

¹⁵ The Act of April 23, 1964, the Civil Code, [Ustawa z dnia 23 kwietnia 1964 r., Kodeks cywilny], (consolidated text: Dz. U. – Journal of Laws of 2024, item 1061).

¹⁶ Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of March 20, 1952 (Dz. U. – Journal of Laws of 1995, No. 36, item 175).

¹⁷ Complaint No. 24095/94, LEX No. 79871.

the steps that may be taken to ensure appropriate solutions are consistent with the Convention. Furthermore, respect for parents' religious convictions and children's beliefs involves the right to believe in a given religion or to abstain from any religious belief. Both the freedom to believe and the freedom not to believe are equally protected¹⁸.

2 Normative Regulations

Parental and legal guardians' rights to determine the framework of their children's upbringing are a normative category recognized at the international and national legislative levels. Existing regulations present a significant degree of similarity; however, a comprehensive approach to this issue requires a separate reference to these particular legal solutions.

2.1 International Law

The Universal Declaration of Human Rights¹⁹, despite its non-binding character, has become a model for many solutions adopted by both national and international legislators. Although Article 26(3) does not explicitly mention "upbringing," it grants parents the primary right to choose the type of education for their children. The International Covenant on Civil and Political Rights (Article 18(4))²⁰ and the International Covenant on Economic, Social, and Cultural Rights (Article 13(3)) ensure parents have the right to provide religious and moral education to their children in accordance with their convictions.²¹ Correspondingly, Article 2 of Protocol No. 1 to the ECHR recognizes the right of parents to ensure education and teaching in accordance with their own religious and philosophical convictions. The Charter of Fundamental Rights of the European Union expands the scope of these convictions by including 'pedagogical convictions' (Article 14(3)). The CRC locates parental rights within the broader context of children's rights. The concept of "upbringing" is complemented by the term "appropriate direction and guidance" of the child (Article 5 of the CRC). The CRC treats upbringing as a parental duty.

¹⁸ Complaint No. 30814/06, LEX No. 784874.

¹⁹ Universal Declaration of Human Rights of December 10, 1948, retrieved from: <http://libr.sejm.gov.pl/tek01/txt/onz/1948.html> (February 1, 2025).

²⁰ The International Covenant on Civil and Political Rights of December 19, 1966 (Dz. U. – Journal of Laws of 1977, No. 38, item 167).

²¹ The International Covenant on Economic, Social, and Cultural Rights of December 19, 1966. (Dz. U. – Journal of Laws of 1977, No. 38, item 169).

Article 18(1) states that all best efforts shall be used to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. The best interests of the child will be their basic concern. Moreover, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities, and services for the care of children (Article 18(2) of the CRC). The State's responsibilities have been expanded to include taking 'all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child' (Article 19(1) of the CRC). The CRC granted children a range of rights, some of which were previously the exclusive prerogative of parents and legal guardians. Some countries, including Poland, interpreted this as a potential threat to parental authority and the child-rearing process. Consequently, when ratifying the CRC, Poland submitted the following declaration: *"The Republic of Poland considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12 to 16, shall be exercised with respect for parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family."*²² Although this declaration does not have binding legal force, it illustrates the intentions and concerns of the Polish legislator.

2.2 Polish Law

Norms included in international regulations function as a reference point for the standards adopted by the Polish legislator.

2.2.1 Upbringing and Parental Authority

The Constitution of the Republic of Poland of 1997 includes the above-mentioned international legal standards and addresses the issue of upbringing in Articles 48(1) and 53(3). Article 48(1) of the Polish Constitution generally refers to the 'upbringing'

²² Rights considered: the right to freely express views on all matters affecting the child (Article 12(1) CRC); the right to be heard in any judicial and administrative proceedings (Article 12(2) CRC); freedom of expression (Article 13(1) CRC); freedom of thought, conscience, and religion (Article 14(1) CRC); freedom of association (Article 15 CRC); protection of privacy, family life, home, and correspondence, unlawful attacks on his or her honour and reputation. (Article 16 CRC).

in accordance with parents' convictions without specifying the particular matters it should cover. However, the legislator specifies that upbringing must take into account the child's maturity level, freedom of conscience and religion, and personal convictions. Furthermore, Article 53(3), recommending the appropriate application of Article 48(1), specifies that parental rights should include moral and religious upbringing and teaching. The scope of upbringing and the nature of parental authority in Poland are further clarified by the provisions of the Family and Guardianship Code (hereinafter: FGC). According to Article 27 of the FGC, both spouses are required, according to their abilities and earnings, and financial capacities, to help satisfy the needs of the family. Fulfilling this obligation may include personal efforts to raise children and manage the common household. Furthermore, in a divorce ruling, the Court decides on parental authority over the shared minor child of both spouses and the parents' contact with the child. The Court also determines the financial obligations of each spouse regarding the maintenance and upbringing of the child (Article 58(1) of the FGC). When deciding on parental authority, the Court must also consider the child's right to be raised by both parents and determine how parental authority and contact shall be exercised after the divorce (Article 58(1a) of the FGC). The manner in which a child's upbringing is closely related to the implementation of parental authority. In legal writings, parental authority is defined as natural relations between the child and both parents, including the child's upbringing, personal care over them, management of their belongings, and their legal representation.²³ Article 95(1) of the FGC specifies that the exercise of parental authority must respect the dignity and rights of the child. The guiding principles for implementing parental authority are the best interests of the child and social interest (Article 95(3) of the FGC), as well as the child's intellectual development, health, and level of maturity (Article 95(4) of the FGC).

Furthermore, the law distinguishes two categories of matters that define the parent-child relationship in the upbringing process. The first category covers circumstances when the child can make binding decisions independently. The second category consists of matters that fall under the authority of parents and legal guardians (discussed later in the present paper). Concerning the first group, the Family and Guardianship Code states that the child should consider the opinions and

²³ Mostowik, 2014, p. 54.

recommendations of parents formulated for his/her benefit. As for the second category, the child is obliged to obey their parents (Article 95(2) of the FGC).

On the basis of analysis of the above-mentioned legal provisions, it can be claimed that parental rights regarding the form of upbringing and decision-making are not absolute. One of the primary reference points in this regard is the child's rights, which are dependent on the degree of the child's maturity.

2.2.2 Education

Parents are obligated to realize their duty to the State in implementing their rights concerning education. One of the duties is the fulfillment of the obligation of education and schooling for their children. According to Article 70(1) of the Constitution of the Republic of Poland, education up to 18 years of age shall be compulsory. The fulfillment of this obligation is regulated by the Act of 14 December 2016 – Education Law (hereinafter: EL).²⁴ According to Article 35(2) of the EL, a child's compulsory education starts at the beginning of the school year in the calendar year when they turn seven and continues until they complete primary education, but no longer than reaching the age of 18. According to Article 40 of the EL, parents of a child included in the compulsory education must fulfill specific obligations. Firstly, they must complete the necessary enrollment procedures. Secondly, they are required to ensure the child's regular attendance at school. Thirdly, they must provide sufficient conditions that contribute to the child's appropriate preparation for classes. Lastly, they are responsible for informing the school principal about the form in which the compulsory education is being fulfilled. Parents, in exercising their rights, may decide (Articles 40(1) and (2) of the EL) whether their child begins education at the age of six (Article 36(1) of the EL) or whether this beginning is postponed for one school year (Article 36(4) of the EL). If parents decide that their child shall attend school at the age of six, the principal's approval is dependent on the fact if the child previously attended preschool education in the preceding school year or if the child possesses an opinion from a psychological-pedagogical counseling center confirming his/her readiness for primary education (Article 36(2)(1) and (2) of the EL). In cases of deferral of the schooling obligation, the school principal must unconditionally respect the will of

²⁴ The Act of December 14, 2016, Education Law [Ustawa z dnia 14 grudnia 2016 r., Prawo oświatowe] (consolidated text: Dz. U. – Journal of Laws of 2024, item 737).

the parents or legal guardians (Article 36(4) of the EL). The consequence of the respect for parents' rights to raise their children in accordance with their convictions includes the freedom to choose also non-public schools (Article 70(3) of the Polish Constitution; Article 13(3) of the International Covenant on Economic, Social, and Cultural Rights). It is important to point out that the duty to ensure access to various types of schools falls on the state authorities. However, as noted in the legal doctrine, this right is not horizontal in nature; it means that non-public schools may impose additional admission criteria, which may be inconsistent with parents' convictions. For instance, non-public schools may require students to belong to a particular religious denomination.²⁵ On the basis of the right to determine the shape of a child's upbringing process, some doubts regarding the scope of parental influence over educational content appear. The Education Law provides certain rights to parents in this respect. The representative body for parents and legal guardians in schools and educational institutions is the Parents' Council (Article 83 of the EL). According to Article 84(1) of the EL, the Parents' Council may submit requests to the school principal, school authorities, the governing body of the school, or the supervising pedagogical authority regarding all matters concerning the school. The council's competencies include: approving, in consultation with the teaching board, the school's educational and preventive program; providing opinions on plans for improving educational effectiveness; and reviewing the proposed financial plan (Article 84(2) of the EL). The Parents' Council also provides opinions on the implementation of pedagogical innovations, which involve modifying existing or introducing new educational, organizational, methodological, or pedagogical measures (Article 45 of the EL).

Organizations operating within schools may also significantly influence the process of shaping students' values. The legislator specifies that these organizations cannot represent any political parties. However, various associations and organizations, particularly scouting organizations, whose statutory objective includes educational activities or the expansion of educational, instructional, caregiving, and innovative initiatives, are permitted. Nevertheless, such organizations must obtain the approval of both the School Council and the Parents' Council to operate within a school (Article 86 of the EL). The School Council, a non-mandatory body, consists of teachers, parents, and students. All representatives are elected from the people

²⁵ Derlatka, 2016.

belonging to a given community (Article 81 of the EL). In the context of the upbringing process, the School Council holds significant entitlements, including: the adoption of the school's statute; submission of requests to the supervising pedagogical body for the assessment of school activities; providing opinions on school work plans and pedagogical experiments; and addressing other important matters concerning the school.

Additionally, based on its own assessment of the school's situation and condition, the School Council may request the appropriate authorities for the issues regarding the organization of specific activities (Article 80(2) of the EL). The activities of bodies consisting of parents are primarily limited to providing opinions. Competent entities, such as the school principal or supervising authorities, are generally not dependent on parental opinions, except for specific instances, such as approving organizations operating within schools. Increasingly, however, parents go beyond the scope of rights regulated in lower-level laws and legal acts and refer to general principles specified in the Constitution of the Republic of Poland or international agreements. Parental opposition frequently concerns the educational model imposed by state authorities in official curricula and optional classes available to students. Legal disputes related to parental rights to educate their children in accordance with their convictions primarily revolve around two fundamental issues: the first one is the sex education in schools and the rights of sexual minorities; the second one is the presence of religious content in school curricula.

In one of its rulings, the Constitutional Tribunal stated that "knowledge imparted in schools does not necessarily have to be inconsistent with parents' convictions, but the Constitution neither guarantees nor can guarantee that the knowledge conveyed in schools will be in accordance with parents' convictions"²⁶. This means that the State has complete discretion in determining curriculum content without the obligation to consider parental will. The presented content may align with their views, but there is no constitutional impediment when those views are contradicted.

²⁶ Judgment of the Constitutional Tribunal of May 27, 2003, K 11/03, OTK-A 2003, No. 5, item 43.

The issue of sex education in Polish schools is regulated by the Act of 7 January 1993, on Family Planning, Protection of Human Fetus, and Conditions of Permissibility of Abortion²⁷, as well as its implementing regulation.²⁸ According to Article 4 of the Act, school curricula include knowledge about human sexuality, principles of responsible and conscious parenthood, the value of family life, prenatal life, methods and means of conscious procreation. The regulation clarifies that such classes are not conducted in grades I-III of primary school (§ 1(2)). Additionally, the program content must be integrated with the school's comprehensive educational and preventive efforts, particularly supporting the educational role of the family, promoting a comprehensive understanding of human sexuality, and fostering pro-family, pro-health, and pro-social attitudes (§ 2 of the regulation). The decision to allow minor students to attend these classes is left to the will of parents. They are supposed to submit a written resignation to the school principal. Otherwise, a minor student is required to participate in these classes, although they are not graded and do not influence the student's academic promotion or school completion. Similarly, an adult student may decide not to participate in these classes by submitting a declaration to the school principal (§ 4 of the regulation). It seems that the optional nature of these classes allows both parents of minor students and adult students to withdraw at any time. However, the regulation does not explicitly state this. It also seems possible for students to rejoin the classes during the school year, although the existing provisions do not regulate this.

The correlation of mutual rights between the child and parents in the educational sphere also extends to the organization of religious education and the presence of confessional elements in public educational institutions. In Polish law, the status of religious education is regulated by normative acts of various legal ranks. The Polish Constitution establishes the optional nature of religious education in the educational system. According to Article 53(4) of the Constitution, "The religion of a church or

²⁷ The Act of January 7, 1993, on Family Planning, Protection of Human Fetus, and Conditions of Permissibility of Abortion [Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży], (consolidated text Dz. U. – Journals of Laws of 2022, item 1575).

²⁸ Regulation of the Minister of National Education of August 12, 1999, on the method of school teaching and the scope of content regarding knowledge of human sexuality, principles of responsible parenthood, family values, prenatal life, and methods and means of conscious procreation contained in the core curriculum of general education (Annex to the announcement of the Minister of Education and Science of October 27, 2023), [Rozporządzenie Ministra Edukacji Narodowej z dnia 12 sierpnia 1999 r., w sprawie sposobu nauczania szkolnego oraz zakresu treści dotyczących wiedzy o życiu seksualnym człowieka, o zasadach świadomego i odpowiedzialnego rodzicielstwa, o wartości rodziny, życia w fazie prenatalnej oraz metodach i środkach świadomej prokreacji zawartych w podstawie programowej kształcenia ogólnego (Załącznik do obwieszczenia Ministra Edukacji i Nauki z dnia 27 października 2023 r.)] (Dz. U. - Journal of Laws of 2023, item 2431).

other legally recognized religious organization may be taught in schools, but other people's freedom of religion and conscience shall not be infringed thereby'. In addition to constitutional provisions, the presence of catechesis in the educational system is ruled by religious statutes regulating the status of particular churches and religious associations. Furthermore, these matters are regulated by EL. According to Article 12(1) of the Act on the Education System²⁹, public preschools and primary schools organize religious education at the request of parents, while public secondary schools provide it at the request of either parents or students themselves; after reaching the age of majority, students decide independently. A crucial consideration in interpreting this provision concerns secondary schools, where both parents and minor students may make binding decisions. The implementation of regulations on the organization of religious education further clarifies these provisions.³⁰ According to § 3(1), schools must provide ethics classes for students whose parents or who themselves express such a preference. Both religious education and ethics are optional subjects; thus, schools are required to provide care or other educational activities for students who do not participate in these lessons (§ 3(3)).

The ECtHR has repeatedly analyzed the issue of religious education in schools. One of the key issues emphasized by the ECtHR is the equal status of religious education and other subjects, assuming that the State decides to introduce religious education into the educational system. In the case of *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, the ECtHR stated that 'Article 2 of Protocol No. 1 of the ECHR, which applies to the role of the state in education and teaching, does not permit a distinction between the teaching of religion and other subjects'. Furthermore, the ECtHR recognizes that religious elements may be present in school curricula and that parents cannot object to such practices. Granting parents such a right could lead to the failure of the entire educational system.³¹

²⁹ The Act on the Education System of September 7, 1991, [Ustawa z dnia 7 września 1991 r. o systemie oświaty] (consolidated text: Dz. U. – Journal of Laws of 2024, item 750).

³⁰ Regulation of the Minister of Education of July 26, 2024, amending the regulation on the conditions and methods of organizing religious education in public preschools and schools, [Rozporządzenie Ministra Edukacji z dnia 26 lipca 2024 r. zmieniające rozporządzenie w sprawie warunków i sposobu organizowania nauki religii w publicznych przedszkolach i szkołach] (Dz. U. – Journal of Laws of 2024, item 1158).

³¹ Judgment of the ECtHR of December 7, 1976, Complaints No. 5095/71, 5920/72, 5926/72, LEX No. 80800. Similarly, in the case of *W. Dojan, A. Dojan, and D. Dojan v. Germany*, LEX No. 523579.

The issue of displaying crosses in classrooms has been addressed in two judgments of the ECtHR in the case of *Lautsi v. Italy*. A mother of children attending an Italian school complained, claiming that the display of a religious symbol in classrooms violated her right to educate her children in accordance with her convictions and subjected them to indoctrination. After unsuccessful litigation in Italian courts, the case reached the ECtHR. In its initial judgment of 3 November 2009, the ECtHR considers that

*"the compulsory display of a symbol of a particular faith in the exercise of public authority in relation to specific situations subject to governmental supervision, particularly in classrooms, restricts the right of parents to educate their children in conformity with their convictions and the right of schoolchildren to believe or not believe. It is of the opinion that the practice infringes those rights because the restrictions are incompatible with the State's duty to respect neutrality in the exercise of public authority, particularly in the field of education."*³²

However, in its subsequent judgment of 18 March 2011, the ECtHR revised its position, stating that the second sentence of Article 2 of Protocol No. 1 does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum.³³

The right of parents to raise their children in accordance with their convictions is subject to limitations when the State exercises its authority in the field of education. The ECtHR clarifies the position that parents' religious and philosophical convictions are their private matters; therefore, they may freely convey their worldview to their children within the privacy of their homes. In the public sphere, such as schools, parents must accept the fact that the final decision is made by particular bodies representing the state authorities. Consequently, when exercising its prerogatives, the State may impose certain curriculum content that is not always in line with parents' beliefs. However, in relation to the authorities, there should be some freedom of choice in optional classes that may interfere with the sphere of parents' beliefs.

³² Judgment of the ECtHR of November 3, 2009, 30814/06 - LEX No 523579

³³ *Lautsi v. Italy* - ECtHR judgment of March 18, 2011, Complaint No. 30814/06, [in:] M.A. Nowicki, European Court of Human Rights. Selection of Judgments 2011, LEX, 2012, p. 470.

2.2.3 Children's Rights

The previously analyzed Article 48, in conjunction with Article 53(3) of the Polish Constitution, grants parents the right to provide their children with moral and religious upbringing and education in accordance with their own convictions. However, this upbringing must consider the child's level of maturity, as well as their freedom of conscience, religion, and personal beliefs. As stated by the Constitutional Tribunal in one of its rulings, referring to the opinion of Paweł Sarnecki, Article 48(1) of the Polish Constitution is essentially a 'praxeological provision, formulating what is presumably a long-established rule of the educational process.' According to the Constitutional Tribunal, 'parents who fail to take these factors into account would cease to educate their children creatively and positively. The right (and duty) of parents to raise their children remains intact, although it must naturally include appropriate responses to new situations'.³⁴

According to Article 12 of the CRC,

'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'.

The references to the necessity of considering the child's level of maturity are also recognized in the jurisprudence of the Court of Justice of the European Union (hereinafter: CJEU). In its judgment of 6 December 2012, it was stated that: the ECtHR takes into account numerous individual circumstances related to the child in order to determine their best interests and ensure their well-being. It particularly considers the child's age and maturity level, as well as the degree of dependence on their parents, paying close attention to their presence or absence.³⁵

From a systemic interpretation perspective, there are legal provisions specifying the age at which a child acquires the capacity to undertake legally effective actions. Some regulations refer to a child's ability to exercise political rights, enabling them to participate in civil society and become full-fledged members thereof. According to

³⁴ Judgment of the Constitutional Tribunal of December 2, 2009, U 10/07, OTK-A 2009, No. 11, item 163.

³⁵ Judgment of the CJEU of December 6, 2012, C-356/11, *O. and S. v. Maabannmuuttovirasto and Maabannmuuttovirasto v. L.*, "Collection of Judgments of the Court of Justice and the Court," 2012, No. 12, p. I-776.

Article 3(2) of the Act of 7 April 1989 – the Law on Associations³⁶, minors aged 16 to 18, possessing limited legal capacity, may join associations and exercise both active and passive electoral rights, allowing them to vote and be elected to association authorities. However, the management board must include individuals with full legal capacity, and they must constitute the majority.

On the basis of the Banking Law Act of 29 August 1997³⁷, a minor holding a savings account, a savings and settlement account, or a fixed-term savings deposit account may independently manage the funds in those accounts upon reaching the age of 13, unless their statutory representative expressly objects in writing (Article 58). Additionally, under Article 12(3) of the Act of 1 July 2005, on the Cell, Tissue and Organ Recovery, Storage and Transplantation³⁸, if a minor above 13 years old has to become a donor of bone marrow, then a consent given by the minor is required, in addition to the consent of their legal guardians and the Court. The same act stipulates that the objection of a minor aged 16 or older constitutes a negative prerequisite preventing the removal of cells, tissues, or organs from a deceased person (Article 6(3)).

A child's ability to make binding declarations is also regulated under the provisions of the FGC. According to Article 118(1) of the FGC:

'the consent of an adoptee who has reached the age of thirteen is required for adoption'.

Correspondingly, changing the surname of a child aged 13 or older requires their consent (Article 118 (1) of the FGC).

These are not all legal provisions that condition the validity of decisions on the attainment of a specified age. This overview does not include, for instance, the acquisition of limited legal capacity at the age of 13 or the possibility of entering into marriage with a female who has reached the age of 16, with Court approval.

³⁶ The Act of April 7, 1989, the Law on Associations, [Ustawa z dnia 7 kwietnia 1989 r., Prawo o stowarzyszeniach] (consolidated text: Dz. U. – Journal of Laws of 2020, item 2261).

³⁷ The Act of August 29, 1997, the Banking Law [Ustawa z dnia 29 sierpnia 1997 r., Prawo bankowe] (consolidated text: Dz. U. – Journal of Laws of 2024, item 1646).

³⁸ The Act of July 1, 2005, on the Cell, Tissue and Organ Recovery, Storage and Transplantation, [Ustawa z dnia 1 lipca 2005 r. o pobieraniu, przechowywaniu i przeszczepianiu komórek, tkanek i narządów] (consolidated text: Dz. U. Journal of Laws of 2023, item 1185).

The evaluation of the existing legal provisions proves that the Polish legislator acknowledges a child's ability to make autonomous decisions at different ages. Undoubtedly, one of the most significant rights within the child's educational process concerns the determination of their origins and information about their biological parents. These rights do not function cumulatively, and existing legal solutions define their scope in various ways. The rights granted to a child significantly influence the actions of adoptive parents and legal guardians, who should not obstruct the exercise of these rights by the child, even if unexpected consequences may arise.

3 Conclusion

On the basis of the presented content, the following conclusions can be drawn:

- a) The upbringing of a child is generally associated with their development within a family. However, there are some circumstances that lead to the parents' divorce or separation; as a result, the upbringing process is somehow altered.
- b) The parental right to raise their children in accordance with their convictions is a fundamental category of rights guaranteed to parents and legal guardians at the normative level by the legislator.
- c) The right to raise children in accordance with parental beliefs is conditioned on the exercise of parental authority or guardianship rights over the child, regardless of the family structure (family model) in which these rights are exercised.
- d) Upbringing should aim to shape a young person in accordance with the will of his/her parents and legal guardians. However, this is not an absolute right and it may be subject to limitations arising from the child's autonomy and the State's fulfillment of its fundamental functions.
- e) The Polish legislator recognizes that a child is capable of making autonomous decisions at different ages.

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RIGHTS OF CHILDREN WITH DISABILITIES IN SLOVENE LAW IN THE LIGHT OF CONTEMPORARY INTERNATIONAL LAW ON CHILDREN'S RIGHTS

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The children with disabilities are among the most marginalized people in every society, and they face various barriers that limit their ability to function, participate and enjoy their rights on an equal basis with other children. These barriers include physical, communicational, attitudinal, and environmental obstacles that are rooted in stigma and discrimination. The Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities are the most important international treaties protecting the human rights of all children, including those with disabilities. European legal instruments, such as the European Social Charter (revised), the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union protect certain rights of persons with disabilities, including children with disabilities or at least may be interpreted in a way that they protect some of their rights. Specific rights of children with disabilities are regulated by national legislation. Slovenia has implemented some of the principles of the principal international instruments regarding children with disabilities. However, in many fields, a significant improvement would be necessary to achieve genuine implementation of international legal obligations binding Slovenia in this field.

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1 Introduction

Fifteen percent of the world's population – at least one billion people – have some form of disability. Nearly 240 million of them are children. According to the United Nations Children Fund (hereinafter: UNICEF),¹ children with disabilities are among the most marginalized people in every society, and they face various barriers that limit their ability to function, participate and enjoy their rights on an equal basis with other children. These barriers include physical, communication, attitudinal, and environmental obstacles that are rooted in stigma and discrimination.

Table 1: Students with special needs in basic schools

Year	Students in basic schools	Students with special needs included in regular or adapted programmes of basic schools	Share of children with special needs included in regular or adapted programmes of basic schools	Students in adapted programmes
2006/07	164.477	N/A	N/A	1.624
2007/08	163.208	N/A	N/A	1.560
2008/09	161.887	N/A	N/A	1.571
2009/10	160.252	N/A	N/A	1.553
2010/11	159.508	N/A	N/A	1.538
2011/12	159.701	N/A	N/A	1.656
2012/13	161.051	N/A	N/A	1.724
2013/14	163.229	N/A	N/A	1.807
2014/15	167.249	N/A	N/A	1.852
2015/16	170.067	N/A	N/A	1.946
2016/17	174.917	12.247	6.92	1.981
2017/18	179.128	13.996	7.72	2.173
2018/19	183.986	9.948	5.34	2.342
2019/20	187.645	13.302	7.00	2.511
2020/21	190.606	15.502	8.03	2.552
2021/22	192.787	14.336	7.34	2.627
2022/23	194.267	18.409	9.34	2.795
2023/24	193.379	19.418	9.8	2.992

Source: Republic of Slovenia, Statistical Office

In Slovenia, the record is kept on children with special needs who are included in basic schools in regular programmes, with adjusted programmes and in basic schools with adapted programmes.²

¹ UNICEF, 2024.

² European Commission, Eurydice, 2024.

According to the Ministry of Education the number of students with special needs in basic schools per school year was the following:³

Table 2: Number of children with special needs in schools

School year	Number of children
2015/2016	10.091
2016/2017	10.072
2017/2018	11.077
2018/2019	12.054
2019/2020	14.160
2020/2021	14.224
2021/2022	14.829
2022/2023	15.303
2023/2024	15.712

Source: Republic of Slovenia, Ministry of Education: <https://www.gov.si/teme/osnovnosolsko-izobrazevanje-za-otroke-s-posebnimi-potrebam/>

The above table does not include children with special needs attending special schools in institutions, also social institutions. The number of those students was approximately 2000 per year.⁴ According to the presented data, it is possible to assess that 20% of children in Slovenia are children with special needs. The great majority of them is included in regular schools.

2 International Legal Standards on the Protection of Children with Disabilities

The Convention on the Rights of the Child⁵ (hereinafter: CRC) and the Convention on the Rights of Persons with Disabilities⁶ (hereinafter: CRPD) are two international treaties that recognize and protect the human rights of all children, including those with disabilities. The CRC states that every child has the right to life, survival, development, education, health, protection, participation, and non-discrimination, regardless of their disability status.

³ Ministry of Education, Children with special needs, 2024.

⁴ Ministry of Education of the Republic of Slovenia, 2024.

⁵ Convention on the Rights of the Child, 1989.

⁶ Convention on the Rights of Persons with Disabilities, 2006.

2.1 Convention on the Rights of the Child

The CRC is a comprehensive international treaty that outlines the rights of all children. Article 2 of the CRC emphasizes the principle of non-discrimination, stating that all children, irrespective of their disability, are entitled to the rights enshrined in the CRC. Additionally, Article 23 of the CRC addresses the rights of children with disabilities specifically, calling for effective access to rehabilitation, health services, and social security.

The CRC expressly guarantees children with disabilities the right to freedom from disability-based discrimination; it has specific provisions on the rights of children with disabilities. The CRC expressly recognizes the right to freedom from disability-based discrimination by listing disability among the prohibited grounds of discrimination (Article 2, para. 1).⁷ The CRC recognizes the right of a child with disabilities to special care and the obligation of the State within its resources to ensure assistance to the child and those responsible for their care (Article 23, para. 2). Such assistance should if possible be provided free of charge, taking into consideration the financial resources of the parents or others caring for the child (Article 23, para. 3).⁸

According to the CRC, children with disabilities have the right to survival and development. They have the right to life and to grow up in an environment that supports their physical, mental, social, and emotional development. Children also have the right to express their opinions, to be heard and to participate in decisions that affect them, according to their age and maturity (the right to participation). They also have the right to access quality and inclusive education that meets their needs and respects their dignity, potential and abilities. The CRC requires states to take measures to ensure the full enjoyment of these rights by children with disabilities, such as providing them with appropriate health care, rehabilitation, social services, accessibility, and support. The CRC also urges states to cooperate with each other and with civil society to promote the rights of children with disabilities.

⁷ Chilemba, 2019, pp. 359-387.

⁸ Sandberg, 2019, pp. 193-194.

The Committee on the Rights of the Child (hereinafter: CRC Committee), established under Article 43 of the CRPD to monitor the Convention's implementation, has further elaborated the rights of children with disabilities in General Comment No. 9.⁹ The CRC Committee has stated that the leading principle relating to the rights of children with disabilities is found in the para. 1 of Article 23 since it guarantees the right to inclusion and active participation in society. The Committee has highlighted that states must take measures aimed at realizing the goal of including children with disabilities in society. In its various concluding observations, the Committee has bemoaned the exclusion of children with disabilities from society, especially through the placement of children with disabilities in institutions.¹⁰ The CRC Committee has further emphasized the need for states parties to the CRC to provide care and assistance to children with disabilities and their families. In the Committee's opinion, the assistance should be provided in the form of, among others, social protection and poverty reduction programs;¹¹ adequate support payments and services for all children with disabilities, including those with severe or profound disabilities;¹² and "services for children and parents and/or through financial support and assistance to parents who are unable to work and generate income because they provide constant care and assistance to a child with a disability".¹³

2.2 Convention on the Rights of Persons with Disabilities

Compared to the CRC, which is focused on the rights of all children, including those with disabilities, the CRPD specifically focuses on the rights of persons with disabilities. However, the CRPD provides more detailed guidance on how to ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities, including children. The CRPD also addresses some specific issues that are relevant for children with disabilities, such as accessibility, reasonable accommodation, and support services. It recognizes the importance of other rights for children with disabilities, such as the right to education, health, family life,

⁹ Committee on the Rights of the Child, General Comment No. 9 (2006), The rights of children with disabilities, 2007.

¹⁰ Committee on the Rights of the Child, CRC/C/ROU/CO/5 Romania 2017j, 2017.

¹¹ Committee on the Rights of the Child, CRC/C/CAF/CO/2 Central African Republic 2017, 2017.

¹² Committee on the Rights of the Child, CRC/C/EST/CO/2–4 Estonia 2017f, 2017.

¹³ Chilemba, 2019, pp. 359–387.

participation, and protection from violence and abuse and aims to promote the dignity, autonomy, and inclusion of children with disabilities in all aspects of society.

While the CRPD does not specifically focus on children, it recognizes the unique vulnerabilities and needs of children with disabilities and includes provisions that are relevant to their rights and well-being. It prohibits discrimination based on disability and emphasizes the equal rights of all individuals, including children with disabilities, to enjoy all human rights and fundamental freedoms (Article 5) and emphasizes the best interests of the child as a primary consideration in all actions concerning children with disabilities (Article 7).

Article 7 of the CRPD focuses on the rights of children with disabilities. According to this article, states parties are obliged to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. States parties are bound to ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right. States parties are also obliged to ensure that the best interests of the child are a primary consideration in all actions concerning children with disabilities and that children with disabilities have the right to preserve their identity, including nationality, name and family relations as recognized by law without unlawful interference.

Article 7 of the CRPD focuses on children with disabilities and requires states parties to take all necessary measures to ensure their best interests, their right to express their views, and their full inclusion in society. One of the key distinctions of Article 7 of the CRPD from Article 23 of the CRC is that the latter is subject to resource limitations. Article 7 of the CRPD sets out a new paradigm for child disability rights, in the sense that resource constraints and progressive realization are absent. States must commit 'all necessary resources' to realize the rights in Article 7. In fact, the resource limitation and progressive realization in Article 23 of the CRC must be deemed as having been eliminated because of the adoption of Article 7 of the CRPD since Article 7 of the CRPD constitutes a subsequent agreement or practice in accordance with Article 3, para. 3(a) and (b) of the 1969 Vienna Convention on the

Law of Treaties.¹⁴ Early treatment is a crucial policy measure and possesses at least two distinct dimensions. The first concerns early identification of disabilities in children, which should be combined with appropriate registration at birth (in accordance with Article 18, para. 2) of the CRPD), which also eliminates the likelihood of abandonment. Early identification further ensures that in societies where disability is a stigma, parents will be provided with appropriate information and support that will allow them to care for their disabled child.¹⁵

To ensure that children with disabilities benefit equally from all Convention rights, as required by Article 7, para. 1, States parties to the CRPD are required to prohibit explicitly all forms of disability-based discrimination against children in their laws and policies. States parties to the CRPD should guarantee children with disabilities equal and effective legal protection against discrimination on all grounds. For that aim, domestic authorities should set up monitoring mechanisms and provide effective redress for children with disabilities in cases of discrimination. In addition, States parties to the CRPD must take all necessary measures to ensure that their mainstreaming initiatives for non-discrimination and equal treatment cover children with disabilities specifically. Children with disabilities are also entitled to the provision of reasonable accommodations in accordance with Article 2 and Article 5, para. 3 of the CRPD are an integral component of the protection against discrimination.¹⁶ Article 23 of the CRC was criticized because it demanded that disabled children 'achieve the fullest possible social integration and individual development'. Article 7, para. 1 of the CRPD puts the issue of equality in its proper perspective. Whereas other equality-based phraseology in the various provisions of the CRPD refer to 'an equal basis with others', the comparison with 'children' rather than 'others' in Article 7, para. 1 suggests a functional test, whereby the rights enjoyed by non-disabled children should also be enjoyed by their disabled counterparts. It is up to each state party to achieve this. To achieve this functional objective, the state party may have to use extra financial resources or invest in its infrastructure. Whatever action the State in question adopts, its effect must be that a disabled child enjoys access to a particular right in a manner enjoyed by a child without disabilities.¹⁷

¹⁴ Bantekas, 2018, p. 198.

¹⁵ Ibid., p. 208.

¹⁶ Broderick, 2018, pp. 201-202.

¹⁷ Bantekas, 2018, p. 208.

The CRPD recognizes the right of persons with disabilities, including children, to education. It emphasizes the need for an inclusive education system that accommodates the diverse needs of learners, promoting the full participation of children with disabilities in mainstream education (Article 24). Furthermore, it recognizes the evolving capacities of children with disabilities and emphasizes the right of children to express their views on matters affecting them. It highlights the importance of considering the child's age and maturity in decision-making processes (Article 7). The CRPD recognizes the rights of persons with disabilities to family life and calls for appropriate support for families with children with disabilities. This includes ensuring that families have the necessary resources and assistance to care for their children with disabilities (Article 23) and addresses the right to health for persons with disabilities, including children. It emphasizes the need for accessible health services and information, ensuring that children with disabilities have equal access to healthcare (Article 25). The CRPD also underscores the right of persons with disabilities, including children, to be protected from exploitation, violence, and abuse, including measures to prevent and respond to all forms of abuse, neglect, and exploitation (Article 16).

In the context of ensuring the implementation of the CRPD, it is important to bear in mind other relevant provisions. An obligation of State parties to raise awareness of the principles enshrined in the CRPD (Article 8) is of high significance. States parties are obliged to adopt immediate, effective, and appropriate measures, which include raising awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities, combating stereotypes, prejudices and harmful practices relating to persons with disabilities, and promoting awareness of the capabilities and contributions of persons with disabilities. Measures to this end include initiating and maintaining effective public awareness campaigns designed to nurture receptiveness to the rights of persons with disabilities, fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities, etc.¹⁸ The required action is 'to raise awareness'. The CRPD indicates that the primary target is society as a whole ('throughout society') and emphasizes that this includes the family level. In General Comment No. 2, which concerns accessibility, the Committee acknowledges that awareness-raising is

¹⁸ Ibid.

one of the preconditions for the effective implementation of the CRPD. Therefore, parties should strive systematically and continuously to raise awareness about accessibility among all relevant stakeholders. The Committee also recognizes that the lack of accessibility is often the result of insufficient awareness and technical know-how and that to introduce policies that allow better accessibility for persons with disabilities, it is necessary to change attitudes towards persons with disabilities to fight against stigma and discrimination, through ongoing education efforts, awareness-raising, cultural campaigns, and communication.¹⁹ Article 8 calls for awareness-raising at all levels of society and in all areas of life to bring about real change in the lives of people with disabilities. Tackling widespread ignorance, as well as debunking "stereotypes and prejudices" associated with disability, is a necessary step towards the full recognition of people with disabilities as subjects with rights who are entitled to full participation in society. Awareness-raising should promote positive perceptions of disability instead of focusing on a "preventive" or "deficit model."²⁰

Collecting relevant information on children with disability is an important aspect of Article 31, according to which states parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the CRPD. The importance of the obligations according to Article 31 to effect change lies in how well the obligation over time will push various actors to collect the kind of robust, consistent, and comparable data to ensure that violations of rights are properly addressed.²¹

Keeping accurate statistical data in the context of Article 7 of the CRPD has several practical dimensions. It may be a tool for assessing whether a state has reduced the number of disabled children in long-term institutions and, in turn, has succeeded in placing high numbers in foster care or reintegrated them with their families. Furthermore, disaggregated data allows policymakers to fully appreciate the situation of and discrimination faced by children with disabilities to formulate targeted programmes with a view to tackling the exclusion they face.²²

¹⁹ Bariffi, 2018, p. 229.

²⁰ Baranger, 2017, p. 214.

²¹ Pedersen, 2017, p. 557.

²² Bantekas, 2018, p. 207.

2.3 European Legal Framework

2.3.1 The European Union law

Equality and non-discrimination are founding values of the EU. As stated in Article 2 of the Treaty on European Union,²³ the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Those principles are also reflected in Article 10 of the Treaty on the Functioning of the European Union (hereinafter: TFEU).²⁴ Furthermore, Article 19 of the TFEU sets out the competence of EU authorities (the Council of the EU and the European Parliament) to take anti-discrimination measures.²⁵

According to Article 21 of the Charter of Fundamental Rights of European Union²⁶ (hereinafter: CFREU) discrimination based on disability is prohibited. The CFREU expressly stipulates the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (Article 26). However, the CFREU does not extend the field of application of the EU law beyond the competences of the Union or create any new competence or task for the Union, nor does it modify powers and tasks as defined in the EU Treaties. In cases where it does not apply, the protection of fundamental rights is guaranteed in the constitutions or constitutional traditions of EU countries and in the international conventions that have ratified them.²⁷

The CRPD has been bound by the EU since 2011, and it concluded that the CRPD is a regional integration organisation within the meaning of Article 44 of the CRPD. The CRPD is part of EU law and has the so-called "sub-constitutive" status. It is subordinate in force to the TEU and TFEU, as well as to the CFREU, but is above secondary EU law, such as a directive, according to the hierarchy of rules. However, the EU has not yet acceded to the Optional Protocol to the CRPD.²⁸

²³ Consolidated version of the Treaty on European Union, 2012, p. 13–390.

²⁴ Broderick & Ferri, 2019, p. 390.

²⁵ Vernia, 2020, p. 10.

²⁶ Charter of Fundamental Rights of the European Union, 2012.

²⁷ Vernia, 2020, p. 11.

²⁸ Broderick & Ferri, 2019, p. 311.

2.3.2 Council of Europe

Legal standards of the Council of Europe (CoE) apply equally to all persons, including persons with disabilities. The most important instrument for the protection of human rights within the framework of the CoE is the European Convention on Human Rights (hereinafter: ECHR).²⁹ Other legally binding standards of relevance to the rights of persons with disabilities are contained in the European Social Charter, the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter: Istanbul Convention), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (hereinafter: Lanzarote Convention) and the Council of Europe Convention on Action against Trafficking in Human Beings.³⁰

ECHR and CPRD have different scopes *ratione materiae* and geographically. The CRPD is intended to protect the rights of persons with disabilities in all areas. In contrast, the ECHR is intended solely to protect civil and political rights, except for Protocol No. 1 on the right to property and the right to education.³¹ The ECHR applies to states within the CoE, while the CRPD is not limited to European countries. The ECHR was the first international treaty aimed at protecting a wide range of civil and political rights, both in the form of a binding treaty for states parties and by establishing a system for monitoring the exercise of rights at the national level.³² Although the ECHR does not explicitly relate to the rights of persons with disabilities and disability only in Article 5, para. 1(e), it is generally applicable for human rights of all persons, including persons with disabilities.

2.3.2.1 Caselaw of the ECtHR

The European Court of Human Rights (hereinafter: ECtHR) has developed a comprehensive jurisprudence on the rights of persons with disabilities, and many of them relate to children with disabilities. In the case *Glor v. Switzerland*³³, the ECtHR interpreted Article 14 of the ECHR for the first time, so the disability is also

²⁹ Act ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, 1994.

³⁰ Council of Europe, Rights of Persons with Disabilities, 2024.

³¹ Broderick & Ferri, 2019, p. 427.

³² Gomien, 2009, p. 16.

³³ *Glor v. Switzerland*, app. no. 13444/04, Judgement of 30 April 2009.

considered to be an "other personal circumstance" based on which discrimination may occur.³⁴

In recent years, the ECtHR has dealt with a significant number of cases relating to children with disabilities and contributed to the development of international legal standards for the protection of their rights. The case of *Guberina v. Croatia*³⁵ concerned the complaint by the father of a severely handicapped child about the tax authorities' failure to take account of the needs of his child when determining his eligibility for tax exemption on the purchase of property adapted to his child's needs.

The ECtHR has decided on the rights of persons with disabilities in relation to the right to family and private life. It has been pointed out in several cases that Article 8 of the ECHR interprets by obliging States to take special measures in the case of "vulnerable" persons.³⁶

The right to education (Article 2 of Protocol No. 1 to the ECHR) of children with disabilities was considered in the case *Dupin v. France*.³⁷ The case *G.L. v. Italy*³⁸ concerned the inability of the applicant. This young girl has nonverbal autism and received specialised learning support during her first two years of primary education, even though the support was provided for by law.³⁹ In the case *T.H. v. Bulgaria*⁴⁰, the applicant, aged 8, who had behavioural difficulties, was diagnosed with a hyperkinetic disorder and a "specific developmental disorder of scholastic skills". The case concerned his allegation that he had been discriminated against in his first

³⁴ Broderick & Ferri, 2019, p. 441.

³⁵ *Guberina v. Croatia*, app. no. 23682/13, Judgement of 22 March 2016.

³⁶ Broderick & Ferri, 2019, p. 435.

³⁷ *Dupin v. France*, app. no. 2282/17, 18 December 2018. The Court held that there had been a violation of the right to education of the applicant's child was inadmissible as manifestly ill-founded, finding that the refusal to admit the child to a mainstream school did not constitute a failure by the State to fulfil its obligations under Article 2 of Protocol No. 1 or a systematic negation of his right to education on account of his disability and that the national authorities had regarded the child's condition as an obstacle to his education in a mainstream setting. After weighing in the balance, the level of his disability and the benefit he could derive from access to inclusive education, they had opted for an education that was tailored to his needs, in a specialised setting.

³⁸ *G.L. v. Italy*, app. no. 59751/15, Judgement of 10 September 2020.

³⁹ The Court held that there had been a violation of art. 14 of the ECHR in conjunction with art. 2 of Protocol No. 1 to the ECHR, finding that the applicant had not been able to continue attending primary school in equivalent conditions to those available to other children and that this difference was due to her disability. The ECtHR considered that the Italian authorities had not sought to determine the young girl's real needs and provide tailored support to allow her to continue her primary education in conditions that would, as far as possible, be equivalent to those in which other children attended the same school. In particular, the authorities had never considered the possibility that a lack of resources could be compensated for by a reduction in the overall educational provision, so that it would be distributed equally between non-disabled and disabled pupils.

⁴⁰ *T.H. v. Bulgaria*, app. no. 46519/20, Judgement 11 April 2023.

two years of primary school by his teachers and head teacher on account of his disability.⁴¹

The case *Dorđević v. Croatia*⁴² concerned the complaint by a mother and her mentally and physically disabled son that they had been harassed, both physically and verbally, for over four years by children living in their neighbourhood and that the authorities had failed to protect them. The case concerned the State's positive obligations in a situation outside the sphere of criminal law where the competent State authorities were aware of serious harassment directed at a person with physical and mental disabilities. The ECtHR found a violation of Article 3 (prohibition of inhuman or degrading treatment) of the ECHR in respect of the child, finding that the Croatian authorities had not done anything to end the harassment, despite their knowledge that he had been systematically targeted, and that future abuse had been quite likely.

In one of the latest cases concerning children with disabilities, *N. M. and Others v. France*,⁴³ the ECtHR dealt with the dismissal, by the administrative courts, of the arguments submitted by parents in their claim for compensation for the special costs arising from their child's disability. This disability had not been detected at the time of the prenatal diagnosis. The ECtHR held that there had been a violation of Article 1 (protection of property) of Protocol No. 1 to the ECtHR with respect to the applicant's parents.

2.3.3 European Committee of Social Rights

In the framework of the CoE another important international treaty is significant, namely the revised European Social Charter (hereinafter: ESC revised). The implementation of the ESC is monitored, among other, by the European Committee of Social Rights (hereinafter: ESCR). These can only be submitted by certain NGOs. A collective complaint may seek to address issues that may constitute an

⁴¹ The ECtHR held that there had been no violation of Article 14 (prohibition of discrimination) of the ECHR taken in conjunction with art. 2 (right to education) of Protocol No. 1 to the ECHR in respect of the applicant noting that it could not be said, on the available evidence, that the actions of the head teacher or the applicant's teacher had been unjustified, unreasonable or disproportionate nor that the head teacher and the teacher had turned a blind eye to the applicant's disability and his resulting special needs; it appeared that they had made a series of reasonable adjustments for him.

⁴² *Dorđević v. Croatia*, app. no. 41526/10, Judgement of 24 July 2012.

⁴³ *N.M. and Others v. France*, app. no., 66328/14, 3 February 2022.

infringement of the ESC or the revised ESC.⁴⁴ In the case *International Association Autism-Europe* (hereinafter: IAAE) *v. France*,⁴⁵ the ECSR concerned inadequate regulation of the situation of persons with autism and found that the proportion of children with autism, whether in full-time or special schools, is significantly lower than that of other children without disabilities. It is noted that the ESC requires countries not only to adopt regulations to ensure equal enjoyment of the right to education but also to take practical steps to ensure that these regulations are effectively implemented. In case *Disability Advocacy Center (MDAC) v. Bulgaria*⁴⁶, the ESCR concluded that the second paragraph of Article 7 had been violated independently or in conjunction with Article E of the revised ESC, as regular schools and educational programmes of these schools were not accessible in practice. Therefore, children placed in institutions for mental disorders have been denied the right to education based on their disability.

After the CRPD entered into force, the ESCR dealt with collective complaints concerning the right to education persons with disabilities, in the case *International Federation for Human Rights* (hereinafter: FIDH) *v. Belgium* in 2011,⁴⁷ and found Belgium's failure to create sufficient daily and night care facilities to prevent many of the most dependent persons with disabilities from being excluded from services corresponding to their specific needs. Violation of the ESC provisions was found in collective complaint cases, *European Action of the Disabled v. France*⁴⁸, regarding the right to education of children and adolescents with autism and the right to vocational training for young adults with autism, and the *MDAC v. Belgium*⁴⁹ regarding the right of children with disability to have access to mainstream schools.

⁴⁴ Council of Europe, European Social Charter, Collective complaints procedure, 2024.

⁴⁵ ECSR, *International Association Autism-Europe (IAAE) v. France*, Complaint No. 13/2002, retrieved from: https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkjmH2bYG/content/no-13-2002-international-association-autism-europe-iaae-v-france?inheritRedirect=false (accessed: 1 February 2024).

⁴⁶ ECSR, *Mental Disability Advocacy Center (MDAC) v. Bulgaria*, Complaint No. 4/2007, https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkjmH2bYG/content/no-41-2007-mental-disability-advocacy-center-mdac-v-bulgaria?inheritRedirect=false (accessed: 1 February 2024).

⁴⁷ ECSR, *International Federation for Human Rights (FIDH) v. Belgium*, Complaint No. 75/2011, retrieved from: https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkjmH2bYG/content/no-75-2011-international-federation-of-human-rights-fidh-v-belgium?inheritRedirect=false (accessed: 4 February 2024).

⁴⁸ ECSR, *European Action of the Disabled ("AEH") v. France*, Complaint No. 81/2012, <https://hudoc.esc.coe.int/eng/#> (accessed: 12 February 2024).

⁴⁹ ECSR, *Mental disability Advocacy Center (MDAC) v. Belgium*, Complaint No. 109/2014, retrieved from: <https://www.coe.int/en/web/european-social-charter/-/no-109-2014-mental-disability-advocacy-center-mdac-v-belgium> (accessed: 1 February 2024).

3 The Rights of Children with Special Needs in Slovenian Law

The rights of children with disability in Slovenia are an essential topic that concerns the human rights and well-being of millions of children in the country. Slovenia has ratified the CRC⁵⁰ and the CRPD⁵¹ and is bound by the provisions of those conventions relating to children with special needs.

It should be mentioned that in the Slovenian legal system, there is no unified term for children with special needs. In Slovenian legislation concerning (among other) children who are in any way hindered in normal development, different terms are used. The Constitution of the Republic of Slovenia relates to the "children with physical or mental disorders" (Article 52, para. 2). Regulations in the field of healthcare use the same term. In contrast, in the field of social security, a slightly different term is used, namely "a child in need of special care and protection. After the adoption of the Placement of Children with Special Needs Act in 2003 the most widely accepted term has become "children with special needs".⁵²

3.1 Healthcare

Persons with disabilities have the right to health services without discrimination on the basis of disability. In this respect, particular attention must be paid to children and adolescents (Article 11 of the Equalisation of Opportunities for Persons with Disabilities Act).⁵³

According to the Health Care and Health Insurance Act (hereinafter: HCHIA)⁵⁴ persons who are insured in based on this act (compulsory insurance) are entitled to payment for medical services. For some persons, compulsory health insurance covers all services (Article 23 of the HCHIA). These include the following:

⁵⁰ Official Gazette of the SFRY, International Treaties, No. 15/90, Act on notification, Official Gazette of the Republic of Slovenia, International Treaties, No. 9/92.

⁵¹ Act Ratifying the Convention on the Rights of persons with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities, Official Gazette of the Republic of Slovenia – International Treaties, No. 10/08.

⁵² Murgel, 2014, pp. 257-259.

⁵³ Equalisation of Opportunities for Persons with Disabilities Act, 1994.

⁵⁴ Health Insurance Act, 2006.

- treatment and rehabilitation of children, pupils and students in full-time education and children and adolescents with physical and mental disabilities and children and adolescents with accidental head injuries and brain damage;
- treatment and rehabilitation of malignant diseases, musculoskeletal and neuromuscular diseases, paraplegia, tetraplegia, cerebral palsy, epilepsy, haemophilia, mental illnesses, advanced forms of diabetes, multiple sclerosis and psoriasis;
- comprehensive treatment with treatment and rehabilitation of blindness and visual impairment in accordance with the current classification of the World Health Organization, total or severe hearing impairment according to the International Classification of Impairments, Disabilities and Impairments of the World Health Organization (1980), cystic fibrosis and autism, and persons after accidental head injury and brain damage,
- treatment and rehabilitation for occupational diseases and injuries at work.

3.1.1 Allowances During Temporary Retention From Work

Insured persons, in case they are specifically insured for this right (e.g., are employed in Slovenia) are entitled to wage compensation during temporary suspension from work in cases where they are unable to work for various health reasons. In the case of absence from work due to the care of a close family member, it is limited in time. The duration of this right is longer in the case of care for a child up to the age of seven or older with a moderate, severe or severe disability (15 working days, exceptionally more, but not more than 30 working days).⁵⁵

3.1.2 Right of One Parent to Stay in Hospital for a Sick Child

Pursuant to Article 40 of the Compulsory Insurance Rules (hereinafter: CIR)⁵⁶, parents have the right to stay with a hospitalised child up to and including the age of five years. The institution covers the costs of accommodation and meals in the amount of the total price determined by the contract between the institution and the provider. If a mother who is breastfeeding a child is hospitalized, she has the right to have the child stay with the child.

⁵⁵ Zore, in: Uršič, 2015, pp. 65–66.

⁵⁶ Compulsory Insurance Rules, 1994.

In case parents are taking care of children with severe impairment or damage to the brain or spinal cord who require parental training for later rehabilitation at home, one of the parents has the right to stay in the hospital. The length of the training depends on the programme but can last up to 30 days in each case. In the case of children with chronic diseases or disabilities, one of the parents has the right to stay in the hospital during the training for the subsequent rehabilitation of the child at home, but for a maximum of 14 days in each case. In these cases, the Health Insurance Office of Slovenia (hereinafter: HIOS) covers costs in the amount of 70% of the price of the unit of account for the non-medical part of the care determined by the contract between the institution and the hospital.

3.1.3 Right to Medical Devices

According to Articles 64 to 100 of the CIR, the right to medical devices necessary for treatment, medical rehabilitation and nursing care may be exercised. Medical devices and a more precise definition of health conditions and other conditions under which an insured person is entitled to a particular medical device are determined by a general act of the Assembly of the HIOS with the consent of the minister responsible for health.

3.1.4 Group Restorative Rehabilitation

In accordance with its annual programme, the HIOS provides insured persons with musculoskeletal and neuromuscular diseases, paraplegia, cerebral palsy, the most severe form of generalised psoriasis, multiple sclerosis and paralytics with a certain functional impairment, an opportunity to participate in group and adapted rehabilitation, which an appropriate clinic, institute or other health institution professionally manages. Rehabilitation participants are provided with co-financing of physiotherapy and the costs of stay, which are determined by the contract between the institute and the group rehabilitation organizer. In this programme, the institution determines the number of days of group rehabilitation and the means for its implementation in each year (Article 50 of the CIR).

3.1.5 Organised Group Training and Summer Holidays in the Medical Colony

Children and adolescents with cerebral palsy, other severe and permanent physical impairments or chronic diseases (juvenile rheumatoid arthritis, diabetes, phenylketonuria and celiac disease) have a right to participate in organised group trainings for the management of the disease or condition that is ensured professionally managed by relevant clinics, institutes or other health institutions. In this context, the HIOS co-finances the necessary health services, therapeutic working groups, and accommodation costs. Exceptionally, one of the parents of the child or adolescent may participate in such training, provided that the latter will take care of the implementation of the child's rehabilitation at home after completing the training. In this case, the institution co-finances the costs of living for one of the parents in the same way as for the child or adolescent. The duration of the training is a maximum of 14 days per year (Article 51 of the CIR).

3.2 Early Treatment of Preschool Children with Special Needs

Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs (hereinafter: IET)⁵⁷ regulates comprehensive early treatment of children with special needs and children with risk factors in preschool age. It involves the treatment of a child and their family in the child's preschool age with the aim of ensuring and promoting children's development, strengthening the capacity of the family, and promoting the social inclusion of the family and the child (Article 1). It defines early intervention services are provided for in the law (Article 7). The central pillar of the arrangements for early treatment of children under the IET is the early treatment centre (Article 8), consisting of a multidisciplinary group of medical, social, and other professionals. For each child, the doctor appoints a multidisciplinary team of members who are important for assisting the child and family in the fields of health, education, and social care. The child's parents are also part of the team (Article 10). For children and their families, which the doctor deems necessary, the multidisciplinary team prepares an individual family plan, in which appropriate medical, social, and pedagogical assistance will be defined individually for each child and their family. For children for whom the doctor decides not to

⁵⁷ Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs, 2017.

draw up an individual family plan, the necessary treatments and assistance to the family are determined in agreement with the parents (Article 12).⁵⁸

An important role in relation to the family is played by the coordinator of an individual family plan, who is a member of a multidisciplinary team that monitors the implementation of early intervention services for an individual child and cooperates with the social work centre. The coordinator provides the family with information regarding social services and public powers in accordance with the sectoral legislation and other tasks assigned to social work centres by other regulations, and informs the family about other forms of assistance available to them in accordance with the applicable regulations.⁵⁹

The IET aims to integrate medical and social care for a child with special needs and their family with combining the necessary treatment of a child and ensuring support for their family up to a certain extent. This system is provided only for preschool children and their families.

3.3 Education of Children with Special Needs

Inclusion in educational programmes at all levels and lifelong learning in their living environment is provided to persons with disabilities on an equal basis with other citizens in accordance with Article 11 of the Equalisation of Opportunities for Persons with Disabilities Act (EODA).⁶⁰ However, according to the second paragraph of the same article, inclusion in various programmes, such as programmes offering a special and adapted curriculum, and the adaptation of regular programmes to the abilities of a person with a disability, is not discrimination.

In addition to the regulations governing education in general,⁶¹ the education of children with special needs is regulated specially by the Placement of Children with Special Needs Act (hereinafter: PCSNA).⁶² This law does not define who children with special needs are; instead, it lists groups of children according to their disability.

⁵⁸ Murgel, 2019, pp. 59–70.

⁵⁹ Ibid.

⁶⁰ Equalisation of Opportunities for Persons with Disabilities Act, 1994.

⁶¹ Organisation and Financing of Education Act, Pre-Primary Institutions Act, Primary School Act, Vocational and Technical Education Act and Gymnasiums Act.

⁶² Placement of Children with Special Needs Act, 2011.

In accordance with Article 2 of the PCSNA, children with special needs are: children with intellectual disabilities, blind and visually impaired children or children with impaired visual function, deaf and hard of hearing children, children with speech and language disorders, physically impaired children, long-term sick children, children with disabilities in specific areas of learning, children with autistic disorders and children with emotional and behavioural disorders, who need an adapted implementation of education programmes with additional professional assistance or adapted education programmes or special education programmes (Article 2). For children with special needs who have been placed in education programmes with adapted implementation and additional professional assistance, depending on the type and degree of deficiency, impediment or disorder, the organisation, manner of testing and assessment of knowledge, promotion and schedule of classes may be adapted and additional professional assistance provided (Article 7). Furthermore, for those children, additional professional assistance may be provided as assistance to overcome deficiencies, impediments or disorders, counselling service or learning assistance (Article 8, para. 2). Such assistance may be provided individually or in a group, inside or outside the classroom, in an educational or social protection institution (Article 9).

Education of children with special needs is carried out in accordance with education programmes with adapted implementation and additional professional assistance, adapted education programmes with equivalent education standards, adapted education programmes with lower education standards, a special education programme for children with moderate, severe and profound intellectual impairment and other special programmes (Article 5 of the PCSNA).

The PCSNA regulates procedures for the placement of learners with special needs into the appropriate educational programmes. Depending on the learners' psychological and physical status, the Act enables their inclusion in education at all levels, from pre-primary to secondary education, based on the assumption that additional help from experts and adaptation of the implementation of programmes will help learners to achieve a comparable standard of knowledge. Learners with severe disorders can still attend special forms of education in schools for learners

with special needs and institutions for the education and training of learners with severe developmental difficulties.⁶³

Children with special needs who cannot be provided with education at their place of residence and cannot be provided with transport due to the distance of residence from the place of education may join the institution for the education of children with special needs, a social care institution, pupils' homes for children with special needs or be placed in a foster family (Article 16, para. 1 of the PCSNA).

3.4 Parental and Family Benefits

Parental Protection and Family Benefits Act (hereinafter: PPFB)⁶⁴ regulates certain rights of children in need of special care or their parents. In accordance with Article 50 of the PPFB, parents have the right to work part-time in certain cases. One parent caring for and protecting a child up to the age of three has the right to full-time or part-time work. One parent caring for and protecting a moderate or severely impaired child or a child with moderate or severe intellectual disabilities is entitled to full-time or part-time work even after the child's third age, but not longer than the child's age of 18. In this case, the employer guarantees the employee the right to wages under actual work obligation, and the State guarantees him the full obligation to pay social security contributions from the proportional part of the minimum wage. The State pays the contributions of the insured person and the employer for compulsory pension and disability insurance, unemployment insurance, parental care, and health insurance contributions in the event of illness and injuries outside work, for the rights to health services and reimbursement of travel expenses. The State pays contributions at the rates set by law, which establishes the rates of social security contributions.

The special right attached to a child in need of special care is the allowance for caring for such a child. It is a cash allowance intended to cover the increased living costs incurred by the family in the maintenance and care of such a child (Article 79 of the PPFB). One parent or other person is entitled to childcare allowance if the child has permanent or temporary residence and lives in Slovenia (Article 80 of the PPFB).

⁶³ European Agency for Special Needs and Inclusive Education, 2024.

⁶⁴ Parental Protection and Family Benefits Act, 2014.

The second benefit is a partial payment for loss of earnings. This is a remuneration received by one parent or another person when they leave the labour market or start working part-time rather than full-time to care for a child in need of special care. This right also rests with one parent or other person caring for and protecting two or more children with moderate or severe intellectual disabilities or moderate or severe motor impairment. If a parent works part-time or full-time, they are entitled to a proportionate part of the partial payment for loss of earnings (Article 83). One parent or other person has the right to partial payment for loss of income if the child and one of the parents or another person has permanent or temporary residence in the Republic of Slovenia and lives in the Republic of Slovenia (Article 84). One parent or other person has the right to partial payment for loss of earnings, if the conditions laid down in this Act are met or at the latest until the child's 18 years of age (Article 86 of the PPFB).

4 Open Issues Regarding Legal Status of Children with Special Needs in Slovenia

By setting the above-described legal framework, becoming a member state of the CRC and the CRPD, and recognizing obligations from EU and CoE instruments, Slovenia has undertaken important steps to create a beneficial social environment for children with special needs. Many of those solutions are in line with international instruments relating to children with special needs. However, being Member State of international treaties relating to the protection of the rights of children with special needs, especially the CRC and the CRPD, and international treaties at the European level is only one step in reaching the goal of actual implementation of those rights in practice. Ensuring the rights of children with disabilities depends on the member states of the relevant international instruments. Most of the mentioned international instruments are legally binding and imply the obligation of states parties to implement them in accordance with the principle of international law *pacta sunt servanda*. While the CRC contains general provisions on the prohibition of discrimination against children with special needs, the CRPD determines detailed modern standards of protection of persons with disability, including children. Therefore, it is vital to ensure full implementation of the CRPD relating to children in domestic legislation and policy.

So far, Slovenia has only partially implemented obligations relating to children with disabilities. In the Concluding observations on the initial report of Slovenia from 2018, the CRPD Committee, among others, expressed concern about the lack of early assistance and the placement of children with disabilities in residential treatment institutions and the absence of mechanisms to ensure the participation of children with disabilities in decision-making processes affecting their lives. In this respect, the CRPD Committee recommended that Slovenia ensure a national strategy, with benchmarks and with human, technical and financial resources, aimed at ensuring the full inclusion of children with disabilities in society, paying attention to the development of inclusive settings in early assistance, education, housing, health and all community services.⁶⁵

Regarding the awareness-raising (Article 8 of the CPRD) the CRPD Committee expressed concern about negative societal attitudes in Slovenia towards persons with disabilities, including the lack of awareness about their capabilities and rights, with particular reference to persons with psychosocial and/or intellectual disabilities and the absence of strategies, including awareness-raising campaigns, for combating stereotypes and prejudices against persons with disabilities and recommended the State to adopt measures to raise public awareness about the rights of persons with disabilities in families, schools and society and to adopt an awareness-raising strategy.⁶⁶

A field of significant importance regarding children with special needs as a part of the wider population of persons with a disability, according to the CRPD Committee is the lack of systematic collection of disaggregated data on persons with disabilities and their social condition, including the barriers that they face in society (Article 31 of the CPRD). The Committee recommended Slovenia to develop systematic data collection and reporting procedures and to collect, analyse and disseminate disaggregated data on its population with disabilities, including data disaggregated by sex, age, ethnicity, type of impairment, socioeconomic status, employment, and place of residence, as well as data on the barriers that persons with disabilities face in society and their level of poverty.⁶⁷

⁶⁵ Committee on the Rights of Persons with Disabilities, CRPD/C/SVN/CO/1, 16 April 2018, p. 4.

⁶⁶ *Ibid.*, p. 5.

⁶⁷ *Ibid.*, p. 13.

So far, none of the CRPD Committee's recommendations regarding children with disability have been implemented. The absence of collecting systematic data on the population with disabilities in Slovenia, including children with special needs, their analysis and dissemination of disaggregated data is one of the main obstacles for implementing specific policies and measures. In his special report on the rights of persons with disabilities in Slovenia from 2024⁶⁸ the Advocate of the Principle of Equality of the Republic of Slovenia has concluded that a systematic review of legislation, policies and programmes has not been prepared, and these remain inconsistent with the provisions of the Convention. The legislation was not harmonised with the human rights-based approach to disability. Furthermore, comprehensive legislation to prevent discrimination, which would also recognise and sanction the denial of reasonable accommodation in all areas of social life as a form of discrimination based on disability, has not been adopted. The focal point for managing, directing, and coordinating all non-discrimination policies at the government level has not been established. No progress has been made in systematically eliminating systemic discrimination against persons with disabilities, especially in legislation and in the field of mental health and institutionalisation. However, the Strategic tasks of the National Strategic Action Document for Persons with Disabilities present the 2022–2030 Action Programme for Persons with Disabilities⁶⁹, which includes deinstitutionalisation. As far as children with disabilities are concerned, the Advocate emphasises that no strategies exist to prevent violence against children in alternative care. Effective coordination between the various actors in this area is not ensured.

Given the fact that a parallel education system exists for a specific share of children with special needs who attend special schools, a conclusion may be drawn that there is no actual inclusion in the field of education. Such a system is enabled by Article 11 of the Equalisation of Opportunities for Persons with Disabilities Act, providing that inclusion of students in various programmes, such as programmes offering a special and adapted curriculum, is not discrimination. It is developed in detail by the Placement of Children with Special Needs Act. Such a system creates segregation of children with special needs to special (basic) schools, which are physically separated or located away from regular schools. This kind of segregation leads to the

⁶⁸ Advocate of the Principle of Equality of the Republic of Slovenia, Special Report on Implementing Rights of All People with Disabilities in Slovenia, 2024, pp. 6-9.

⁶⁹ Republica Slovenia, 2021, Action Programme for Persons with Disabilities 2022–2030.

segregation of children included in such schools in their lives as adults. Exclusion of children with special needs from separate schools paves the way for their exclusion from society as they become adults. This is not in compliance with one of the basic contemporary principles of the protection of the rights of persons with disabilities enshrined in Article 3 of the CRPD, the principle of full and effective participation and inclusion of persons with disabilities in society.

Additionally, it should be noted that the CRPD Committee in its Concluding remarks of 2018 (para. 40) recommended Slovene authorities to adopt a strategy and action plan with a clear time frame for the implementation of inclusive education at all levels for all children with disabilities and, further, establish a comprehensive monitoring system to assess the progress of inclusive education. It also recommended that the State strengthen the capacity of inclusive schools to train teachers in inclusive education, curriculum accommodation, and teaching methods, as well as enhance the quality of educational support by adopting an individualised approach to children with disabilities and their capacity-building. According to the Advocate of the Principle of Equality, not all educational institutions are fully accessible to persons with disabilities, and appropriate quantitative and qualitative indicators do not define the monitoring of progress in this regard. The 2022–2030 National Child Guarantee Action Plan of the Republic of Slovenia⁷⁰ provides a time frame for the implementation of inclusive education at all levels, but it is not actually that ambitious. The system for monitoring progress is not specifically defined, pursuant on sufficient quantitative and qualitative indicators. It does not contain any performance criteria and lacks the necessary human and technical resources for a successful implementation.⁷¹

5 Conclusion

Standards of international law on the protection of the rights of children with disabilities are well developed and based on the modern human rights model of the protection of the rights of persons with disabilities. However, the mere course, inclusion of children with disabilities in legally binding instruments, is just the first rung of the ladder to be climbed. The example of Slovenia shows that although some rights of children with disabilities have been regulated by national legislation, there

⁷⁰ National Child Guarantee Action Plan of the Republic of Slovenia 2022–2030.

⁷¹ Ibid. See, for example, tables on p. 36 and 42.

are still many challenges and gaps in the implementation of the rights of children with disabilities that need to be addressed in the future.

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SAFEGUARDING THE CHILD'S BEST INTERESTS IN JUDICIAL PROCEEDINGS THROUGH DIGITAL TECHNOLOGY

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Although appearing in court can cause significant psychological distress to children, especially when involved in criminal proceedings or family disputes, their participation in judicial proceedings is sometimes unavoidable. While children's procedural rights are rarely the main issue in proceedings before the ECtHR, its case law has nonetheless established certain standards concerning the need for child-friendly approaches. However, safeguarding children's rights to effective participation and to be heard while simultaneously protecting them from secondary victimisation remains challenging. With the development of technology and the digitalisation of judicial systems, new approaches and opportunities continue to emerge. Remote hearings and various digital tools hold great potential to make judicial proceedings less intimidating and traumatic when implemented with proper safeguards. The paper analyses relevant ECtHR case law, the psychological aspects of remote hearings, and some examples of Slovenian good practices concerning using digital tools in judicial proceedings involving children.

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1 Introduction

Historically, children participating in judicial proceedings have only rarely been at the forefront of legal discourse as a separate subject of rights deserving of special and enhanced protection rather than the extension of their parents. The shift toward a child-centred approach can be attributed to several international instruments, most notably the Convention on the Rights of the Child (hereinafter: CRC), which established certain necessary standards for protecting the child's best interests in legal settings, especially concerning their right to be heard. The recognition that children, as vulnerable participants in judicial proceedings, require additional safeguards to ensure their effective participation and protect their procedural rights arose from the growing understanding that they are not merely passive subjects, but full-rights holders entitled to procedural guarantees in line with their age and maturity. Much of the credit for this development can be assigned to the European Court of Human Rights (hereinafter: ECtHR), which has played a crucial role in shaping these safeguards through its case law, despite the fact that the European Convention on Human Rights (hereinafter: ECHR) does not explicitly grant special procedural protection to children involved in court proceedings. However, as discussed in more detail below, the ECtHR's case law in this area remains somewhat fragmented and narrowly focused, with some key issues still awaiting a satisfying solution.

One of the key challenges in safeguarding children's rights is finding a proper balance between their right to effectively participate in proceedings affecting their interests and the need to protect them from potential psychological harm. Direct involvement and in-person participation in court proceedings, especially in the case of very young or traumatised children, can lead to psychological distress and secondary victimisation, which can be even more harmful to their long-term well-being than the original incident. The digitalisation of judicial systems has opened the door to new solutions and possibilities to tackle these issues (e.g., by minimising distressing encounters or providing a less intimidating environment) but has also given rise to new concerns and challenges that could adversely affect the fairness of proceedings.

The paper analyses the ECtHR case law on children's rights in judicial proceedings and the safeguards established to protect their best interests; evaluates the potential of using digital technology in court settings to meet these standards based on their

psychological impact, both beneficial and adverse; and highlights good practices within the Slovenian justice system, demonstrating that digital tools can be effectively integrated into judicial processes, provided that potential risks are properly managed and mitigated.

2 Children's Procedural Rights in the ECtHR Case Law

2.1 The ECtHR's Approach

The ECtHR is the sole interpreter of the ECHR and has no obligations toward any other international law or jurisprudence, including the CRC. However, even though there is formally no connection between these two instruments, the ECtHR has consistently acknowledged a reciprocal, harmonious relationship between the two conventions and frequently references both when adjudicating cases involving children and their rights. In this regard, it even holds that concerning children, certain positive obligations of contracting states must be interpreted in the light of the CRC.¹ Nonetheless, the fact that the ECHR itself does not explicitly provide special protection or grant special status to children involved in court proceedings can be at least partially blamed for the ECtHR case law remaining somewhat fragmented and isolated in this area. Until relatively recently, the rights of children involved in court proceedings and other legal procedures have not been a primary focus in the case law of the ECtHR but were generally only considered within the broader framework of procedural guarantees and fair trial, frequently as "side issues", or were interpreted equally to those of adults or through the prism of their parent's rights. However, due to the growing emphasis on child-centric approaches and the influence of international instruments dedicated to safeguarding children's rights, most notably the CRC, a globally accepted stance has emerged that children not only have the same rights as adults and must be recognised as full-rights holders, but are also entitled to additional rights due to their special needs and vulnerability to exploitation and abuse, especially when involved in judicial proceedings.²

In the landmark case *Blokhin v. Russia*, the ECtHR thus asserted that when a child enters the criminal justice system, their procedural rights must be guaranteed and their innocence or guilt established in accordance with the requirements of due

¹ See also Helland & Hollekim, 2023, pp. 213-214 and *Harroudj v. France*, 2012.

² Durandelle, Enslen & Thomas, no date, p. 2. For more, see also Drnovšek, 2024, pp. 111-129.

process and the principle of legality, with respect to the specific act they have allegedly committed. A child must not be deprived of important procedural safeguards solely because the proceedings that may result in their deprivation of liberty are deemed under domestic law to be protective of their interests as a child and juvenile delinquent rather than penal. Discretionary treatment based on someone being a child, a juvenile, or a juvenile delinquent is only acceptable where their interests and those of the state are not incompatible. Otherwise – and proportionately – substantive and procedural legal safeguards do apply.³

Special consideration of children's procedural rights and a distinct interpretation of these otherwise traditional legal concepts is reflected in the ECtHR case law concerning the child's right to effective participation in criminal proceedings as part of the right to a fair trial under Article 6 of the ECHR, and the right to be heard in family matters as part of the right to respect for private and family life under Article 8 of the ECHR.

2.2 The Right to Effective Participation

In the controversial⁴ cases of *T. v. the United Kingdom* and *V. v. the United Kingdom*, the ECtHR affirmed that the right to effective participation is integral to the child's right to a fair trial under Article 6 of the ECHR. Given that there is no universally agreed-upon standard among the Council of Europe Member States regarding the minimum age of criminal responsibility, the ECtHR established that attribution of criminal responsibility to the child of such age does not in itself give rise to a breach of the ECHR, nor does the criminal trial of a child as such violate the fair trial guarantees under Article 6(1). However, a child charged with an offence must be treated in a manner that takes full account of their age, level of maturity, and intellectual and emotional capacities, and that steps are taken to promote their ability to understand and participate in the proceedings. In the case of a young child charged with a grave offence attracting high levels of media and public interest, the hearing should be conducted in such a way as to reduce their feelings of intimidation and inhibition as much as possible. While public trials may serve the general interest in the open administration of justice, where appropriate, in view of the age and other

³ *Blokhin v. Russia*, 2016.

⁴ At the age of ten, the applicants abducted a two-year-old boy from a shopping mall, took him over two miles away, tortured him, battered him to death and left him on a railway line to be run over. They were convicted of murder and abduction following a highly publicised trial.

characteristics of the child and the circumstances surrounding the criminal proceedings, this general interest could be satisfied by a modified procedure providing for selected attendance rights and judicious reporting. The ECtHR further emphasised that in such cases, even special measures taken in view of the child's young age and to promote their understanding of the proceedings (for example, explaining the trial, showing them the courtroom in advance) and the representation by skilled and experienced lawyers might not be sufficient. If it is highly unlikely that the child would have felt sufficiently uninhibited in the tense courtroom and under public scrutiny to have consulted with the lawyers during the trial or, given their immaturity and their disturbed emotional state, to have cooperated with them outside the courtroom, a conclusion has to be drawn that the child was unable to participate effectively in the criminal proceedings against them and was, in consequence, denied a fair hearing in breach of Article 6(1) of the ECHR.⁵

"Effective participation" in this context presupposes that the child has a broad understanding of the nature of the trial process and what is at stake for them, including the significance of any penalty that may be imposed. Article 6(1) of the ECHR does not require that a child on trial for a criminal offence should understand or be capable of understanding every point of law or evidential detail. Given the sophistication of modern legal systems, many adults of normal intelligence cannot fully comprehend all the intricacies and all the exchanges taking place in the courtroom. However, the child should be able to understand the general thrust of what is said in court (if necessary with the assistance of an interpreter, lawyer, social worker or friend) and to explain to their representative their version of events, point out any statements with which they disagree and make them aware of any facts which should be put forward in their defence.⁶

In other rulings, the ECtHR emphasised that the right of a juvenile defendant to effective participation in their criminal trial requires that the authorities deal with them with due regard to their vulnerability and capacities from the first stages of their involvement in a criminal investigation and, in particular, during any questioning by the police. The authorities must take steps to reduce, as far as possible, the child's feelings of intimidation and inhibition and ensure that they have a broad understanding of the nature of the investigation, of what is at stake for them,

⁵ Summarised from *T. v. the United Kingdom*, 1999 and *V. v. the United Kingdom*, 1999.

⁶ *S.C. v. the United Kingdom*, 2004; *Panovits v. Cyprus*, 2008.

including the significance of any penalty which may be imposed, as well as of their rights of defence and, in particular, of their right to remain silent.⁷ Where the child's young age and limited intellectual capacity impair their ability to participate effectively in judicial proceedings (e.g., they fail to comprehend the importance of making a good impression on the jury), it is essential that they are tried before a specialist tribunal, which is able to give full consideration to and make proper allowance for the handicaps under which the child labours, and adapt its procedure accordingly.⁸

2.3 The Right to be Heard in Family Matters

Article 8 of the ECHR (Right to respect for private and family life) does not impose any explicit procedural requirements concerning children participating in family law proceedings. However, to respect their interests protected by this article, the ECtHR case law established that children must be sufficiently involved in decisions related to their family and private life, as guaranteed by several international legal instruments, such as Article 12 of the CRC, Articles 3 and 6 of the European Convention on the Exercise of Children's Rights,⁹ and Article 24 of the Charter of Fundamental Rights of the European Union (the Charter).¹⁰ The ECtHR has thus reinforced international and European standards through its case law, emphasising that children must no longer be considered as their parents' property but rather as individuals with independent rights.¹¹

As children lack the full autonomy of adults but are nonetheless subjects of rights, their right to personal autonomy (as an inherent part of the "private life") has a limited scope and is exercised through their right to be consulted and heard.¹² In any judicial or administrative proceedings affecting children's rights under Article 8 of the ECHR, children capable of forming their own views must thus be provided with the opportunity to be heard and express their views. Otherwise, it cannot be said that they were sufficiently involved in the decision-making process.¹³ For children of a certain age, the ECtHR favours the national judge hearing them in person;

⁷ *Blokhin v. Russia*, 2016; *Adamkiewicz v. Poland*, 2010; *Martin v. Estonia*, 2013; *S.C. v. the United Kingdom*, 2004.

⁸ *S.C. v. the United Kingdom*, 2004.

⁹ *European Convention on the Exercise of Children's Rights*, 1996.

¹⁰ *Charter of Fundamental Rights of the EU*, 2012.

¹¹ ECHR-KS, 2022.

¹² *M.K. v. Greece*, 2018.

¹³ *M. and M. v. Croatia*, 2015; *C v. Croatia*, 2020; *M. K. v. Greece*, 2018; *N. TS. and others v. Georgia*, 2016.

however, depending on their age and maturity, interviews by experts and subsequent reports for the judges referred to in the judicial decisions could be considered sufficient.¹⁴ In the case of very young children who may not yet be capable of forming or expressing their wishes, especially when their behaviour suggests that their opinion might not be properly autonomous but rather influenced by one of the parents, domestic authorities should seek expert opinion to determine whether it is possible, given the child's age and maturity, to interview them in court, if need be with the assistance of a specialist in child psychology.¹⁵ If the domestic authorities conclude that the child lacks the discernment necessary to be heard, expert reports giving an account of their opinion regarding the situation in dispute should be obtained to make up for the failure to hear the child.¹⁶ Similarly, in cases involving children who have experienced trauma, an expert should be appointed to determine whether requiring the child to participate in court proceedings or undergo repeated questioning would be contrary to their best interests. Taking into account the margin of appreciation granted to domestic authorities, who are better positioned than the ECtHR to assess such circumstances, the domestic courts may justifiably determine, based on expert opinions, that it is inappropriate to hear the child in person, especially if they were caught up in a conflict of loyalties and direct participation could have harmful psychological effects or considerably prolong the proceedings.¹⁷

It is worth emphasising that, according to the ECtHR, the views of a child are not necessarily immutable, and while their objections must be given due weight, they are not necessarily sufficient to override their parents' interests (particularly regarding the maintenance of regular contact between a child and a parent in cases where the child resists it). The right of a child to express their own views should not be interpreted as effectively giving unconditional veto power to children without any other factors being considered and without an examination being carried out to determine their best interests. Such interests normally dictate that the child's ties with their family must be maintained, except in cases where this would harm the child's health and development.¹⁸ On the other hand, it is generally accepted that there may come a stage where it becomes pointless, if not counter-productive and harmful, to

¹⁴ ECHR-KS, 2022.

¹⁵ *Petrov and X v. Russia*, 2018; *Zelikha Magomadova v. Russia*, 2019; *Gajtani v. Switzerland*, 2014.

¹⁶ *Neves Caratão Pinto v. Portugal*, 2021.

¹⁷ *R.M. v. Latvia*, 2021; *Gajtani v. Switzerland*, 2014.

¹⁸ *Zelikha Magomadova v. Russia*, 2019; *K.B. and others v. Croatia*, 2017; *Raw and others v. France*, 2013; *Suur v. Estonia*, 2020; *Gajtani v. Switzerland*, 2014; *I.S. v. Greece*, 2023.

attempt to force a child to conform to a situation which, for whatever reasons, they resist.¹⁹

Very similar views are reflected in the case law of the Court of Justice of the European Union (CJEU), which is not surprising, given that the CJEU attaches great importance to opinions and interpretations adopted by the ECtHR in its case law and that it follows from Article 52(3) of the Charter that, in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, their meaning and scope are to be the same as those laid down by the ECHR (not precluding wider protection by the EU law). The CJEU clarified that Article 24(1) of the Charter requires that children should be able to express their views freely and that the views expressed should be taken into consideration on matters which concern the children, solely 'in accordance with their age and maturity', while Article 24(2) of the Charter demands that account be taken of the best interests of the child in all actions relating to children. Thus, in the matters of parental responsibility, it is for the court that has to rule in the case to assess whether such a hearing is appropriate since the conflicts requiring judgment awarding custody of a child to one of the parents and the associated tensions create situations in which the hearing of the child, particularly when the physical presence of the child before the court is required, may prove to be inappropriate and even harmful to the psychological health of the child. Therefore, it is not necessary that a hearing before the court takes place, but the right of the child to be heard does require that legal procedures and conditions are made available for the child to express their views freely and that the court obtains those views. In other words, while it is not a requirement of the applicable EU instruments that the views of the child are obtained in every case through a hearing and the court thus retains a degree of discretion, the court that does decide to hear the child is required to take all measures which are appropriate to the arrangement of such a hearing, having regard to the child's best interests and the circumstances of each case, in order to ensure the effectiveness of those provisions, and to offer the child a genuine and effective opportunity to express his or her views.²⁰

¹⁹ *C. v. Finland*, 2006; *Plaža v. Poland*, 2011. For more, see also Kraljić, 2016, pp. 11-30 and Kraljić & Drnovšek, 2022, pp. 101-116.

²⁰ *Joseba Andoni Aguirre Zarraga v. Simone Pelz*, 2010. See also *Dynamic Medien Vertriebs GmbH v. Avides Media AG*, 2008 and *M. A. v. État Belge*, 2021.

A common guiding principle can be extracted from the case law analysed above that applies to both criminal and family law proceedings.²¹ The ECtHR (as well as the CJEU) has consistently emphasised that children must be granted procedural guarantees and the possibility to express their views according to their age and maturity to ensure their effective participation and the right to be heard. While the participation of children in judicial proceedings is fundamental for the protection of their rights, the ECtHR has also acknowledged that their direct involvement may, in some cases, be harmful and thus contrary to their best interests, particularly when the child is very young, traumatised, or subject to (unfriendly) public scrutiny. In such cases, the national courts are directed to adopt child-sensitive approaches that minimise intimidation and further traumatising. To this effect, digital tools – such as remote hearings via videoconference, recorded interviews and testimonies, and child-friendly digital platforms – carry a notable potential for enhancing the protection of children's rights by providing less intrusive means of participation without direct court exposure while still allowing children to express their views in proceedings.

3 Digital Tools as a Means to Safeguard Children's Procedural Rights

3.1 Psychological Benefits and Risks of Using Digital Technology in Court Proceedings

While the advantages and disadvantages of remote hearings and videoconferencing have been the subject of debate among its proponents and critics for some time, interest in the psychological implications of their application has increased more recently, with several empirical studies focusing on the impact of remote proceedings on the psychological state of participants – including or especially children – and the resulting quality of their participation in judicial proceedings. While these issues remain critically under-researched, the studies have already yielded some insightful findings.

Depending on the individual, videoconference and other digital tools have a great potential to either alleviate or exacerbate anxiety about appearing in court, which can, in turn, heavily affect the quality and usefulness of one's participation in judicial

²¹ See also Drnovšek, 2024, pp. 111-129.

proceedings. Participants who are not very familiar with the courtroom environment, procedures, and protocols (e.g., witnesses or other participants who are testifying for the first time) are especially prone to the so-called anticipatory anxiety, i.e., an unpleasant psychological state in response to feelings of uncertainty and stress concerning the performance of a task. Its negative impact on performance is reflected in physiological responses (increased heart rate, breathing rate, muscle tension, and sweating),²² cognitive and behavioural responses (avoidance and negative self-talk, feeling helpless or powerless),²³ or even decreased motor skills.²⁴ Research has shown that anxious and preoccupied individuals performed worse on a test measuring eyewitness accuracy, with their perception and recall of significant information also being negatively affected.²⁵ In cases of abused children, the fear and trauma associated with testifying in front of the offender may cause psychological injury to the child and overwhelm them to the extent that prevents effective testimony.²⁶ This is particularly true for older children, whom the attorneys tend to question more aggressively than younger children.²⁷ A study done on children has shown that children who were questioned in a mock courtroom demonstrated impaired memory performance and greater heart rate variability (a stress response) compared to children interviewed in a small, private room.²⁸ Videoconferencing might allow participants to avoid some sources of anxiety by giving them the option of testifying in a more private and comfortable environment, which might, in turn, enhance their performance. On the other hand, carrying out remote hearings requires special care to prevent the opposite effect, as using unfamiliar equipment and technology can be its own source of anxiety and thus adversely affect the quality of testimony.

Several factors can contribute to the stress of appearing in court. The formal setting, complex legalese, potential legal consequences for improper conduct, facing the offender and challenging them, testifying publicly and reliving the trauma can all be extremely intimidating. Research supports that testifying in judicial proceedings can be harmful to a person's mental health.²⁹ While some victims or witnesses appreciate

²² Streetman et al., 2022, pp. 1349-1350.

²³ Seligman & Csikszentmihalyi, 2014; see also Clemente & Padilla-Racero, 2020.

²⁴ Streetman et al., 2022, p. 1350.

²⁵ Siegel & Loftus, 1978.

²⁶ For more, see Thoman, 2013, p. 243.

²⁷ Thoman, 2013, p. 240.

²⁸ Nathanson & Saywitz, 2003.

²⁹ For details, see Clemente & Padilla-Racero, 2020.

the opportunity to share their story in a public setting, others prefer discretion.³⁰ Repeated questioning, public scrutiny, adversarial questions and scepticism can intensify trauma, feelings of helplessness, misunderstanding and self-blame, thus triggering severe anxiety or depression. The justice system itself can become a source of negative experiences and of so-called secondary victimisation, i.e. distress suffered by a victim of offence due to the negative psychological, social, legal and financial impact of being processed by the justice system.³¹ Digital tools can potentially prevent or minimise secondary victimisation by reducing contact between victims or witnesses and the offender, minimising public exposure, and accelerating legal proceedings to provide closure.

On the other hand, remote hearings facilitated by digital technology are intrinsically linked to certain unique challenges that are less prevalent in traditional, in-person judicial proceedings. Some – but not nearly all – include the following:

A) Forming impression and assessing credibility. Impression formation is an ongoing process (in which an individual collects and combines information about another in order to form a global impression of that person) and can be impacted by anything, e.g., the firmness of a handshake or the person's outfit,³² the rate of speech and speech patterns (people who employ slow rates of speech are viewed as more calm, composed, trustworthy, and honest),³³ directness of eye contact, smiling, etc.³⁴ Research suggests that someone's perceived characteristics can impact judicial decision-making. The testimony of witnesses who are seen as more confident is considered more accurate and believable; the testimony of likeable witnesses seems more impactful and credible and holds a greater persuasive power.³⁵ Similar seems to apply to the testimonies of expert witnesses.³⁶ Since people who collaborate and communicate face-to-face are perceived as more likeable and more intelligent than those who collaborate and communicate with each other over video,³⁷ remote hearings can potentially result in a less favourable perception of a person and, in turn, in different decisions. For example, research conducted in Cook County

³⁰ Stepakoff et al., 2014, p. 9.

³¹ Clemente & Padilla-Racero, 2020, p. 866 ff.

³² See, for example Chaplin et al., 2000.

³³ Cramer, Brodsky & DeCoster, 2009, p. 64.

³⁴ Kilgo, Boutler & Coleman, 2018.

³⁵ McGuire, 1969.

³⁶ See, for example, Brodsky et al., 2009.

³⁷ Fullwood, 2007.

(Illinois) has shown that felony bail amounts increased by an average of 51% in the eight years after they were moved from in-person to video initial bail hearings.³⁸

B) Narrowed field of perception. The remote format of hearing inherently alters the setting and affects the observer's visual field and the quality of visually presented information.³⁹ Perception is limited to what the technology (camera and microphone) can capture and transmit, which might exclude important non-verbal cues (e.g., fidgeting, disability, smell as a sign of intoxication). This can present a significant obstacle, given that, according to estimates, 60 to 65% of interpersonal communication is conveyed via nonverbal behaviours, many of which are unconscious and can often be a more authentic reflection of someone's thoughts and emotional state.⁴⁰ Furthermore, videoconferencing does not allow a choice of whom and what to observe during testimony, and what is shown on screen may not always be the only or the most relevant information. Even though impression formation and interpersonal dynamics begin even before direct interaction (e.g., observing how a person enters a courtroom, how they walk, sit, etc.),⁴¹ such aspects become unobservable with the remote testimony, which starts only when the camera is turned on. Judges have also expressed concerns about witnesses being prompted by another person off-camera, potentially resulting in unreliable testimony.⁴²

C) Manipulation of physical environment and setup. Camera angles, lighting, and location can all influence someone's perception and impression.⁴³ Research has shown that gazing directly at the camera is positively associated with likeability, social presence and interpersonal attraction, that high camera angles increase interpersonal attraction and decrease threat perception, and that faces closer to the camera are perceived as more threatening than in other positions.⁴⁴ All these factors can be manipulated, which raises additional concerns. The ability to simulate eye contact by staring at the camera instead of the screen – and thus leave a more favourable impression – can be more easily manipulated by individuals who are more comfortable with the camera and have more experience with technology (e.g.,

³⁸ Diamond et al., 2010; see also Vavonese et al., 2020.

³⁹ Goldenson & Josefowitz, 2021, p. 93.

⁴⁰ Foley & Gentile, 2010, p. 39; see also Burgoon, Manusov & Guerrero, 2022, p. 4 ff.

⁴¹ Argelander, 1976, p. 29 ff.

⁴² Williams, 2011, p. 9.

⁴³ Turner, 2021, p. 218; Tran, 2023, p. 494.

⁴⁴ Fauville et al., 2022.

content creators).⁴⁵ Videoconferencing platforms that allow participants to see themselves may intensify their emotions and increase self-awareness, which can result in heightened self-criticism and an urge to adapt the testimony and behaviour to better align with personal standards and societal norms (self-regulatory behaviour).⁴⁶ Research has shown that someone's behaviour can even be affected by the size of their picture on screen.⁴⁷ Furthermore, the background can also influence how someone is perceived; e.g., if someone is testifying from prison, they might be perceived as dangerous, if testifying from a hospital, they might invoke compassion, and if testifying from their office, they might give the appearance of authority.⁴⁸

D) Psychological significance of judicial symbols. While courtroom settings can induce anxiety, the formality and symbolism of judicial proceedings (the robes, wigs, emblems, positioning of a judge, architecture of court buildings, etc.) serve an important psychological function by evoking respect, signifying the authority of the judge and legitimacy of proceedings.⁴⁹ In a videoconferencing setting, the judge has less control over projecting their own appearance and public image, which might impact how the authority of the court and the judge are perceived.⁵⁰

E) Technical aspects. Technical issues and frequent interruptions (technical glitches, lags, asynchronicity) might affect the perception of testimony by not letting participants express themselves fully, especially on an emotional level. For example, a witness recalling and reliving a traumatic event might experience and express emotions that align with their verbal account; however, if the video freezes, the disruption may alter the flow of the testimony, possibly resulting in distrust or misperception. Moreover, such disruptions can impact the psychological state of the person testifying by causing frustration, distraction, emotional detachment, or anger over having to repeat themselves. Even minor asynchronicity can contribute to the so-called "Zoom fatigue", i.e. a cognitive strain supposedly caused by the brain having to work harder to synchronise delayed audio and video signals received via technology.⁵¹ Given that court proceedings are communicative processes taking

⁴⁵ Bellone, 2013, p. 31.

⁴⁶ Wegge, 2006, p. 279.

⁴⁷ Wegge, 2006.

⁴⁸ Rowden & Wallace, 2019, p. 708.

⁴⁹ Kutz, 2022, p. 297; Rowden & Wallace, 2018, p. 505. For more about the importance of judicial symbols, see Kessler, 1962.

⁵⁰ Rowden & Wallace, 2018, p. 510.

⁵¹ Wiederhold, 2020, p. 437; Tran, 2023, p. 494.

place in a group of people, remote hearings can be plagued with issues related to impaired turn-taking, difficulties in pointing and referring to objects out of sight, signals indicating understanding, interruptions, or even in "we versus them" thinking when in different locations.⁵²

The challenges discussed above represent only a minor fraction of issues faced by courts and participants in judicial proceedings conducted remotely, and with the rapid technological development and digitalisation, new challenges will inevitably emerge. With the increasing rate of reliance on videoconferencing and other digital tools within the justice system, it is crucial for the courts to pay attention to all potential disadvantages of remote trials and implement necessary protocols, safeguards, and measures to mitigate such obstacles and ensure procedural fairness to the same extent as for in-person trials. When used with all due consideration, digital technology can be a powerful tool to better safeguard the rights of participants in proceedings and improve their experience with the justice system. This is especially true in cases involving children, where the use of digital tools can uphold their best interests by decreasing their anxiety, preventing secondary victimisation, and reducing exposure to intimidating court proceedings and distressing encounters while still allowing them to participate and express their views in a safer, more familiar, and less traumatic environment. The possibility of conducting proceedings involving children remotely, via videoconference, thus brings certain undeniable psychological advantages and is also consistent with standards established by the ECtHR to uphold children's rights to effective participation and to be heard.

3.2 Good Practices in the Republic of Slovenia

The justice system in the Republic of Slovenia has recognised the potential of digital tools to enhance the protection of children in judicial proceedings and has been actively integrating their use in an attempt to establish child-friendly practices. To mitigate the risk of secondary victimisation and other harmful outcomes, special measures and protocols were implemented to protect vulnerable child witnesses, especially those who were the victims of criminal offences against sexual integrity, marriage, family and youth, enslavement, or human trafficking. Under paragraph six of Article 240 of the Slovenian Criminal Procedure Act (*Zakon o kazenskem postopku*

⁵² Wegge, 2006, p. 276.

– ZKP),⁵³ in such cases, the hearing of witnesses who are younger than 15 years must be carried out in specially adapted premises, depending on their personal circumstances, unless this is not necessary for justifiable reasons that must be substantiated explicitly by the court. To that effect, child-friendly facilities have been introduced at all district courts in the Republic of Slovenia. These special rooms are designed to be less intimidating and stressful and are equipped with toys, colourful furniture, and hidden cameras that children do not easily detect. Generally, they have a special entrance where the child does not need to undergo regular security measures (security guards, scanners, intimidating main entrance, etc.) and can avoid stressful encounters (especially with offenders). Instead of appearing in the main courtroom, where other participants are located, the child is interviewed by a specially trained professional (e.g., social worker), who is in contact with the judge via headset. The child's hearing is streamed live to a screen in the main courtroom, and the judge and participant can instruct the interviewer on which questions to ask.⁵⁴

A further step towards child-friendly justice was taken with the implementation of the project Barnahus (meaning "Children's House" in Icelandic), a leading European model for child-friendly, multidisciplinary, and inter-institutional treatment of children, witnesses, and victims of sexual abuse.⁵⁵ The Barnahus model aims to coordinate parallel criminal and child protection proceedings by bringing together all relevant activities of the criminal justice process under one roof, thus preventing the re-victimisation of children during the investigation process and the court proceedings. The crucial role of the service is to gather valid evidence using forensic interviews that can be used in court proceedings, meaning that the child can avoid going to court. The child also receives help and support, including medical assessment and care, mental health assessment and therapy.⁵⁶ To establish legal grounds for implementing this model in the Republic of Slovenia, the Act on the Protection of Children in Criminal Proceedings and Their Comprehensive Treatment in the Barnahus (*Zakon o zaščiti otrok v kazenskem postopku in njihovi celostni*

⁵³ Official Gazette of the Republic of Slovenia, No. 176/21 – official consolidated text, 96/22 – odl. US, 2/23 – odl. US, 89/23 – odl. US and 53/24.

⁵⁴ For more, see Drnovšek & Berk, 2024, pp. 246-247.

⁵⁵ What is Barnahus?. Retrieved from: <https://www.hisa-za-otroke.si/en/barnahus/> (accessed: 28 February 2025).

⁵⁶ Hiša za otroke, 2024, pp. 2-3. Retrieved from: https://www.hisa-za-otroke.si/wp-content/uploads/2024/05/BROSURA_HisaZaotroke_175x250_high_spread.pdf (accessed: 28 February 2025). See also Mikec & Stankić Rupnik, 2022, p. 44; Drnovšek & Berk, 2024, pp. 248-251.

obravnavi v hiši za otroke - ZZOKPOHO)⁵⁷ was adopted, which established a comprehensive and systematic framework for treating child victims and witnesses of criminal offences. With a strong emphasis on the child's best interests and the prevention of secondary victimisation, the act supplements criminal legislation by introducing clear guidelines to ensure a child-friendly and trauma-sensitive approach in legal proceedings.⁵⁸ While the Barnahus model was originally designed as a response to criminal offences against sexual integrity, it has been adapted in the Republic of Slovenia also to include child victims and witnesses of other violent crimes. Furthermore, if the best interests of the child so require, comprehensive treatment may also be provided to a minor under the age of 18 who is subject to pre-trial or criminal proceedings.⁵⁹ Following the adoption of the ZZOKPOHO, the public institution Children's House was formally opened in Ljubljana, Slovenia, on 27 May 2022. In the first year of its existence, it already provided support to 26 children who were victims of criminal offences against sexual integrity.⁶⁰

In its activities, the Children's House relies heavily on using digital tools to pursue its main objective – the child's best interests and the prevention of secondary victimisation – especially in conducting interviews and training professionals. The child's interview is conducted based on a written court order issued by the court, either as an ex officio or upon the parties' proposal. While the court retains the substantive and procedural management of the questioning, the Children's House is responsible for its organisation and execution. Before the interview, a preparatory meeting is held at the Children's House, led by the investigating judge, during which the participants may give their statements on the facts and circumstances relevant to the conduct of the interview, on the questions to be posed to the child, and the method of conducting the interview. The forensic interview is then conducted in accordance with the protocol for forensic interviewing of a child by a trained professional from the Children's House. The interview takes place in a specially designed setting consisting of two separate rooms, connected via audio and video systems, which ensures that there is no unwanted personal contact between the child and the suspect or the accused immediately before, during and after the interview.

⁵⁷ Official Gazette of the Republic of Slovenia, No. 54/21.

⁵⁸ Hiša za otroke, 2024, p. 4. Retrieved from: https://www.hisa-za-otroke.si/wp-content/uploads/2024/05/BROSURA_HisaZAotroke_175x250_high_spread.pdf (accessed: 28 February 2025).

⁵⁹ ZZOKPOHO, art. 1 and 43.

⁶⁰ Hiša za otroke v letu dni obravnavala 26 otrok, žrtev spolnih zlorab. Retrieved from: <https://www.hisa-za-otroke.si/hisa-za-otroke-v-letu-dni-obravnavala-26-otrok-zrtev-spolnih-zlorab/> (accessed: 28 February 2025).

The child and the professional conducting the interview are confined in one room while all other participants observe from another. Communication between the professional and the judge leading the interview is transmitted through electronic communication equipment. All interviews are audio and video recorded, ensuring that recordings can be used as evidence in criminal and other legal proceedings (e.g., family law cases) and also serve as a tool for providing crisis and psychosocial support to the child.⁶¹

It is self-evident that professionals conducting forensic interviews with children under such sensitive circumstances need to be properly trained. While digital tools were already used for this purpose before (simulations with pre-programmed sequences limited to a fixed set of actions), a new pilot tool was developed in 2024 (in collaboration between the Ministry of Justice, the Ministry of Digital Transformation, the Children's House, and the Faculty of Computer and Information Science at the University of Ljubljana) to train forensic interviewers working with children, as well as to support the general training of professionals conducting interviews with children in distress, using high fidelity simulations of interviews that take into account the importance of non-verbal communication.⁶²

Another measure aimed at making unfamiliar judicial proceedings less anxiety-inducing for children is the publication of illustrated brochures prepared by the Supreme Court of the Republic of Slovenia for boys aged 5 to 9,⁶³ girls aged 5 to 9,⁶⁴ and children of both genders aged 10 to 14⁶⁵ appearing at court as witnesses.⁶⁶ These activity books are intended to familiarise children, especially younger ones, with courtroom procedures and their role as witnesses by presenting legal concepts in a clear and child-friendly manner. Through a combination of text, illustrations and interactive exercises (drawing, connect-the-dots, matching professions with

⁶¹ ZZOKPOHO, art. 16-28. See also Hiša za otroke, 2024, p. 11. Retrieved from: https://www.hisa-za-otroke.si/wp-content/uploads/2024/05/BROSURA_HisaZAotroke_175x250_high_spread.pdf (accessed: 28 February 2025).

⁶² For more on the tool, see Pilotno digitalno orodje za usposabljanje strokovnjakov za izvedbo forenzičnih intervjujev, retrieved from: <https://www.youtube.com/watch?v=Vy9g2BXY4MA> (accessed: 28 February 2025).

⁶³ Supreme Court of the Republic of Slovenia, 2022a. Retrieved from: https://www.sodisce.si/mma_bin.php?static_id=20220721115657 (accessed: 28 February 2025).

⁶⁴ Supreme Court of the Republic of Slovenia, 2022b. Retrieved from: https://www.sodisce.si/mma_bin.php?static_id=20220721115656 (accessed: 28 February 2025).

⁶⁵ Supreme Court of the Republic of Slovenia, 2020. Retrieved from: https://www.sodisce.si/mma_bin.php?static_id=20201119103419 (accessed: 28 February 2025).

⁶⁶ Brochures were published in 2010 by the Supreme Court of the Republic of Slovenia and updated in 2020 and 2022.

their attire, crossword puzzles), these materials explain the key roles of persons involved in proceedings (judge, prosecutor, attorneys, court clerks, expert witnesses), courtroom and security protocols, as well as highlight the importance of child's participation in judicial proceedings (heavily emphasising that the child's role is to help the court, that they did not do anything wrong, and that they do not need to fear any consequences, regardless of how well they testify). More recently, this approach has been upgraded with video animations published by the Supreme Court of the Republic of Slovenia that serve the same purpose while increasing accessibility and engagement for the digitally inclined generation.⁶⁷ In addition to the Slovenian version, these animations are also available in Italian and Hungarian languages (minority languages), English, and sign language.⁶⁸

4 Conclusions

Safeguarding children's procedural rights in judicial proceedings requires careful balancing between the child's rights to effective participation and to be heard on the one hand and their mental well-being on the other. The ECtHR case law emphasises the need to involve children in court proceedings, but also urges the courts to employ child-friendly measures tailored to their age, maturity and personal situation. In that regard, digital tools have a great potential to make proceedings less intimidating and more child-sensitive, thus contributing to procedural fairness and the prevention of secondary victimisation. However, while the digitalisation of the justice system presents new opportunities to safeguard children's rights (as well as the rights of adults), it also raises serious concerns from legal, practical, but also psychological aspects that all require careful consideration.

Different jurisdictions have adopted various approaches to addressing these challenges, with varying levels of digitalisation employed in the conduct of judicial proceedings. As discussed in this paper, the Republic of Slovenia has been quite proactive in integrating digital tools into its justice system. The measures such as child-friendly premises in combination with remote testifying, the Barnahus model, and informative animations, all contribute to alleviating psychological distress and trauma while still ensuring the effective participation of children in judicial

⁶⁷ Otrok na sodišču. Retrieved from: <https://www.youtube.com/watch?v=NYuIwVVtGI&t=146s> (accessed: 28 February 2025).

⁶⁸ Uredništvo VSRS. Retrieved from: <https://www.youtube.com/@SupremeCourtSLO/videos> (accessed: 28 February 2025).

proceedings. However, while these national solutions (as well as solutions in other countries, which were not subject to this paper) should be emphasised as a step in the right direction, stronger cross-border cooperation remains necessary. Differences in procedural rules and digital infrastructure can lead to incompatibilities and inconsistent levels of procedural protection among the EU Member States and, even more so, other countries. Given the rapid pace of technological development (especially the yet unknown impact of AI on the conduct of judicial proceedings), legal frameworks must stay flexible to respond to the new emerging challenges but must also remain mutually consistent. While international efforts to implement child-friendly policies continue to recognise the need for special adjustments in judicial proceedings involving children,⁶⁹ more (international) attention should be directed to researching the potential of digital tools in achieving these aims and establishing proper safeguards to mitigate the accompanying risks.

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⁶⁹ See, for example, Council of Europe's Strategy for Children's Rights (2022-2027) adopted in 2022 (Retrieved from: <https://rm.coe.int/council-of-europe-strategy-for-the-rights-of-the-child-2022-2027-child/1680a5ef27#:~:text=The%20Strategy%20for%20the%20Rights,at%20the%20same%20time%2C%20finding> (accessed: 28 February 2025)) or Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted in 2010 (Retrieved from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045f5a9> (accessed: 28 February 2025)).

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35 YEARS OF CHILD RIGHTS AND THE EMERGING RIGHT TO A HEALTHY ENVIRONMENT

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As of November 20, 2024, 35 years have passed since the adoption of the United Nations Convention on the Rights of the Child (UNCRC) in 1989, a unique and binding instrument that enshrined, for the first time in international law, a comprehensive set of rights for children across the globe. While the UNCRC has driven significant progress since its adoption in 1989, emerging challenges, particularly digitalisation and the climate crisis, reveal critical gaps in its implementation. This article evaluates three decades of achievements in child rights protection, identifies persistent shortcomings, and examines the urgent need to address environmental degradation as a violation of children's rights. Through an analysis of international legal provisions and landmark cases, the authors argue for stronger enforcement mechanisms to uphold children's right to a healthy environment.

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1 Introduction

The legal governance of children's rights constitutes a particularly challenging area of law, characterised by inherent complexity and occasional incoherence in its application.¹ The title of this chapter may suggest that the discussion begins with the landmark United Nations Convention on the Rights of the Child (hereinafter: UNCRC), adopted in 1989 and reaching its 35th anniversary on 20 November 2024. While this convention indeed represents a major milestone in the legal protection of children, the deeper motivation behind this contribution lies in retracing the gradual, historical evolution of legal thinking about children, not merely as subjects of care but as rights-holders in their own right. In this sense, the chapter adopts a crescendo approach, highlighting the long and complex journey of humanity toward crafting binding legal instruments aimed at protecting those who were, for centuries, regarded as property, dependents, or passive recipients of adult authority.

It is important to acknowledge that religious traditions and sacred texts, such as the Bible,² the Qur'an,³ and other foundational scriptures,⁴ contain numerous recommendations and moral obligations regarding the treatment and upbringing of children. These include calls for compassion, education, protection, and justice. However, the present article is grounded in legal positivism, the idea that law should be understood as a system of rules and norms enacted and recognised by legitimate authorities.⁵ As such, our analysis focuses on codified legal instruments developed by the international community, particularly those that emerged from treaty-based mechanisms and intergovernmental cooperation.⁶

¹ Huntington & Scott, 2020; Moritz & Mathews, 2023.

² See Ephesians 6:4, English Standard Version: "Fathers, do not provoke your children to anger, but bring them up in the discipline and instruction of the Lord." Retrieved from: <https://www.biblegateway.com/passage/?search=Ephesians%206%3A4&version=ESV> (accessed: 29 June 2025).

³ See: Qur'an 64:15, English - Sahih International: "Your wealth and your children are but a trial, and Allah has with Him a great reward." Retrieved from: <https://surahquran.com/english-aya-15-sora-64.html> (accessed: 29 June 2025).

⁴ See Dhammapada Chapter 5, Verse 62: "I have sons, I have wealth"; with this (feeling of attachment) the fool is afflicted. Indeed, he himself is not his own, how can sons and wealth be his? Retrieved from: <https://www.tipitaka.net/tipitaka/dhp/verseload.php?verse=062> (accessed: 29 June 2025).

⁵ See Kammerhofer, 2023.

⁶ See United Nations (1989) Convention on the Rights of the Child [Online]. Retrieved from: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (accessed: 30 June 2025).

From this perspective, the protection of children is not merely a moral imperative, but a legal commitment progressively articulated through conventions, declarations, and treaties. Long before the adoption of the UNCRC, the international community had already begun to recognise the need to safeguard children through formal legal frameworks. One of the earliest examples is the 1902 Hague Convention on the Guardianship of Minors, which introduced cross-border guardianship regulations and recognised the need for international cooperation in matters affecting children's welfare.⁷ This pioneering treaty marked an important step in the attempt to regulate the legal relationship between states and children, particularly in cross-border contexts. It laid the groundwork for international cooperation in matters concerning the protection of minors, reflecting an emerging recognition of children as individuals with interests that require legal safeguarding.

Comprising 13 articles, the 1902 Hague Convention on the Guardianship of Minors emphasised States 'duty to ensure minors' welfare when guardianship or parental oversight was absent or disrupted. Article 6 established the guardianship administration's broad responsibility over both the minor's person and property, reflecting an early recognition of the comprehensive nature of child protection. Further, Article 7 provided for urgent protective measures when no immediate guardianship arrangement existed, implicitly acknowledging that a child's welfare could not be neglected in moments of crisis, even in the absence of formal family authority.

Although limited in scope and primarily concerned with procedural aspects within European jurisdictions, the 1902 Hague Convention on the Guardianship of Minors symbolised an early shift towards viewing children not only in relation to their families but also as subjects of public concern and state responsibility.

In the same vein, the early 20th century bore witness to a series of legal developments reflecting the international community's growing recognition of the need to protect children, not only as dependents within the family unit but as individuals deserving of specific legal safeguards. A significant step in this direction emerged from the Treaty of Versailles (1919), which established the International

⁷ Hague Conference on Private International Law (1902) Convention of 12 June 1902 relating to the settlement of the conflict of laws concerning the guardianship of minors. Retrieved from: <https://www.hcch.net/en/instruments/conventions/the-old-conventions/1902-guardianship-convention#status> (accessed: 30 June 2025).

Labour Organisation (ILO) with a mandate to improve working conditions globally. As van Daalen and Hanson demonstrate through their analysis of ILO policy shifts, the organisation has consistently maintained child labour elimination as a core priority while adapting its approaches from regulation to abolition over time.⁸ This enduring commitment reflects the ILO's foundational recognition that protecting children from exploitative labour is essential to social progress. Among the earliest initiatives was ILO Convention No. 5 on the Minimum Age for Industrial Work (1919), which set a minimum employment age for children in industrial settings.⁹ While narrowly focused, the ILO Convention No. 5 reflected an evolving consensus that childhood should be preserved from premature economic exploitation. Implicit in its provisions is the recognition that children's rightful place is within nurturing environments, primarily their families, and that their physical, mental, and emotional development should not be compromised by early labour.

Nowadays, the two ILO Conventions on Child Labour are Convention No. 138 on Minimum Age¹⁰ and Convention No. 182 on the Worst Forms of Child Labour.¹¹ Under these conventions, all ILO member states are obliged, even those that have not ratified them, to pursue the elimination of child labour through national policies. However, despite the protection mechanisms and their continuous improvement, child labour remains, a pressing global issue. According to the ILO (2024) reports, child labour persists on a staggering scale. The 2024 Global Estimates of Child Labour in figures reported that 138 million children (59 million girls and 78 million boys) remain trapped in child labour globally, 8% of the world's child population, with 54 million subjected to hazardous work threatening their health, safety, or moral well-being.¹² These figures show us that child protection is an ongoing process and needs constant improvement.

⁸ van Daalen & Hanson, 2019, pp. 133-150.

⁹ International Labour Organization (ILO) (1919) C005 - Minimum Age (Industry) Convention, 1919 (No. 5).

Retrieved from:

https://normlex.ilo.org/dyn/nrmlx_en/?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUM ENT,P55_NODE:CON,en,C005,/Document (accessed: 30 June 2025).

¹⁰ International Labour Organization (ILO) (1973) C138 - Minimum Age Convention, 1973 (No. 138). Retrieved from:

https://normlex.ilo.org/dyn/nrmlx_en/?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312283:NO (accessed: 30 June 2025).

¹¹ International Labour Organization (ILO) (1999) C182 - Worst Forms of Child Labour Convention, 1999 (No. 182). Retrieved from:

https://normlex.ilo.org/dyn/nrmlx_en/?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 (accessed: 30 June 2025).

¹² International Labour Organization (ILO) (2024) 2024 Global Estimates of Child Labour in Figures. Retrieved from: <https://www.ilo.org/resource/other/2024-global-estimates-child-labour-figures> (accessed: 30 June 2025).

Building on this chapter's crescendo approach to the historical evolution of child rights and protection mechanisms, one can mention the next pivotal development emphasising both moral and humanitarian statements: the Geneva Declaration of the Rights of the Child (1924).¹³ Although not legally binding, the declaration was the first international document to explicitly call for special protection for children, particularly in the aftermath of the devastation of World War I (1914–1918). Composed of five concise articles, it declared that children must be given the means for normal development, both materially and spiritually protected in times of distress, and prepared to assume their place in society. It emphasised the responsibility of adults, not only parents but society at large, to ensure the child's well-being. Though brief and aspirational in tone, the Geneva Declaration marked a critical shift: it acknowledged that children are not merely extensions of their families but members of the human community whose dignity and rights must be recognised and safeguarded.

This evolving legal consciousness took a more structured form with the adoption of the Declaration of the Rights of the Child by the United Nations General Assembly (1959).¹⁴ While still a non-binding instrument, this Declaration significantly expanded the normative framework laid out by the 1924 Geneva Declaration. Composed of ten principles, it offered a more detailed and progressive articulation of children's rights, marking a notable evolution in how the international community perceived the child not only as vulnerable and in need of protection, but also as a bearer of legal entitlements that ought to be supported by national and international legal systems.

Unlike its predecessor, the 1959 Declaration introduced more robust language around state responsibility, calling for both legal and institutional mechanisms to ensure the fulfilment of children's rights. For instance, Principle 2 affirms that the child shall enjoy special protection and be given the opportunities and facilities necessary to develop “physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity.” Crucially, it introduces the foundational legal concept that would later become central in child rights law: the best interests of the child shall be “the paramount consideration” in

¹³ League of Nations (1924) Geneva Declaration of the Rights of the Child, 1924. Retrieved from: <https://www.humanium.org/en/geneva-declaration/> (accessed: 30 June 2025).

¹⁴ United Nations (UN) (1959) Declaration of the Rights of the Child. Retrieved from: <https://www.humanium.org/en/declaration-rights-child-2/> (accessed: 30 June 2025).

the enactment of laws and in all measures affecting children. This principle reflects a growing shift from generalised moral obligations to more clearly defined legal standards.

Furthermore, the 1959 Declaration emphasized the need for equal treatment regardless of race, colour, sex, language, religion, or social origin (Principle 1), the child's right to a name and nationality (Principle 3), and protections against neglect, cruelty, exploitation, and trafficking (Principles 8 and 9). By expanding on the vague protections of the 1924 Declaration and moving closer toward enforceable norms, it laid the groundwork for the development of comprehensive legal instruments such as the UNCRC from 1989.

The 1959 Declaration thus marked a pivotal turning point in the international recognition of children as rights-holders under the law, prefiguring many of the key principles that would be enshrined in later binding treaties. It signalled a more systemic understanding that child protection must not only rely on moral and religious codes, or emergency responses in times of conflict and industrial abuse, but must be grounded in clear, consistent legal norms upheld by both states and societies.

This normative evolution, from early guardianship frameworks and labour protections to comprehensive rights-based declarations, demonstrates the international community's growing commitment to codifying children's rights in positive law. It also sets the stage for the next chapter in this legal journey: the adoption of the UNCRC in 1989, and the need to continue advancing children's rights in the face of 21st-century challenges, including the climate crisis, digital technologies, and widening global inequalities.¹⁵

With this legal historical trajectory in mind, this chapter now turns to exploring the contemporary challenges facing children and the evolving legal responses to address them. The discussion is structured around four key parts.

¹⁵ United Nations (1989) Convention on the Rights of the Child, adopted 20 November 1989 by General Assembly resolution 44/25. Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (accessed: 30 June 2025).

Part I provides an overview of the existing legal frameworks designed to protect children's rights, with a focus on their key provisions and the progress achieved to date.

Part II, Shortcomings and the Challenge of Environmental Issues, examines how modern threats, particularly those linked to environmental degradation and climate change, impact children and assesses how current legal instruments respond to these emerging realities.¹⁶

Part III analyses the role of national and international courts, highlighting influential jurisprudence and landmark cases shaping the future of children's rights, especially concerning environmental justice.

Finally, Part IV offers a conclusion, drawing together the key findings and reflections and identifying paths forward to ensure a rights-based, sustainable, and inclusive future for all children.

2 Legal Framework – The UNCRC and Related Instruments

Before the adoption of the UNCRC in 1989, the rights of children were largely fragmented, inconsistent, and often overlooked in both domestic and international legal frameworks. Children were rarely acknowledged as individual rights-holders; their needs and vulnerabilities were subordinated to the authority of parents or the interests of the state. Access to education, healthcare, protection from abuse, and legal recognition varied significantly across regions, and fundamental rights such as freedom of expression, protection from economic exploitation, and participation in public life were not systematically recognised or enforced. In many parts of the world, child labour, conflict recruitment, neglect, and discrimination based on gender, disability, ethnicity, or social status went unchecked, with no universal treaty compelling state accountability. The UNCRC changed this landscape dramatically. With its 54 articles, the UNCRC became the most comprehensive and widely ratified human rights treaty in history. It unified civil, political, economic, social, and cultural rights under a single legally binding framework, establishing children not only as recipients of protection but as active subjects of rights. Core guiding principles such

¹⁶ See Mensah, 2024a, pp. 279-312.

as non-discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival, and development (Article 6), and the right to be heard (Article 12) ensure that children must be involved in decision-making and all actions and decisions concerning them are grounded in respect for their dignity and agency.¹⁷

The UNCRC guarantees access to education (Articles 28 and 29), including the development of the child's personality, talents, and abilities to their fullest potential. It protects the child's identity (Article 8) and ensures the right to healthcare (Article 24), social security (Article 26), and an adequate standard of living (Article 27). It also affirms the child's right to protection from violence, abuse, and neglect (Article 19), protection from economic exploitation and hazardous work (Article 32), and protection from all forms of sexual exploitation and abuse (Article 34).

Importantly, the UNCRC embraces participatory rights, such as freedom of expression (Article 13), freedom of thought, conscience, and religion (Article 14), freedom of association (Article 15), and the right to access information from diverse sources (Article 17) empowering children to engage with the world around them as informed and active members of society.

To ensure these rights are upheld, the UNCRC includes implementation provisions (Articles 43–54) that establish a system of international monitoring through the Committee on the Rights of the Child, which reviews state reports, provides recommendations, and encourages states to harmonise national legislation and policy with the Convention. These articles emphasise the collaborative responsibility of governments, institutions, and civil society in realising children's rights and fostering environments in which all children can thrive.

Through its holistic and integrated approach, the UNCRC not only remedied many of the legal and structural gaps that existed prior to its adoption but also set in motion a global movement to place children's rights at the heart of legislation, public policy, and international development.

¹⁷ Tobin & Cashmore, 2020.

Except for the UNCRC, several complementary instruments are available to address specific and emerging threats to children's rights, further strengthening the global legal framework.

One of the most critical extensions of the UNCRC is the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC), adopted in 2000.¹⁸ This Protocol was designed in response to the persistent and devastating impact of armed conflict on children, particularly their recruitment and use as soldiers. OPAC raises the minimum age for compulsory recruitment into national armed forces to 18 and explicitly prohibits the use of children under 18 in direct hostilities. It obliges states to take all feasible measures to prevent the recruitment and use of children in armed groups, recognising that such practices constitute serious violations of international law and children's rights.

Adopted in the same year, the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (OPSC)¹⁹ addresses one of the gravest violations of children's rights: sexual exploitation. It provides a robust legal framework to criminalise and prevent child trafficking, prostitution, and the production and dissemination of child pornography, obligating states to adopt legislative, administrative, and judicial measures to protect victims and prosecute perpetrators. The OPSC affirms the right of children to be protected from all forms of sexual abuse, economic exploitation, and commodification, reinforcing obligations already present in Articles 34–36 of the UNCRC.

Further reinforcing the enforcement of children's rights, the Optional Protocol on a Communications Procedure (OPIC),²⁰ adopted in 2011, introduces an accountability mechanism by allowing individual children, groups of children, or their representatives to file complaints directly to the Committee on the Rights of the Child when they believe their rights under the UNCRC or its two previous

¹⁸ United Nations (2000) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Retrieved from: <https://www.ohchr.org/en/professionalinterest/pages/opaccrc.aspx> (accessed: 2 July 2025).

¹⁹ United Nations (2000) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography. Retrieved from: <https://www.ohchr.org/en/professionalinterest/pages/opscrc.aspx> (accessed: 2 July 2025).

²⁰ United Nations (UN) (2011) Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-communications> (accessed: 2 July 2025).

protocols have been violated and no effective remedies are available at the national level. This mechanism represents a significant advancement in ensuring that children are not only rights-holders in theory but also in practice, with access to justice and an international forum to seek redress.

Outside the UNCRC framework, complementary instruments have further expanded the protections afforded to children. As already mentioned in the introduction, we can highlight the ILO child-related conventions as a vital legal milestone in the global effort to eliminate egregious forms of child labour. The child labour prohibition conventions are in alignment with UNCRC Articles 28 and 32, which together create a dual framework to safeguard children's development through education and protect them from exploitative labour.

Article 28 for example, enshrines the right to education, requiring states to ensure free and compulsory primary education (Article 28(1a)), expand accessible secondary and vocational training (Article 28(1b–d)), and reduce school dropouts (Article 28(1e)). Equitable access to quality education can definitely help fight the root causes of child labour, offering children pathways to escape poverty and harmful work.

On the other hand, Article 32 complements this by explicitly prohibiting economic exploitation and work that jeopardises children's health, education, or development (Article 32(1)). It mandates legislative measures to set minimum employment ages and regulate working conditions (Article 32(2a–b)), reinforcing the link between education and labour protections. Together, these provisions recognise that education is both a shield against exploitation and a means of empowerment, ensuring childhood is spent in classrooms rather than hazardous workplaces.

The synergy between these UNCRC provisions and ILO standards underscores a shared objective: breaking the cycle of child labour through education while addressing its economic drivers, thus also aligning with the Sustainable Development Goals²¹ (SDGs) 1-5;10.

²¹ United Nations (UN) (2015) The Sustainable Development Goals. Retrieved from: <https://www.un.org/sustainabledevelopment/sustainable-development-goals/> (accessed: 2 July 2025).

Regarding children and warfare, the Geneva Conventions and their Additional Protocols afford children specific protections in times of armed conflict.²² To that protection framework can be added the Hague Conventions on intercountry adoption (1993)²³ to fight against illegal adoption and the International Child Abduction Convention (1980)²⁴ to protect children from exploitation and unlawful removal across borders.

At the international regional level, when it comes to child protection mechanisms, the existing conventions and other legal frameworks are usually based on the UNCRC. Indeed, the various regional systems have developed their own legal instruments tailored to their specific social, cultural, and political contexts, thereby reinforcing and expanding the protection of children's rights. In Africa, for instance, the African Charter on the Rights and Welfare of the Child (1990),²⁵ adopted under the auspices of the Organization of African Unity (hereinafter: OAU), stands out as a landmark treaty.

It entered into force on 29 November 1999 and affirms many UNCRC principles while introducing uniquely African perspectives, such as the role of extended families in child upbringing (Article 18) and offers stronger language on issues like child marriage (Article 21) and armed conflict (Article 22).²⁶

In Latin America, the Inter-American system, through instruments like the American Convention on Human Rights²⁷ and the Inter-American Program for the Promotion and Protection of the Human Rights of Children and Adolescents, has

²² See Mensah, 2024b, pp. 3-42.

²³ Hague Conference on Private International Law (1993) Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. Permanent Bureau. Retrieved from: https://iss-ssi.org/storage/2023/04/Brochure_25-ans_-HCCH_ANG.pdf (accessed: 2 July 2025).

²⁴ Hague Conference on Private International Law (1980) Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Retrieved from: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24> (accessed: 2 July 2025).

²⁵ Organization of African Unity (OAU) (1990) African Charter on the Rights and Welfare of the Child. Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government, Addis Ababa, 11 July 1990. Retrieved from: https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf (accessed: 2 July 2025).

²⁶ Since this chapter is about the UNCRC, a detailed analysis of other regional frameworks will not be made. However, for more information about the African regional children protection instruments, see: Mensah, 2024c, pp. 235-266.

²⁷ Organization of American States (OAS) (1969) American Convention on Human Rights 'Pact of San José, Costa Rica'. Signed 22 November 1969, entered into force 18 July 1978. Retrieved from: https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf (accessed: 2 July 2025).

pushed for children's rights in the context of migration, violence, and poverty, emphasizing non-discrimination, family unity, and the best interests of the child.²⁸

In Europe, the European Convention on the Exercise of Children's Rights (1996),²⁹ developed by the Council of Europe, focuses on promoting children's participation in judicial and administrative proceedings, particularly in family law matters (Articles 3–6). These regional frameworks not only mirror the UNCRC's core principles, including the best interests of the child, the right to be heard, and protection from exploitation, but also ensure that localised challenges are addressed through context-specific legal mechanisms and enforcement bodies.

3 Shortcomings and the Challenge of Environmental Issues

While the digitalisation of society is one of the most influential and rapidly evolving phenomena of the 21st century, with deep implications for children's rights and well-being, the authors of this paper have chosen to focus specifically on environmental shortcomings. This decision stems from the conviction that the environmental crisis poses one of the greatest contemporary threats to children's rights, particularly their right to development, survival, and dignity. As the title of this chapter suggests, the emphasis lies on the violation of the environmental rights of children and the extent to which these rights are recognised and protected under existing legal frameworks.

This section begins by asking a fundamental question: Do children have an enforceable right to a healthy environment? While the UNCRC adopted in 1989 does not contain a standalone article articulating such a right, its provisions nonetheless intersect significantly with environmental concerns. For example:

- a) Article 6 guarantees the child's inherent right to life, survival, and development;
- b) Article 24 affirms the child's right to the highest attainable standard of health, including access to clean drinking water and environmental sanitation;

²⁸ Inter-American Commission on Human Rights (IACHR) (year not stated) The rights of the child in the Inter-American human rights system. Retrieved from: <https://www.cidh.org/countryrep/Infancia2eng/Infancia2Cap1.eng.htm> (accessed: 2 July 2025).

²⁹ Council of Europe (1996) European Convention on the Exercise of Children's Rights. Strasbourg, 25 January. Retrieved from: <https://rm.coe.int/european-convention-on-the-exercise-of-children-s-rights/1680a40f72> (accessed: 2 July 2025).

- c) Article 27 provides for the right to an adequate standard of living, implicitly requiring environmental conditions conducive to well-being;
- d) Article 29 promotes education to develop respect for the natural environment.

At the international level, the United Nations General Assembly's 2022 recognition of the right to a clean, healthy, and sustainable environment as a universal human right represents a major normative milestone, affirming that environmental protection is not just a policy goal, but a legal and moral imperative, especially in relation to children. This is further echoed in General Comment No. 26 (2023) by the Committee on the Rights of the Child, which explicitly affirms that children's rights are impacted by climate change, biodiversity loss, pollution, and the unsustainable use of natural resources.

The SDGs, as part of the 2030 Agenda, also provide an integrated framework linking environmental sustainability with children's development. Key goals include:

- a) SDG 3: Ensure healthy lives and promote well-being for all ages;
- b) SDG 6: Ensure availability and sustainable management of water and sanitation;
- c) SDG 13: Take urgent action to combat climate change and its impacts;
- e) SDG 15: Protect, restore and promote sustainable use of terrestrial ecosystems.

However, the 2024 Sustainable Development Report paints a stark picture of global inaction and regression. It highlights how persistent and worsening environmental challenges severely compromise children's right to development. Reversals in life expectancy (SDG 3) and the rising prevalence of childhood obesity (SDG 2) have disproportionately affected children, particularly in vulnerable and low-income regions.³⁰ Unsustainable agricultural practices and widespread deforestation (SDG 15) are undermining food security and accelerating biodiversity loss, with 600 million people projected to suffer from hunger by 2030, a staggering number that includes millions of children.³¹ Moreover, nitrogen and phosphorus pollution linked to industrial agriculture is contaminating water systems (SDGs 6 and 14), further endangering children's health and access to clean water resources.³²

³⁰ Sachs et al., 2024, p. 17.

³¹ Sachs et al., 2024, p. 51.

³² Sachs et al., 2024, p. 56.

These trends reveal that current international commitments are failing to deliver on the environmental dimensions of children's rights. They also underscore a broader systemic failure: the lack of political will and global cooperation necessary to ensure that environmental policy and sustainable development goals are aligned with the best interests of the child, a core principle of the UNCRC (Article 3). Without urgent and coordinated action, the existing gaps in achieving the SDG targets will continue to violate the fundamental rights of children, especially the right to health, development, and a viable future.

Beyond the CRC and its General Comments, a broader framework of international human rights law also provides support, implicitly and explicitly, for children's right to a healthy environment. The additional legal provisions supporting children's environmental rights are:

1. Universal Declaration of Human Rights (hereinafter: UDHR, 1948)³³

Although not legally binding, the UDHR lays foundational principles that are crucial to understanding environmental rights as human rights. For instance:

Article 25: Affirms the right to a standard of living adequate for health and well-being, including food, clothing, housing, and medical care, conditions directly influenced by environmental quality.

Article 26: Ensures access to education, which includes environmental education as promoted by the UNCRC (Article 29).

These principles have guided the development of binding treaties and national constitutions, indirectly reinforcing the link between environmental conditions and human dignity, especially for vulnerable groups like children.

2. International Covenant on Economic, Social and Cultural Rights (hereinafter: ICESCR, 1966)³⁴

³³ United Nations. (1948) Universal Declaration of Human Rights. Retrieved from: <https://www.ohchr.org/en/universal-declaration-of-human-rights> (accessed: 2 July 2025).

³⁴ United Nations (UN) (1966) International Covenant on Economic, Social and Cultural Rights. Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (accessed: 2 July 2025).

The ICESCR explicitly protects many environmental rights that affect children's well-being:

Article 11: Recognises the right to an adequate standard of living, including adequate food, clothing, and housing, which are increasingly threatened by climate change, deforestation, and water scarcity.

Article 12: Protects the right to the highest attainable standard of physical and mental health, which includes the obligation to prevent and reduce the harm caused by environmental pollution, contaminated water, and unsafe living conditions.

The UN Committee on Economic, Social and Cultural Rights has also issued General Comment No. 14, affirming that the right to health includes access to safe drinking water, adequate sanitation, and a healthy environment.

3. Stockholm Declaration (1972)³⁵ & Rio Declaration (1992)³⁶

These foundational environmental law documents paved the way for recognising that human beings have a fundamental right to “an environment of a quality that permits a life of dignity and well-being.”

The Stockholm Declaration (Principle 1) already emphasised the right to a healthy environment.

The Rio Declaration (Principle 10) affirms the right of all people, implicitly including children, to access information, public participation in environmental matters, and access to justice, all of which are echoed in the UNCRC (Articles 12–17).

³⁵ United Nations (UN) (1972) Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration). Retrieved from: <https://docenti.unimc.it/elisa.scotti/teaching/2023/28955/files/2.a-stockholm-declaration> (accessed: 2 July 2025).

³⁶ United Nations (UN) (1992) Rio Declaration on Environment and Development. Retrieved from: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CO_NF.151_26_Vol.I_Declaration.pdf (accessed: 2 July 2025).

4. UN Human Rights Council Resolutions

In 2021, the UN Human Rights Council adopted Resolution 48/13, officially recognising for the first time that access to a clean, healthy, and sustainable environment is a universal human right. Though not legally binding, this resolution has immense normative value and has already informed regional and national legal reforms.

In 2022, the UN General Assembly echoed this recognition in a landmark resolution, emphasising that environmental degradation negatively affects the effective enjoyment of human rights, especially for children and future generations.

5. Escazú Agreement (Latin America & the Caribbean)³⁷

While regional, the Escazú Agreement (2018) is the first treaty to include binding provisions on environmental human rights defenders and access to environmental information, public participation, and justice. These participatory rights are essential for empowering young people in environmental matters and protecting those advocating for environmental justice.

4 Landmark Cases

These cases demonstrate a growing recognition by courts and quasi-judicial bodies that environmental degradation and climate inaction are not abstract policy issues but fundamental human and child rights matters. Despite procedural setbacks and jurisdictional hurdles, children climate activists are emerging as powerful legal actors, demanding that governments fulfil their obligations under both international human rights law and environmental law.

They also reflect an evolving legal landscape in which the best interests of the child (UNCRC, Article 3) and the right to development (UNCRC, Article 6) are increasingly interpreted considering environmental protection and sustainability. As

³⁷ United Nations (UN) (2018) Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). Adopted 4 March 2018, entered into force 22 April 2021. Retrieved from: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxvii-18&chapter=27&clang=_en (accessed: 2 July 2025).

environmental issues continue to impact this field, it continues to develop, and these cases serve as both legal and symbolic landmarks in the global effort to ensure that children inherit not just a livable planet but a just and sustainable future. In recent years, courts around the world have increasingly been called upon to interpret and enforce environmental rights, especially in the context of climate change and its disproportionate impact on children. These legal actions have highlighted a critical question: Can the failure to protect the environment constitute a violation of children's rights under national constitutions and international human rights law, including the UNCRC?

Several landmark cases have helped to shape this emerging field of climate litigation with a child-rights perspective, underscoring both the potential and the limits of judicial intervention in addressing environmental harms affecting young people.

4.1 Case 1: Juliana v. United States (2015) – United States

One of the most well-known climate lawsuits involving children is *Juliana v. United States*, in which 21 plaintiffs, aged 8 to 19 at filing, accused the U.S. government of violating their constitutional rights through climate inaction. They argued that by promoting fossil fuel production, the government violated their constitutional rights to life, liberty, and property, as well as the public trust doctrine. Though the Ninth Circuit Court of Appeals dismissed the case in 2020 for lack of standing, the litigation sparked a global conversation about intergenerational justice, government accountability, and the role of youth as claimants in climate litigation. The plaintiffs solicited the Supreme Court to continue to pursue alternative legal avenues, and the case remains emblematic of youth-led environmental activism seeking recognition of a constitutional right to a livable climate. However, the Supreme Court dismissed the case by declining *Mandamus* and *Certiorari* Petitions in 2025.

In the framework of this chapter, we can highlight that this case achieved what procedural dismissals cannot erase: it concretised climate change as an intergenerational rights issue under constitutional law while demonstrating the power of youth activism in advancing SDG 13 (Climate Action). The plaintiffs' decade-long persistence, from district court to Supreme Court petitions, forced the acknowledgement of the impact of climate change on the next generations.

4.2 Case 2: Urgenda Foundation v. The State of the Netherlands (2019) – Netherlands

In *Urgenda v. The Netherlands*, Dutch citizens sued their government, claiming that its inadequate climate action violated their rights to life and well-being under Articles 2 and 8 of the European Convention on Human Rights (ECHR). The Dutch Supreme Court upheld the claim, ordering the government to reduce greenhouse gas emissions by at least 25% compared to 1990 levels. While this case did not focus exclusively on children, its outcome set a powerful precedent, confirming that governments have a legal duty to protect citizens, particularly future generations, from the foreseeable harms of climate change. Moreover, this ruling represents the first ever judicial mandate, compelling a national government to restrict greenhouse gas emissions based not on legislative requirements, but on fundamental legal principles.

4.3 Case 3: Sacchi et al. v. Argentina, Brazil, France, Germany, and Turkey (2019) – United Nations

In this groundbreaking case, 16 children, including Swedish activist Greta Thunberg, filed a petition before the UN Committee on the Rights of the Child, alleging that the respondent states were violating their rights under the UNCRC by failing to take adequate measures to address climate change. Although the Committee declared the case inadmissible in 2021 due to failure to exhaust domestic remedies, it made a crucial acknowledgement: States can be held responsible for the cross-border impact of emissions originating from their territories, and children are victims of foreseeable harm to their rights to life, health, and culture. This recognition marked an important step in developing extraterritorial obligations in environmental human rights law.

4.4 Case 4: Milieudefensie et al. v. Royal Dutch Shell (2019)

This climate case marks the first successful attempt to hold a private corporation legally accountable for its contributions to climate change. It builds upon the success of the already mentioned case, *Urgenda Foundation v. The State of the Netherlands* (2019), which established a governmental duty of care. The facts of the case mention that on 5 April 2019, the environmental organisation Milieudefensie (Friends of the Earth Netherlands), together with six NGOs and over 17,000 Dutch citizens, filed

a lawsuit against Shell in the Hague District Court. The plaintiffs argued that Shell's continued fossil fuel operations breached its duty of care under Dutch tort law (Article 6:162 of the Dutch Civil Code) and its obligations under human rights law (Articles 2 and 8 of the ECHR), while also failing to align with the Paris Climate Agreement (*Milieudefensie v. Shell*, 2021).

The plaintiffs sought a court order requiring Shell to align its emissions with the Paris targets—namely, a 45% reduction by 2030 and net-zero emissions by 2050. Their claim highlighted Shell's long-standing knowledge of climate risks, misleading public messaging, and inadequate mitigation efforts as evidence of unlawful endangerment. The Hague District Court ruled that Shell must reduce its Scope 1, 2, and 3 emissions by 45% by 2030 (compared to 2019 levels). However, the Hague Court of Appeal delivered a more nuanced judgment: while upholding Shell's duty of care under Dutch law, it overturned the 45% reduction mandate, citing the absence of scientific consensus on company-specific pathways, practical enforcement issues, and concerns about emissions leakage if competitors filled Shell's market share. The Court also suggested that new fossil fuel investments might breach Shell's duty of care, though this was not decisive to the ruling. Notably, it acknowledged Shell's stated aim of achieving a 45% reduction by 2035.

This ruling sets a significant precedent for defining the boundaries of judicial intervention in corporate climate policy. It balances emission reduction obligations with market realities and applies human rights law to private sector climate responsibilities. In February 2025, Milieudefensie announced its intention to appeal to the Supreme Court of the Netherlands, seeking a reinstatement of a specific emissions reduction target.

Overall, in the framework of the topic discussed in this chapter, this particular case reinforces the recognition of a safe and healthy environment as a fundamental human right, which is essential for the protection and well-being of children. By holding a private corporation accountable under human rights and environmental law, the case strengthens legal pathways to safeguard children's rights under the UN SDGs and the Paris Climate Agreement, particularly in securing a livable planet for future generations.

4.5 Case 5: European Collective Climate Litigation- Duarte Agostinho and Others v. Portugal and 32 Other States (2020)

In *Duarte Agostinho and Others v. Portugal and 32 Other States* (ECtHR, no. 39371/20), six Portuguese youth filed a landmark climate case alleging that inadequate state policies violated their rights under Articles 2 (right to life), 8 (right to privacy), and 14 (non-discrimination) of the ECHR. The applicants specifically cited climate-related threats to their well-being, including intensifying heat waves and forest fires in Portugal.

The case, fast-tracked by the ECtHR in 2020, represented an effort by young Europeans to hold 33 states accountable for climate-related harms, arguing that insufficient action under the Paris Agreement framework violated their human rights due to cross-border climate risks.³⁸ The proceedings attracted third-party interventions from organisations including Amnesty International and the European Commission, which supported the applicants' arguments regarding states' human rights obligations in the context of climate change. However, in its April 9, 2024, decision, the ECtHR declared the application inadmissible on two key grounds: First, it rejected the extraterritorial jurisdiction argument, finding no legal basis to hold the 32 non-Portuguese states accountable for emissions impacts in Portugal. Second, while accepting territorial jurisdiction over Portugal, the Court ruled that domestic remedies had not been properly exhausted for claims against the Portuguese government. This dual reasoning resulted in the comprehensive dismissal of the case while leaving open important questions about climate justice under international human rights law.

5 Conclusion

As this chapter has illustrated, the journey toward fully realising children's rights has been long, progressive, and often fragmented. From the early 20th-century efforts to regulate guardianship and prohibit child labour to the landmark adoption of the UNCRC in 1989, the international community has made substantial strides in elevating children from objects of protection to rights-holders in their own capacity. The UNCRC and its optional protocols, alongside complementary instruments such

³⁸ United Nations (2015) The Paris Agreement [Online]. Retrieved from: https://unfccc.int/sites/default/files/english_paris_agreement.pdf (accessed: 2 July 2025).

as the ILO Conventions, regional treaties, and the SDG, have forged a robust normative framework that champions children's rights to health, development, education, and participation.

However, as analysed in Part II, this progress remains incomplete in the face of mounting environmental challenges. Despite being among the least responsible for environmental degradation, children are disproportionately affected by its consequences, which undermine their rights to life, health, food, water, and development. The absence of an explicit and enforceable environmental right within the CRC reveals a significant normative gap, one that is only partially addressed by soft law, interpretive documents like General Comment No. 26 (2023) on the environment, and broader human rights instruments such as the ICESCR or the UDHR.

The landmark climate litigation examined in Part III, *Juliana v. United States*, *Urgenda v. the Netherlands*, and *Sacchi et al. v. Argentina et al.*, demonstrates the rising momentum of children and youth asserting their rights through legal channels, demanding accountability and urgent action to safeguard their future. While some of these cases have faced procedural hurdles, they signal a vital shift: children are no longer passive victims of environmental harm; they are active agents in shaping climate justice and legal innovation.

Looking ahead, the recognition of the right to a clean, healthy, and sustainable environment as a human right by the United Nations General Assembly and Human Rights Council in 2021–2022 offers a historic opportunity to solidify this right in binding international law. Yet to be truly transformative, this right must be explicitly child-sensitive, guided by principles enshrined in the UNCRC, non-discrimination, the best interests of the child, survival and development, and child participation.

As we mark 35 years since the adoption of the UNCRC, the time has come to reaffirm our global commitment to children's rights by addressing the environmental dimension with the seriousness it demands. Sritharan identifies climate change and air pollution as the twin threats to children's health and well-being, requiring immediate global action.³⁹ Vončina further underscores this threat, highlighting how

³⁹ Sritharan, 2025.

toxicologically significant compounds in PM10 and PM2.5 emissions, particularly from industrial sources like cement plants, pose disproportionate risks to public health, including children's health, necessitating stringent monitoring under the best available technology standard.⁴⁰

To effectively combat these challenges, along with others outlined in this chapter, we must:

- strengthen legal frameworks to explicitly protect children's environmental rights;
- enhance accountability mechanisms for violations of these rights;
- guarantee meaningful child participation in environmental policymaking;
- integrate environmental indicators into child rights monitoring systems.

These measures are essential to fulfil our collective promise of creating a just, inclusive and sustainable world where all children can thrive, not merely survive.

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⁴⁰ Vončina, 2024.

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CHILDREN'S RIGHTS IN THE SUSTAINABLE AND DIGITAL ENVIRONMENTS: EXPLORING OPPORTUNITIES AND CHALLENGES

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The scientific monograph 'Children's Rights in the Sustainable and Digital Environments: Exploring Opportunities and Challenges' addresses current and carefully selected topics in the field of children's rights. It specifically focuses on issues where the authors critically analyze and discuss the protection of children's rights in the context of sustainable development and digital transformation, as well as the challenges posed by both environments. The contributors engage in critical discourse and offer in-depth analyses of children's rights from both substantive and procedural legal perspectives, examining developments at the national level as well as within the international legal framework. They clearly identify inconsistencies, shortcomings, and difficulties that children's rights face in the context of sustainability and digitalization. In their contributions, the authors emphasize the importance of safeguarding children's rights in judicial proceedings and highlight the role and responsibilities of both national and international actors in this field. They further discuss selected aspects of children's vulnerability and violations of their rights, especially in relation to children affected by armed conflict, those living in crisis regions, and children with disabilities.

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...From exploring regulatory landscapes (for example, in Slovenia, Croatia, Poland, Azerbaijan, Turkey...) to probing the global impact of digitalization and sustainable development on children's rights, each chapter contributes a unique perspective to the overarching theme...

Branka Rešetar, University of Osijek, Croatia

...this scientific monograph is both a celebration of the UNCRC's legacy and a call to action to protect children in the era of climate change and digitalisation. It invites legal scholars, policymakers, practitioners, and advocates to reflect on how existing child protection frameworks can adapt to better serve children in a changing world...

Barbara Janusz Pohl, Adam Mickiewicz University, Poland

