

Children's Rights and the European Union – Framework

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ABSTRACT

According to the Principle of conferral, the European Union has no competences over family law, including the regulation of children's rights. Therefore, legally binding documents (Treaty on European Union, Treaty on the Functioning of the European Union, and the Charter of Fundamental Rights of the European Union) refer to (some) children's rights and the principles of treatment of children at a generic level. This fact does not present a major obstacle because all the European Union Member States are parties to the Convention on the Rights of the Child and many other treaties that regulate children's rights in greater detail. Non-binding documents appear in a frenzy and show an ambition to resolve many children's problems typically observed in developed countries of the world, including those of the European Union. As their provisions often overlap and aim to achieve many objectives, the question arises as to the purposefulness of many soft law documents, such as strategies, guidelines, resolutions, communications, recommendations, and agendas. They reflect the significant and specific problems encountered by children in the European Union and indicate the need for children's rights to be exercised. Moreover, they are a signal to adults, not only parents, to do more for the protection of children and their rights. However, it is unclear to what extent soft law can provide an answer to related issues, especially because, as a rule and ever more frequently, new "values" are introduced in the name of the alleged non-discrimination of children, such as gender ideology. The Member States of the European Union have no unified position on this issue.

KEYWORDS

children's rights, European Union, Treaty on European Union, Treaty on the Functioning of the European Union, Charter of Fundamental Rights of the European Union, soft law

1. Introduction

Deliberation on children's rights in Europe implies the evaluation of legal steps the European Union – as an important European organisation of 27 states – has undertaken. European legislation predominantly refers to public law because of the fundamental features of the European Union as an economic and political institution. Private law is of marginal interest, and family law, as one such legal area, and

children's rights within its framework have only recently become an area of interest to European institutions.¹ One gets the impression that in the scope of this broad interest in the protection of children's rights, there is a penetration of new ideas, such as gender ideology,² which are anything but compatible with children's rights. Therefore, it is with certain apprehension that we look upon the development of children's rights in the European legal area.³ Efficient improvement of children's rights in response to the problems faced by children in Europe at the general level implies the following: fighting poverty;⁴ providing quality education without ideological overtones; fighting violence against children (domestic violence and beyond); protecting children from drug abuse, child prostitution, pornography, trafficking, and paedophilia; a complete ban on surrogate motherhood;⁵ protection of migrant children. Owing to children's dependence on adults – parents or third persons – it is clear that support and concrete protection from various harmful and pernicious behaviours of adults towards them are necessary at the level of European institutions and in related documents. Harmful behaviour and events sometimes affect all children regardless of age and sometimes target a specific children's age group. The fact remains that there are millions of

1 This is a process of Europeanisation of family law through its harmonisation and unification, for which interest has grown over the past ten years; Majstorović, 2013, pp. 1 and 7. Legal theoreticians distinguish three levels of convergence of national systems within the frameworks of "European" family law: rules on conflict of laws, procedural law, and substantive law, the latter giving rise to most doubts and misgivings; Ibid. p. 4.

2 Hrabar, 2020. The study report entitled Cross-Border Legal Recognition of Parenthood in the EU, on a study conducted at the request of the PETI Committee of the European Parliament by the Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies (PE 746.632- April 2023), is interesting in this regard [Online]. Available at: <http://www.europarl.europa.eu/supporting-analyses> (Accessed: 22 June 2023).

3 Stalford, 2012, pp. 5 and 11., claims: '... it is fair to say that EU seems an unlikely context within which to pursue children's rights'.

4 According to 2021 estimates, 24.4% of children in the EU live at risk of poverty and social exclusion. Romania has the highest rate (41.5), and Slovenia the lowest (11%) [Online]. Available at: https://ec.europa.eu/eurostat/statis-explained/index.php?title=Children_at_risk_of_poverty_or_social_exclusion. (Accessed: 24 April 2023). Save the Children reports that one in five children in the EU, or 19.6 million children, live in poverty. Over 200,000 more children are at risk of poverty in the European Union: Save the children report, 7 March 2023. [Online]. Available at: <https://www.savethechildren.net/news/over-200000-more-children-are-risk-poverty-european-union-save-children-report> (Accessed: 24 April 2023).

5 Although the ban on surrogate motherhood implies the protection of the unborn child, such a child, should he or she be born as a result of such procedure, indirectly faces the violation of many of his or her rights; cf. Hrabar, 2021.

children⁶ already or potentially exposed to various forms of violations of their rights. This gives reason to think about how much the European Union is prepared to protect children through its legislative procedures and concrete actions and to what extent it is authorised to do so.

In its legal and legislative actions, the European Union is restricted by three principles: conferral of competences, subsidiarity, and proportionality. According to the Principle of conferral (according to Art. 5 Para. 2 of the Treaty on European Union⁷), the European Union's (hereinafter: EU or Union) action is drawn from the competences 'conferred upon it by the Member States' to attain the objectives set out in Art. 3.⁸ Linked to this Principle is the doctrine of implied competences that provides a possibility for intervention through regulation, even in the area of private law, if this is 'necessary for the proper functioning of the internal market'.⁹ The principle of subsidiarity (Art. 5 Para. 3 of the Treaty on European Union) enables the Union to act if the objectives of Union action cannot be achieved at the national level, which, already at the principle level, presents a problem due to the possible abuse of the definition of the objective.¹⁰ The principle of proportionality is a limiting factor in the sense of introducing measures that must not exceed what is necessary to achieve the objectives of the Treaty.¹¹

For the European Union to be able to regulate substantive law, its Member States should confer competences on it, which has not yet happened, and the Founding Treaties should specify the competence of the Union to govern the situation with an

6 Data on the number of children in the EU differ in terms of the year of the data and the source. Thus, it is stated that there are slightly fewer than 80 million children in the EU (2020) or that children account for 18.3% of the population; in 2021, 4.09 million babies were born in the EU; 22.2% live at risk of poverty; one-third of asylum seekers are children, 33% of girls and 20% of boys have experienced violence on the Internet. cf. <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/DDN-20230309-1>. Data refer to 90 million children in the EU; therefore, it should be assumed that the risks are similar to those in 2020. The European Parliament Resolution P9_TA(2019)0066 refers to 100 million children living in the European Union accounting for more than 20% of the EU population. cf. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Marriage_and_divorce_statistics#Fewer_marriages.2C_fewer_divorces.

7 Consolidated version of the Treaty on European Union, OJC 326, 26.10.2012.

8 Majstorović, 2013, p. 14.

9 Ibid. Majstorović explicitly opposes the possibility of the Union's action in the field of substantive family law.

10 Thus, Majstorović, 2013, p. 14. mentions the objectives related to family law, including 'combating social exclusion and discrimination'. These objectives can be interpreted in line with gender ideology and imposed as a new European "value" in spite of the fact that half of the EU Member States, for example, do not recognise same-sex marriage. In this regard, very sinister deliberations may lead us to conclude that at some point in time, paedophilia may also be declared something not harmful for children, that sex change in children may be a matter of the free expression of children's views, etc.

11 Thus, Majstorović, 2013, p. 15. refers to Protocol no. 2 to the Founding Treaties elaborating the principles of subsidiarity and proportionality.

international element. The foothold for this is Art. 81 of the Treaty on the Functioning of the European Union¹² (cf. *infra*).

When weighing the legal status of children on European soil, one should mention the Council of Europe (CE) primarily concerned with human rights,¹³ and children's rights are part of the system of human rights.¹⁴ As all the European Union Member States are equal members of the CE, this is the CE's indirect influence on the European Union, as all the documents of the CE apply to the European Union Member States. If the courts of every European organisation (Court of Justice of the European Union and European Court of Human Rights) are added to this, it becomes clear that half a billion Europeans move within this legal area.¹⁵

European international private law, although inconsistent,¹⁶ relies on the need for full exercise of people's freedom of movement as one of the four fundamental freedoms in the European Union. Therefore, European international private law is a competence of the European Union, which, by means of the Hague Conference on Private International Law, 'encourages unification of rules for conflict of law, as well as procedural rules'.¹⁷ Such rules – conventions – can influence substantive law;

12 Consolidated version of the Treaty on the Functioning of the European Union/Lisbon Treaty, OJ C 326, 26.1.2012.

13 Majstorović, 2013b, p. 77-92. The EU has not yet become a member of the CE. The negotiations on accession of the European Union to the European convention for the protection of human rights and fundamental freedoms started in 2010, the legal basis for such an endeavour being Article 6 Para. 2 of the Treaty on European Union which reads: The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties., as well as the Protocol (No 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms. After three years, the first provisional agreement was reached. However, the Court of justice of the EU found that 'The agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms is not compatible with Article 6(2) TEU or with Protocol (No 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms'. (Opinion of 18 December 2014, ECLI:EU:C:2014:2454 [Online]. Available at: <http://curia.europa.eu/juris/document/document.jsf?docid=160882&doclang=EN>) (Accessed: 24 April 2023). The negotiations were resumed in 2020, and it is believed that the 46+1 Group (all members of the Council of Europe plus the European Union) has made significant progress during its meeting in 2023, and it is expected that new steps are to follow. The CE is the largest European political organisation founded with the objective of realising a common heritage and economic and social progress. Among other goals, its Statute refers to the advancement of human rights and fundamental freedoms in its Member States; cf. Lapaš 2013, p. 178.

14 Hrabar, 1989, p. 871. With reference to special legal acts referring to political strategy towards children, the Council of Europe Strategy for the Rights of the Child (2022-2027) certainly has its value; however, this is not the object of our analysis because it does not derive from the EU.

15 cf. Hrabar, 2019, p. 135.

16 Thus, Majstorović, 2013b, p. 15, refers to a "normative labyrinth", and Bouček, Ibid. to a "regulatory jungle".

17 Majstorović, Ibid. p. 16. For the activities of the Council of Europe and the Hague Conference on International Private Law cf. amplius Majstorović, 2013b.

therefore, additional caution is necessary to avoid overstepping the competences of the European Union¹⁸ and infringing on national family laws without authorisation.¹⁹

2. Convention on the Rights of the Child and the European Union

Discussion on European law addressing children's rights necessarily gives rise to the issue of relations between European documents and the Convention on the Rights of the Child and the possible ratification of the Convention by the European Union. First, the European Union is a subject of international law²⁰ and is free to accede to different international treaties. Legal theory believes that 'the legal order of the European Union, in spite of its exceptional level of development and unique supranational features, can hardly be identified with the concept of "European law"'²¹. However, the European Union is not a party to the Convention on the Rights of the Child and is not expected to become one. The question is whether this is necessary at all because all its Member States are simultaneously parties to the Convention on the Rights of the Child. The Union is a supranational organisation, especially regarding issues where the Member States conferred their competences to the Union.²² Primary legislation of the European Union (cf. *infra*) makes modest and generic references to just some of the many rights contained in the Convention on the Rights of the Child because, at the time of their adoption, children's rights were not the focus of the European Union's interest. Subsequently, secondary legislation made, and is making, a major turnaround towards an abundant number of documents to protect children's rights in the European Union.

Owing to its universal significance, the Convention on the Rights of the Child is the backbone and benchmark for the development of children's rights. A fact contributing to this is that the Convention is a catalogue of all children's rights, which are theoretically divided into several groups and categories,²³ setting four general principles sometimes appearing as clear rights: non-discrimination (Art. 2); the best

18 For example, the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), which has been ratified by all the EU Member States. Currently, a convention containing rules on conflict of laws with regard to surrogate motherhood is being drafted, which may cause major divisions among the Member States of the Hague Conference and the EU.

19 Theoreticians of family law rightly doubt the justification of further encroachment upon the essence of national family laws cf. Majstorović, 2013b, p. 15.

20 This status was recognised by Art. 47 of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007.

21 Lapaš, 2013, p. 176. Reference is made to the interfering legal circles of different European organisations within international law, unlike a "pyramid construction" of legal norms within internal legal order; Ibid. p. 177.

22 Ibid. p. 179. In this sense, the European Union 'like its Member States, participates in different international treaties'; Ibid. p. 187.

23 For distribution of rights within the Convention itself, cf. amplius Hrabar, 2021b, p. 199-205.

interests of the child (Art. 3); the right of every child to life, survival, and development (Art. 6); and the rights of the child to express views and take part in making decisions affecting the child in accordance with their age and maturity (Art. 12). Although the European Union is not a party to the Convention and there is no mechanism for the time being for its accession to the Convention, there is still a certain symbolic influence ‘by the power of universal principles of European law’²⁴ with modest attempts by the Court of Justice of the European Union to invoke the Convention on the Rights of the Child in its case law. Thus, the Court invoked the Convention in one case,²⁵ giving it crucial importance.²⁶ This, of course, does not mean that children’s rights and corresponding European documents are not violated in the European Union. Nevertheless, this fact has heretofore not been raised to the level of attention it deserves. Accession of the European Union to the Convention on the Rights of the Child would make legal sense only if a special court for children’s rights, similar to other courts of the European Union,²⁷ was established, which could protect all the children’s rights in the European Union.

3. Documents of the European Union Related to Children’s Rights

The number of legal acts of the European Union increases annually, including those on family law and, to some extent, children’s rights. There are an increasing number of legal acts within the secondary law (comprising regulations, directives, decisions, recommendations, and opinions), whereas primary legislation made up of the Founding Treaties contains a smaller number of provisions. Substantive family law is beyond the scope of European Union regulation; however, the issue of judicial cooperation in civil matters that have a cross-border impact falls under shared competence, that is, about creating the area of freedom, security, and justice to guarantee the security, law, and free movement of citizens within the Union.²⁸

Legal and political measures in the European Union with regard to children’s rights must primarily be based on the Founding Treaties, especially the Treaty on EU and the Treaty on the Functioning of the European Union, due to the limited competences that the Member States agreed upon when founding the European Union.

24 Stalford, 2012, p. 33.

25 A lack of special provisions on children and their rights in European documents can be offset by invoking the Convention on the Rights of the Child and thus increase its legal force.

26 This is the case C-244/06 *Dynamic Medien Vertriebs GmbH vs. Avides Media AG* (2008) where the Court invoked Art. 17 of the Convention on the Rights of the Child with reference to justifying the restriction of free flow of goods (in this specific case, of DVDs and video recordings by means of an electronic order). The article encourages the states to develop appropriate guidelines to protect children from information spread by the media that can have a harmful influence on their well-being.

27 cf. more on this in Hrabar, 2014.

28 cf. Majstorović, 2013, p. 7.

The Charter of Fundamental Rights of the European Union²⁹ is equally important as it systematises the existing principles of the Union's legal order.³⁰

3.1. *The Treaty on European Union (2009)*

The Treaty on European Union stipulates that the European Union shall promote the protection of children's rights; however, it does not provide for European bodies that would be competent for this and does not specifically define children's rights or their well-being. Therefore, this Treaty can be characterised as a declaration of fundamental values and objectives.³¹ Art. 3 Para. 3 of the consolidated version of the Treaty on European Union reads as follows:

'It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child'.

In the same article, in Para. 5, it emphasises that the Union '... shall contribute ... to the protection of human rights, in particular the rights of the child'.

3.2. *The Treaty on the Functioning of the European Union (2009)*

The Treaty on the Functioning of the European Union focuses on various areas of family law and children's rights. A broad range of relevant provisions refer to the prohibition of discrimination and judicial cooperation in civil matters aimed at ensuring the proper functioning of the internal market. Thus, Art. 19 confers powers on the Council to 'take appropriate actions to combat discrimination' on different bases, including age, which would imply children (as well).³² The provision of Art. 81 specifies that the Union shall develop judicial cooperation in civil matters (Para. 1), and in Para. 3, authorises the Council to establish measures concerning family law with cross-border implications.³³ Judicial cooperation between the states takes

29 Charter of Fundamental Rights of the European Union, OJ C 326, 26.10. 2012.

30 cf. Rodin, S. according to Majstorović, 2013, p. 8.

31 Hrabar, 2013, p. 54.

32 The provision of Art. 19 reads: 'Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'.

33 'Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament. The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament'.

place through different measures,³⁴ of which judicial decisions on parental care (child custody) and alternative methods of amicable conflict resolution are considered the most important. Other decisions are in the domain of procedural law that refers to all civil proceedings, including family law. The fact is that based on Art. 81 Para. 3, two regulations of crucial importance for children's rights were adopted as 'measures concerning family law with cross-border implications': Brussels II ter³⁵ and Maintenance Regulation³⁶ that fulfil the goal of ensuring '(c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction' (Art. 81 Para. 2).

Notably, no definition of the concept of "child" exists in the European Union either in the treaties, secondary legislation, or case law of European courts.³⁷ In European Union law, the concept of "child" varies and depends on the context: sometimes, the context is biological (origin), sometimes based on age (years), and sometimes according to dependency (economic or social dependency on parents and legal representatives).³⁸

3.3. The Charter of Fundamental Rights of the European Union (2009)

The Charter of Fundamental Rights of the European Union is a document designed to protect human rights.³⁹ It is a declaration of the fundamental principles and rights of

34 '... a) the mutual recognition and enforcement between Member States of judgements and of decisions in extrajudicial cases; (b) the cross-border service of judicial and extrajudicial documents; (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction; (d) cooperation in the taking of evidence; (e) effective access to justice; (f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States; (g) the development of alternative methods of dispute settlement; (h) support for the training of the judiciary and judicial staff. (art. 81 par. 2)'.

35 Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), Official Journal of the European Union L 178, 2.7.2019.

36 Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, Official Journal of the European Union L 7, 10.1.2009.

37 The only attempt to provide a definition has been made by the Directorate General of Justice - DG Justice invoking the Convention on the Rights of the Child; cf. '06508 Rights of the Child' [Online]. Available at: www.ec.europa.eu/justice. (Accessed: 24 April 2023).

38 Stalford, 2012, p. 21 f. Such distinctions are present in many legislations.

39 Majstorović states that the Charter is 'a crown of efforts made by the European Union in its commitment to protect human rights ...' cf. Majstorović, 2013b.

citizens of the European Union that present their common values,⁴⁰ and in terms of legal force, it is on an equal footing with the Treaty on EU.⁴¹ The fact of the matter is that its significant contribution to children's rights (in reality, their needs and interests) highlights (and thereby recognises) children's rights independently and separately from the rights of other (adult) European citizens and families in general. A further value of the Charter with respect to children is its influence on European law and the process of policy-making towards children, thereby becoming “evidence” that will enable institutions to critically review legislative proposals and national procedures in order to ensure their alignment with fundamental rights.⁴² Furthermore, the Court of Justice of the European Union invoked the right of the child protected by the Charter.⁴³ Nonetheless, one should not expect too frequent invocations of the Charter in the future, since rights other than children's rights fall within the scope of this Court's judicial review.

Several articles of the Charter are important for the legal status of children. Some refer to every individual, including children, whereas others refer strictly to children.

Provisions affecting the legal status of children are as follows: those on the rights of children (Art. 24), education (Art. 14), prohibition of discrimination based on age (Art. 21), and prohibition of exploitation of children (Art. 32).

Some provisions of the Charter govern the family, implying the rights of children: right to respect for private and family life, home, and communications (Art. 7) and right of the family to enjoy legal, economic, and social protection (Art. 33).

Some provisions not strictly linked to age and therefore applied to adults and children alike are the provisions⁴⁴ on human dignity (Art. 1); the right to the integrity of the person (Art. 3); the prohibition of torture and inhuman or degrading treatment (Art. 4); and the prohibition of slavery, forced labour, and trafficking in human beings (Art. 5). Moreover, among rights and freedoms are the right to liberty and security (Art. 6); right to protection of personal data (Art. 8); right to freedom of expression and information (Art. 11); right to freedom to choose an occupation and right to engage in work (Art. 15); right to property (Art. 17); right to asylum (Art. 18); and right to protection in the event of removal, expulsion, or extradition (Art. 19).

40 The concept of “common values” (from the Preamble) is important for the sake of recognisability of children's rights as part of the public policy (*ordre public*) not only in the EU, but also in national states. It is true that most of the Charter's 54 articles correspond to the rights and principles contained in the constitutions of EU Member States and international documents. Recently, there has been an issue of “values” that are gender-intoned. They are not shared values of all legal orders, and the Charter makes no reference to them, although they are becoming ever more often a part of the EU agenda. Moreover, EU Member States do not share the same values regarding euthanasia, surrogate motherhood, etc.

41 Thus, T. Hickman, *Beano No More: The EU Charter of Rights After Lisbon*, Judicial Review, 2011, 6, p. 113, cit. according to Stalford, 2012.

42 Stalford, 2012, p. 41.

43 With regard to Art. 24 of the Charter; cf. e. g. C-149/10 *Zoi Chatzi vs. Ypourgos Oikonomikon* (2010), C-491/10 *Joseba Andoni Aguirre Zarraga v. Simone Pelz* (2011) OJ C63; Case C-200/10 *PPU J McB vs. LE* (2011) WLR 699 etc.; cf. www.curia.europa.eu.

44 More on them cf. Korać Graovac, 2013, p. 30.

In addition to this division, rights to marry and found a family within the framework of “family law rights” can refer to children (Art. 9) in the sense of marriages of minors.

In addition to freedoms and rights, the Charter emphasises the principles of equality⁴⁵ and solidarity.⁴⁶ For the legal status of children, the provision in Art. 32 prohibiting child labour and protecting young people at work is important, as is the provision in Art. 33 protecting the family (in the legal, economic, and social sense) and maternity (in the sense of prohibition of dismissal, maternity benefits, and maternity leave).⁴⁷

A special chapter in the Charter on citizens’ rights (Chapter V Citizens’ Rights) predominantly refers to adults and their electoral right, right of document access management, and so on. Although one should expect that provisions on justice (VI Justice) will be interesting primarily to adults, they also refer to children when they are involved in court proceedings.⁴⁸

Below, the Charter’s most important rights that impact the rights of children, or are specifically children’s rights, are presented.

Freedom of Thought, Conscience and Religion (Art. 10)

Freedom of thought, conscience and religion: 1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

This provision applies to every human being, including children. This provision, contained in many international (especially UN) documents, guarantees freedoms without which a democratic society is unthinkable. Freedom of thought, conscience, and religion is also contained in the Convention on the Rights of the Child (in Art. 14⁴⁹).

45 Equality before the law, Art. 20; non-discrimination, Art. 21; cultural, religious and linguistic diversity, Art. 22; equality between women and men, Art. 23; rights of the elderly, Art. 25; integration of persons with disabilities, Art. 26.

46 They mostly refer to adult persons/workers.

47 Social security and social assistance (Art. 34) and healthcare (Art. 35), environmental protection (Art. 37) indirectly refer to children as well.

48 The right to an effective legal remedy and a fair trial, presumption of innocence and the right to defence, the *ne bis in idem* principle in criminal proceedings, etc.

49 The Convention reads: ‘1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others’.

This right should not be identified with the right of the child to express his or her views, as protected and intended for children in Art. 24 of the Charter, as freedom of thought is freedom to reflect on things (events, people, phenomena) around oneself, and is closely linked to freedom of conscience and freedom of religion. Conversely, the right to free expression of views from the Convention (in Art. 12) is closely linked to the child's view on things that concern himself or herself.

Over the past few decades in Europe, there has been a stronger awareness of the rights of children, especially adolescents. Children are increasingly demanding that their views be respected by adults.⁵⁰

Right to Education (Art. 14)

Right to education: 1. Everyone has the right to education and to have access to vocational and continuing training. 2. This right includes the possibility to receive free compulsory education. 3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

The right to education primarily relates to children, although the Charter does not specify it as such, but rather recognises it with respect to every citizen. Family law theory considers it, at least with regard to children, as one of the original and fundamental rights of the child,⁵¹ since it presupposes two facts: First, that education (of the child) means an investment in their development and one of the distinctions with respect to the rest of the living world. Second, it is difficult to imagine a child who would not acquire diverse knowledge in the most appropriate time, meaning from the moment he or she is mature enough to start school, but would begin to acquire diverse knowledge as an adult. However, among some marginal groups and individuals (because of their culture or way of life), there is an aversion towards the education of children, especially girls, and women too. The European view on education implies the progressive acquisition of knowledge, accessible to every individual according to their abilities.

The fact that the Charter guarantees the right to free compulsory education (Para. 2) is important for children's rights. The Convention on the Rights of the Child also refers to the right to the education of children (Arts. 28 and 29) and regulates more content with regard to the education (and teaching) of children.⁵²

50 cf. '2.5. Giving a voice to every child', Council of Europe Strategy for the Rights of the Child (2022-2027) p. 39.

51 Thus, Hrabar, 1994.

52 cf. Hrabar, 2021b, p. 226 f.

In Para. 3, the Charter emphasises that parents are the dominant persons who decide on the selection of education (and teaching) they want their children to receive. The European context of multiculturalism (in terms of faith, religion, worldview, and philosophy) and democratic society is evident in the respect of the authors of the Charter for the parents as the primary child-raisers. The upbringing that parents give their children (and that arises from their philosophical and religious convictions and worldviews) must not be in opposition to the education that children obtain in school. Educational convictions, that is, parents' views as to what children should be taught in school and how, are explicitly emphasised in this provision of the Charter, which is in accordance with the provision of Art. 2 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which reads as follows:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

To this could be added Resolution 1904(2012) of the Parliamentary Assembly of the Council of Europe on the Right to Freedom of Choice in Education in Europe,⁵³ which, in Pnt. 2, associates the right to freedom of choice in education with the freedom of conscience. Consequently, children's education and teaching within the school system must not clash with parents' convictions. This primarily refers to school subjects that contain content influenced by underlying values.⁵⁴ The right of the parents' influence on the education of their children is not exhausted only in the aforementioned condition, but also refers to a broader influence that an educational system can exert on children, prescribing a potential compulsory full-day school for children, which is one of the most recent proposals. It is clear that schools are primarily educational institutions and that children's upbringing rests upon parents (according to the explicit provision of Arts. 5 and 18 of the Convention on the Rights of the Child). A reduction in the time that children spend with their parents directly clashes with the right to respect for family life, since an absence of children from their families that is too lengthy and continuous breaks the bond between children and their parents as well as the parents' influence on their children's upbringing.⁵⁵

Children's Rights (Art. 24)

53 Resolution 1904(2012) of the Parliamentary Assembly of the Council of Europe on the Right to Freedom of Choice in Education in Europe 1.2.2013. [Online]. Available at: <http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=18983&Language=EN>, 1.2.2013 (Accessed: 22 June 2023).

54 This primarily refers to subjects where children are taught about human sexuality, religious issues, ethics (e.g. conscientious objection), surrogate motherhood, gender roles, etc.

55 This is partially the reason for the emergence of the issue of the home-schooling, which the Member States of the European Union treat differently in their national regulations.

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

This provision of the Charter presents a selective approach to children's rights, or a simple excerpt from the multitude of rights, through an explicit introduction of only three rights of children, which is (critically) explained by an attempt to merge several principles and substantive rights contained in the Convention on the Rights of the Child.⁵⁶ This is the right of children to protection and care, the right to free expression of their views, and the right to have regular personal relations and direct contact with both parents. When it comes to the application of these rights, there are the criteria of the child's well-being and interests, as well as the child's age and maturity vis-à-vis the child's right to express views, constituting a sort of guidance for the treatment of children, and today, a usual standard in international treaties.⁵⁷ The child's right to protection and care is a kind of "umbrella" covering various other rights that may be threatened (e.g. use of narcotics, alcohol, violence against children, health issues). At the same time, there is a need to engage European society and institutions, as well as national institutions, to support children as they grow up.

The right to free expression of one's views is a participatory right in the broadest sense, since it refers to all the situations that pertain to the child and is a legal standard in response to the idea of the child as a legal subject.

The Charter refers to the right to regular personal relations and direct contact of the child with both parents given the increasing number of separated families and children who have difficulty growing up without one parent, while at the same time legal systems, institutions, and the other parent do not always allow the child to have different forms of contact with the separated parent.⁵⁸ Highlighting this right is in line with the major fluctuation of European citizens within the borders of the European Union, guaranteeing them the freedom of movement and the freedom to change their domicile or residence. The issue of how to protect, in everyday life, the child's right to

56 McGlynn, *Rights for Children: The Potential Impact of the European Union Charter of Fundamental Rights*, 2002, p. 70, criticises this provision as an ill-advised and heavy compromise between different concepts of children's rights as contained in different international documents; cit. according to Stalford, 2012, p. 42.

57 From the Convention on the Rights of the Child to the Convention on Contact, the Revised Convention on Adoption, etc.

58 In 2021, there were 1.7 million marriages and 700,000 divorces in the European Union. Naturally, this often gives rise to issues of personal relations between children and the separated parent. cf. https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=Marriage_and_divorce_statistics#Fewer_marriages.2C_fewer_divorces.

have regular contact with the separated parent at the level of European institutions and legislation remains outstanding.⁵⁹

If one considers that all European Union Member States are parties to the Convention on the Rights of the Child, then there is no objection to excessive simplicity of the wording in Art. 24 of the Charter.

In terms of content, the binding documents analysed here do not significantly encroach upon national substantive family rights, either in terms of their wording and scope or the non-contentious content they protect. Since there is no binding secondary legislation that would be relevant for substantive family law and such legislation cannot exist on account of the issue of competences, it follows that it is up to the Member States' willingness to accept (or reject) non-binding documents related to children's rights. However, as will be seen further, their number, the lack of overview, and interference give the impression of their non-contentious importance, something that the states easily "succumb to" in the sense of their acceptance without reservation.

4. European Union Non-Binding Documents Related to Children's Rights

In addition to primary legislation, documents that make up the secondary legislation are significant for children's rights within the European Union. They include regulations, directives, decisions, recommendations, and opinions with a varying level of legally binding or non-mandatory nature.⁶⁰

There are important, although sometimes considerably similar, soft law instruments that deal with children's rights in the sense of substantive law.

4.1. EU Strategy on the Rights of the Child (2021) and the European Child Guarantee (2021)

The EU Strategy on the Rights of the Child⁶¹ reflects the need to create a framework and designate goals to which European society should aspire to protect children and their rights, indicating the need for recognition of children's rights as self-standing and not incorporated into human rights (of adults). The EU Strategy on the Rights of the Child has been developed for children and with children. It provides a framework for European Union action aimed at better promotion and protection of children's

59 The Council of Europe Convention on Contact concerning Children defines children's contacts with parents in more detail; however, the Convention is not in force in all the Member States of the European Union. For more on this, cf. Jakovac-Lozić, D., 2014.

60 cf. Treaty on the Functioning of the European Union, Chapter 2, Legal Acts of the Union, Adoption Procedures and Other Provisions, Section 1 The Legal Acts of the Union.

61 Full name: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – The EU Strategy on the Rights of the Child (2021-2024).

rights, together with recommendations for action by other EU institutions and the European Union Member States. It lays emphasis on the rights of most threatened children, the rights of children in the digital age, prevention and combating violence, and fostering child-friendly justice.

The thematic fields of the Strategy are participation of the child in political and democratic life, socio-economic inclusion, health and education, combating violence against children and ensuring child protection, child-friendly justice, digital and information society, and embedding a child perspective in all EU actions (mainstreaming). The abundance of information on children in this Strategy and requirements for concrete steps have resulted in the following statements: children's rights are human rights; the protection and promotion of the rights of the child is a core objective of the European Union; the Strategy's overarching ambition is to build the best possible life for children in the European Union; never before have children across the EU enjoyed the rights, opportunities and security of today; this progress was hard won but should not be taken for granted; the COVID-19 pandemic has exacerbated existing challenges and inequalities and created new ones; the EU needs a new, comprehensive approach to reflect new realities and enduring challenges; and children's rights should be mainstreamed across all relevant EU policies.

In this document, the European Commission offers a strategy for protecting children as part of European home and foreign policy.

A document linked to it – the European Child Guarantee (2021)⁶² – aims to break the circle made up of poverty and social exclusion, conditions that have an impact on school performance (e.g. increasing school dropouts) and health, affecting subsequent employability.

Regardless of how comprehensive and exhaustive a document the Strategy is and how ambitious its goals are, the impression is that this is an inconsistent and unclear instrument of protection in the sense of its implementation and some of its goals that, from a global perspective, cannot be acceptable to all states because of the great variety in customs and culture worldwide.

4.2. EU Guidelines on the Promotion and Protection of the Rights of the Child of 2017 – Leave no Child Behind

The EU Guidelines on the Promotion and Protection of the Rights of the Child of 2017 – Leave no Child Behind⁶³ are a framework for action on protecting children's rights and a reflection of the commitment of the European Union to enforce different children's rights according to European and global documents. They replaced the

62 European Child Guarantee [Online]. Available at: <https://ec.europa.eu/social/main.jsp?catId=1428&langId=en> (Accessed: 20 April 2023).

63 The EU Guidelines on the Promotion and Protection of the Rights of the Child of 2017 – Leave no Child Behind [Online]. Available at: https://www.eeas.europa.eu/sites/default/files/10_hr_guidelines_protection_en.pdf (Accessed: 20 April 2023).

2007 Guidelines due to the multiple changes in the world⁶⁴ and in the policies of the European Union.

In their introduction, the Guidelines refer to numerical indicators of violations of children's rights in the world by category. The purpose is to provide practical guidance to officials of EU institutions and EU Member States to strengthen their role in promoting and protecting the rights of all children in EU external action and strengthen their cooperation with international and civil society organisations. The Guidelines invoke the UN Convention on the Rights of the Child and its three Optional Protocols as the universal legal standard in the protection of children, emphasising four principles of the Convention. Priorities that can be singled out in the actions of the European Union are to support and encourage partner countries to fulfil their legal obligations, raise awareness and promote better understanding of the principles and provisions of the most important instruments of the child's rights, pursue a rights-based approach to the implementation of the General Measures of Implementation of the UNCRC (as set out in General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child)⁶⁵, raise awareness and promote gender equality between all boys and girls, complement and strengthen ongoing EU efforts in multilateral fora, and support the implementation of the 2030 Agenda for Sustainable Development. The following are enumerated as EU tools to promote and protect the rights of the child: political dialogues, human rights dialogues, statements and démarches, EU Human Rights and Democracy Country Strategies activities, bilateral and multilateral co-operation, and the Trade for All strategy. Regarding the operational part of the Guidelines, the emphasis is on a wide range of measures identified by the Committee on the Rights of the Child, such as legislation and policy; national strategies/documents and action plans; bilateral and multilateral cooperation; mobilisation of financial resources; coordination mechanisms for the implementation of the rights of the child; human resources and capacity-building; data, evidence, and knowledge; and finally, oversight and accountability.⁶⁶

It could be stated that these Guidelines abound in a multitude of Euro-bureaucratic expressions, and it is difficult to understand them in a simple manner.

4.3. European Parliament Resolutions

The European Parliament adopted two resolutions on children's rights that have legal force, and that, in relatively clear terms, present goals that could better achieve the

64 Emphasis is especially laid on the adoption of the 2030 Sustainable Development Agenda stressing the obligation to make stronger efforts towards equal opportunities of especially the vulnerable and marginalised as well as a link to the New York Declaration for Refugees and Migrants (2016).

65 General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child [Online]. Available at: <https://www.refworld.org/legal/general/crc/2003/en/36435> (Accessed: 22 April 2023).

66 Guidelines, pp. 11-17.

protection of children in the European Union. Certainly, as is always the case with the inflation of legal acts, the question is how much will truly be achieved.

*4.3.1. Resolution of the European Parliament of 26 November 2019
on Children's Rights on the Occasion of the 30th Anniversary of
the UN Convention on the Rights of the Child*

The Resolution on the Occasion of the 30th Anniversary of the Convention on the Rights of the Child⁶⁷ relies on many international instruments,⁶⁸ and emphasises facts, standard settings, and foundations⁶⁹ for “general remarks” and “home policies”. Among the general remarks, the Resolution includes the following in its 10 points: need to apply the Convention on the Rights of the Child to all children, institutionalisation of a European Union representative for children's rights and establishment of a centre for the protection of children in the European Union, encouragement of the application of the child's best interest, call to the Commission to better protect children, possible accession of the European Union to the Convention on the Rights of the Child, implementation of the Sustainable Development Goals and a healthy environment, reminder of gender inequality that causes disparity, exclusion and violence against children, identification of dangers that children face in “aggressive, misleading and intrusive advertising”, and exploitation of children for commercial purposes; finally, support to the Commission in all efforts aimed at eradicating child labour. Home policy implies the following topics: ending all forms of violence against children (Pts. 11–19), investment in children (Pts. 20–26), education (Pts. 27–31), child-friendly justice (Pts. 32–33), migrant children (Pts. 34–38), threatened children (Pts. 39–46), and participation of the child (Pts. 47–50). Foreign policies (Pts. 51–58) are focused on the actions of the Commission and third countries aimed at raising awareness and better respect for children's rights, combating inter-generational poverty, and enabling greater financing of services, among other such efforts. The topic “children and armed conflicts” speaks at a general level of principled and difficult issues of children in war conflicts, their rehabilitation and reintegration, and the need for stronger involvement of the European Union in the support provided to children.⁷⁰

67 Resolution on the Occasion of the 30th Anniversary of the Convention on the Rights of the Child (P9 TA(2019)0066) [Online]. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2019-0066_EN.html (Accessed: 22 April 2023).

68 The Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union, directives, other resolutions, general remarks, UNICEF reports.

69 Such as: definition of the child, violation of different rights of children, European goal of promoting children's rights, existence of discrimination of children, the need to respect the child's views, parental roles, the existence of new threats of the modern age (digitalisation, climate change, etc.), abuse of children in all forms, child trafficking; new forms of abuse and exploitation of children are identified such as “revenge pornography” and sextortion.

70 Special reference is made to children of foreign fighters in Syria. It is to be expected that some new resolution will tackle the issue of children in the war in Ukraine and taking children from Ukraine to Russia.

4.3.2. *Resolution of the European Parliament dated 11 March 2021 on the Rights of Children with Regard to the EU Strategy on the Rights of the Child*

The second resolution – the Resolution of the European Parliament dated 11 March 2021 on the Rights of Children with Regard to the EU Strategy on the Rights of the Child⁷¹ – is equally extensive and is the European Parliament's response to the EU Strategy on the Rights of the Child (cf. *infra*). In a usual fashion, the Resolution invokes various documents.⁷² In 25 points of its recitals, the Resolution speaks of facts that determine the position of children in the European Union⁷³ (and, to some extent, in the world). Based on them, in 40 points of its operative part, competent bodies are called upon to prompt action, with emphasis on the action of the Commission through a comprehensive strategy on children's rights and adoption of legislative and non-legislative proposals and binding and non-binding instruments of the European Union.

4.4. *An EU Agenda for the Rights of the Child (2011)*

This document precedes the aforementioned Strategy, which is founded on it, and is a communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (An EU Agenda for the Rights of the Child. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM (2011)0060.⁷⁴ It appeared as an appeal by the Commission addressed to European institutions and Member States

71 Resolution of the European Parliament dated 11 March 2021 on the Rights of Children with Regard to the EU Strategy on the Rights of the Child (P9_TA(2021)0090). [Online]. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0090_EN.html (Accessed: 22 April 2023).

72 For example, the Convention on the Rights of the Child, the General Comments of the UN Committee on the Rights of the Child, EU Guidelines on the Rights of the Child, Global UN Study on Children Deprived of Freedom, political reports on COVID-19, directives, recommendations, resolutions, etc.

73 Mentioned are: existence of children's rights and their best interests, need for education with emphasis on neglect of girls in this regard, a large number of children living in poverty, the impact of the COVID-19 pandemic on the status of children, need for stronger formal care for children and unacceptability of home-schooling, more recent health problems of children in the field of mental health, deficiencies in national legislations in the protection of children from social exclusion, exploitation of children, discrimination, worrying numbers of child trafficking, unacceptability of child labour, mutilation of female reproductive organs and marriages of minors, increase of domestic violence and sexual abuse and exploitation of children on the Internet, social exclusion of children with disabilities, children asylum seekers, unaccompanied children and children detained in the context of migration, the influence of environmental disasters on children, risks of statelessness, lacking participation of children in policy-making, issues of children in institutions, insufficient digital literacy of children.

74 An EU Agenda for the Rights of the Child. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM (2011)0060. [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011DC0060> (Accessed: 23 April 2023).

for the better protection and promotion of children's rights.⁷⁵ The Agenda includes general principles of action in the sense of emphasis on the statement that children's rights are an integral part of the European Union's policy on fundamental rights, recognises the need to create a database on children and their position in the European Union, and emphasises the need for cooperation among all stakeholders who deal with children. In this sense, the Agenda calls for concrete actions to protect children in the judicial system and especially protect vulnerable children, underlining the problem of poor and socially excluded children, children with disabilities, children who are victims of trafficking and sexual abuse, child asylum seekers, unaccompanied children, and Roma children. The Agenda considers the principle of the child's best interest to be the leading and overarching principle and, on several occasions, stresses the importance and need for the application of the Convention on the Rights of the Child in all the EU Member States.

A requirement of special importance for every national family law in the European Union is the creation of child-friendly justice. Specifically, difficulties have been identified in maintaining personal relations between children and separated parents (especially in transnational disputes), a consequence of divorce or legal separation, which restricts the child's rights. The Agenda requires national systems to facilitate the accessibility of information and enable children and parents to be informed about their rights in family disputes that concern national and European law and are related to parental responsibility, so that children would not become hostage to intricate cross-border legal procedures. The Commission intends to pay special attention to parental child abduction, especially in situations with an international dimension. Furthermore, a flow of people within the borders of the European Union can have an impact in terms of jeopardising children's rights with regard to their civil status. Therefore, the Commission has begun to propose measures to facilitate the recognition (translation and proof of authenticity) of documents from state registers.

After a series of goals related to children who participate in criminal proceedings,⁷⁶ the Agenda specifies the protection of unaccompanied children arriving in the European Union as one of its goals. It points to special measures and procedural guarantees for the protection of such children, especially from their potential disappearance (for different markets – drugs, prostitution, organs, slavery, etc.). The Agenda attaches great importance to the training of professionals to communicate with children who have experienced any kind of trauma.

75 Children from all the Member States of the European Union took part in the creation of the Agenda, talking about the obstacles they face in the exercise of their rights. Essentially, children want adults to have greater trust in them, to better respect their views, to involve them more in decision-making that concerns them and to have more regard for their views; cf. *Children's Rights as They See Them*, European Commission Justice, 2010, p. 3.

76 The Agenda enumerates different situations in which children in Europe may find themselves and which require special programmes and actions. They include: early dropout from school, Roma children, escape from home, criminal abduction of children, a dedicated hotline for missing children and their parents, cyber-bullying, violence in school, dangers/addiction of children to mobile phones and excessive use of social networks.

Furthermore, the Agenda focuses on children in situations outside the family, such as violence, child labour, children in armed conflicts, and sex-tourism. The European Union aims to resolve such situations through political dialogue with third countries, bilateral and multilateral cooperation, international negotiations, and humanitarian assistance.

Finally, the Agenda requires efficient action enabling children to express their views and participate in decision-making on matters concerning them. In accomplishing this goal, the Agenda sees a major role of the European Forum on the Rights of the Child and national Ombudspersons for children.

4.5. Recommendations of the Council for the Establishment of the European Child Guarantee

As previously mentioned, the European Commission produces many documents through which it intends to elaborate on or supplement previous documents. Often, it repeats the same matters or designs tasks for European and national bodies in a slightly confusing manner.

In March 2021, the Commission presented a proposal for Council Recommendation Establishing a European Child Guarantee⁷⁷ to reduce the risk of poverty and social exclusion. This is a multidimensional phenomenon that is more prevalent among children than in the total population,⁷⁸ and in addition to an unfavourable position *per se*, it creates obstacles for inclusion and participation in society, thus requiring the European Union and Member States to take efficient steps to curtail it for the sake of social progress. As one of its goals, the European Pillar of Social Rights provides for the reduction of the risk of poverty or social exclusion for at least 5 million children. The objective of the European Guarantee is to provide access to key services for children who need help, and this Recommendation specifies the forms and manners in which Member States should achieve it. The European Child Guarantee is aligned with the European Pillar of Social Rights Action Plan and the European Union Strategy on the Rights of the Child, and the European Union will allocate funds to help children.

The European “activity” may be seen through certain other documents too. The Council adopted the Recommendation on High-Quality Early Childhood Education and Care Systems (2019) and the Resolution on a Strategic Framework for European Cooperation in Education and Training towards the European Education Area and Beyond (2021–2030). The European Commission published communications titled ‘Achieving the European Education Area by 2025’ and ‘The Digital Education Action Plan 2021–2027 Setting Education and Training for the Digital Age’.

77 Council Recommendation Establishing a European Child Guarantee (EU) 2021/1004 of 14 June 2021. [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2021:223:FULL> (Accessed: 24 April 2023).

78 It speaks of 22.2% (almost 18 million) children in relation to 20.9% (approximately 91 million) of the total population; cf. Proposal of Recommendation, p. 1.

With regard to gender equality, the ‘Gender Equality Strategy 2020–2025’ was created, and with regard to LGBTIQ persons, the ‘LGBTIQ Equality Strategy 2020–2025’ was adopted.

The following documents were also included in deliberations and proposals: ‘EU Anti-Racism Action Plan 2020–2025’; ‘EU Roma Strategic Framework for Equality, Inclusion and Participation 2020–2030; (with a special Recommendation of the Council); followed by the communications ‘A Renovation Wave for Europe - Greening Our Buildings, Creating Jobs, Improving Lives’ and ‘Strategy on the Rights of Persons with Disabilities 2021–2030’, etc.

The European Union soft law in the area of children’s rights primarily comprises multiple actions and non-binding documents that have bureaucratically “swollen” to confusing proportions. The fact of the matter is that children’s problems in Europe are not only various but also specific in relation to the problems of children in underdeveloped and developing countries, and are characteristic of Western society. The features of “European” problems are threefold and require legal reaction. We encounter social issues underlying legal issues (integration of asylum-seeking children, immigrant children, Roma children, etc.); psychological issues that are a follow-up to legal issues (e.g. children separated from their parents because of family dissolution); and finally, children in the judicial system as an issue (children who are victims of paedophilia and other pathological desires of adults, children exposed to violence, children who have no opportunity to express their views before competent bodies). All of these questions require a specific response in the sense of binding documents for all the European Union Member States. This means that it would be necessary to prepare a corresponding convention (or a treaty, as is customary in the European political and legal system), which would, per the model of the Convention on the Rights of the Child, elaborate on the rights of children who are most threatened in the European area, based on their needs, with a simultaneous binding character (and sanctions) for the Member States. In our view, this should be the first step towards the better protection of children’s rights.⁷⁹ Furthermore, such a document should not have ideological overtones, but should be gender-neutral and guided by the child’s best interest.

79 cf. Hrabar, 2013, p. 70.

References

- Hrabar, D. (1989) 'Prava djece kao prava čovjeka, *Naša zakonitost*, 7-8, pp. 865-873.
- Hrabar, D. (1994) 'Dijete – pravni subjekt u obitelji', *Pravni fakultet u Zagrebu*, Zagreb.
- Hrabar, D. (2013) 'Prava djece u Europskoj uniji – pravni okvir' in Bodiroga-Vukobrat, N. *et al. Europsko obiteljsko pravo*, Narodne novine, 2013, pp. 53 – 71.
- Hrabar, D. (2014) 'The establishment of a European court for the rights of the child as a new contribution to the area of freedom, security and justice', *Zbornik Pravnog fakulteta u Zagrebu*, 64, 2014, 2, pp. 181 – 198.
- Hrabar, D. (2019) 'Posredni utjecaj Vijeća Europe na Europsku uniju u svjetlu obiteljskopравnih vrijednosti', *Godišnjak Akademije pravnih znanosti Hrvatske*, vol. X, 1, pp. 133-162.; <https://doi.org/10.32984/gapzh.10.1.7>.
- Hrabar, D. (2020) 'Postmoderno doba kao predvorje negacije dječjih prava', *Zbornik radova Pravnog fakulteta u Splitu*, 57, 2020, 3, pp. 657-688.; <https://doi.org/10.31141/zrpf.2020.57.137.657>.
- Hrabar, D. (2021) 'Die Leihmutterschaft in den Urteilen des Europäischen Gerichtshofes für Menschenrechte', in G. Sander, A. Pošćić, A. Martinović (eds.) *Exploring the Social Dimension of Europe, Essays in Honour of Nada Bodiroga-Vukobrat*, Verlag Dr. Kovač, Hamburg, pp. 363-379.
- Hrabar, D. (2021b) 'Obiteljskopравni odnosi roditelja i djece' in Hrabar, D. *et al. Obiteljsko pravo*, Narodne novine, Zagreb, 2021, pp. 199 – 205.
- Jakovac-Lozić, D. (2004) 'Europska konvencija o kontaktima u svezi s djecom (2003.) i prilagodba obiteljskog zakonodavstva Federacije Bosne i Hercegovine zahtjevima konvencije de lege ferenda', *Zbornik radova Pravnog fakulteta Sveučilišta u Mostaru*, Pravni fakultet Sveučilišta u Mostaru, pp. 147 – 184.
- Korać Graovac, A. (2013) 'Povelja o temeljnim pravima Europske unije i obiteljsko pravo' in Bodiroga-Vukobrat, N. *et al. Europsko obiteljsko pravo*, Narodne novine, Zagreb, pp. 25 – 51.
- Lapaš, D. (2013) 'Odnos međunarodnog i europskog prava – novo lice dualizma?' in Bodiroga-Vukobrat, N. *et al. Europsko obiteljsko pravo*, Narodne novine, Zagreb, 2013, pp. 173 – 202.
- Majstorović, I. (2013) 'Obiteljsko pravo kao različitost u jedinstvu: Europska unija i Hrvatska' in Bodiroga-Vukobrat, N. *et al. Europsko obiteljsko pravo*, Narodne novine, Zagreb, pp. 1 – 24.
- Majstorović, I. (2013b) 'Europski pravni kontekst i značenje za hrvatsko obiteljsko materijalno pravo', *Godišnjak Akademije pravnih znanosti Hrvatske*, Vol. IV, No. 1, pp. 77-92.
- Stalford, H. (2012) 'Children and the European Union – Rights, Welfare and Accountability', Oxford and Portland, Oregon.