

## **Children's Rights in the Council of Europe – Framework**

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### **ABSTRACT**

The Council of Europe aims to connect the countries of the European continent to promote the idea of human rights and liberties to achieve common social development and progress in the rule of law for all countries and their citizens. In this context, the Council of Europe provides a comprehensive normative framework for the implementation and protection of child rights as a distinct category of human rights. Under the auspices of the Council of Europe, a significant number of international treaties and soft law instruments have been created that are of direct or indirect importance to child rights. The rights of the child have been recognised, applied, and protected first in treaties on human rights in general, and then in family related conventions, and particularly within child-oriented treaties. In terms of child rights, the activities of various judicial or non-judicial bodies that monitor or supervise the implementation of these treaties or act separately within the Council of Europe's framework should be considered. The real engine of the Council of Europe is the European Court of Human Rights, which has been continuously developing case law for human rights. Such an approach by the Court influences the harmonisation of the substantive family law of member States, including the exercise of the rights of the child. Over the last few decades, other international and supranational organisations have increasingly suppressed the Council of Europe. However, the significance of its work in the fields of human and child rights cannot be easily diminished.

### **KEYWORDS**

child rights, human rights, Council of Europe, treaties, child rights-oriented approach, soft law

## **1. Introduction**

The Council of Europe was founded in 1949 with the aim of achieving legal, economic, and cultural connections and greater unity among the countries of the European continent devastated in the Second World War.<sup>1</sup> Throughout time, this organisation has been attempting to harmonise the national laws of European States, reaffirming

| 1 The Statute of the Council of Europe, 05 May 1949, ETS 001, art. 1(a). Hereinafter: the Statute. |

| Veljko VLAŠKOVIĆ (2024) 'Children's Rights in the Council of Europe - Framework'. In: Anikó RAISZ (ed.) Children's Rights in Regional Human Rights Systems. pp. 41–64. Miskolc–Budapest, Central European Academic Publishing. [https://doi.org/10.71009/2024.ar.crirhrs\\_2](https://doi.org/10.71009/2024.ar.crirhrs_2) |

and applying the idea of human rights which by nature does not tolerate the borders between individuals, peoples, and countries.

The legal and political activities of the Council of Europe rest upon the Committee of Ministers and Parliamentary Assembly as two primary bodies, including the Secretariat as a key operational force headed by the Secretary-General who personifies the entire organisation. Under these bodies, there is a vast network of authorities, advisory, and technical committees or commissions in accordance with the Council of Europe's Statute. In this context, the Committee of Ministers established the Commissioner for Human Rights in 1999 as an independent, non-judicial authority to assist member States in implementing the Council of Europe's human rights standards. The final and essential pillar of the Council of Europe is the European Court of Human Rights.

The Committee of Ministers comprises the Ministers of Foreign Affairs of the member States as their permanent representatives acting on behalf of the Council of Europe with a decision-making mandate and a key role in guarding and maintaining the Council's principal bases and values.<sup>2</sup> The Parliamentary Assembly (The Consultative Assembly in the original text of the Statute) has been designated as a deliberating body comprising representatives appointed by member States with the mandate to debate matters within its competence and present adequate conclusions in the form of Recommendations to the Committee of Ministers.<sup>3</sup> Member States are entitled to different numbers of representatives depending primarily on their size and population.

Drawing power from the statute ratified by almost all European countries, the Council of Europe has provided a highly significant space for common action in legal matters pursuing the goals of human rights and liberties.<sup>4</sup> Therefore, legislative activity under the auspices of the Council of Europe is expressed at its most important level through conventions and other legally binding international treaties that serve as instruments for codifying human rights. Furthermore, the adoption of various recommendations is a significant driving force for human rights policy implementation. Although the latter legal instruments are non-binding in a strictly formal sense, they often precede conventions, enabling member States to gradually adjust their national legislation.<sup>5</sup>

The idea of fulfilling and protecting human rights within the Council of Europe's framework was achieved by establishing various monitoring expert bodies, groups, and organisations. They are mostly tied with the supervisory mechanism of a particular Council's treaty, although different examples can be found regarding this issue. Thus, to acquire a better insight into the exercise of human rights at national levels and ensure a more effective approach in combatting human rights violations, the

<sup>2</sup> The Statute, arts. 13 – 14.

<sup>3</sup> The Statute, art. 22.

<sup>4</sup> Lowe, 2016, p. 97.

<sup>5</sup> Ibid., p. 98.

Statute of the Council of Europe could serve as a direct instrument for establishing specialised monitoring expert bodies separated from the supervisory mechanism of any particular Council's treaty, such as the European Commission against Racism and Intolerance (ECRI).<sup>6</sup> In other cases, monitoring or supervisory bodies were established as part of the specific human rights treaty or by the Convention that has served solely as an instrument for the creation of such a monitoring authority and for defining its competence and role (e.g. the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment).<sup>7</sup>

However, the most significant activity in achieving common ground in legal matters among member States is adopting conventions regarding human rights and liberties. In this context, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the European Convention on Human Rights).<sup>8</sup> Heavily influenced by the United Nations Universal Declaration of Human Rights,<sup>9</sup> this treaty does not draw its true strength primarily from the content, but from the supervisory mechanism for the enforcement of the Convention, that is, the European Court of Human Rights (ECtHR), seated in Strasbourg. Thus, the ECtHR continues to make it a living instrument, preserving the vitality of this Convention through the evolutionary interpretation of human rights, considering the inevitable changes in social surroundings.

Somehow as expected and understandable, child rights were not the focus of the Council of Europe's early work.<sup>10</sup> Thus, child rights were not fully recognised as a distinctive category of human rights. Although the Council of Europe made valuable efforts to improve the position of children as vulnerable members of a family and the wider community, these legal instruments were not essentially child-oriented. Child rights only emerged with the adoption of the United Nations Convention on the Rights of the Child (CRC) in 1989 as the most universally accepted treaty in human history.<sup>11</sup>

6 The Council of Europe, Committee of Ministers, Resolution Res (2002)8 on the statute of the European Commission against Racism and Intolerance (ECRI), adopted by the Committee of Ministers on 13 June 2002 at the 799th meeting of the Ministers' Deputies, preamble. ECRI was created in 1993 at the Vienna Summit of Heads of State and government of the member States of the Council of Europe by adopting the Declaration and the Plan of Action. See Jacob-Owens, 2019, p. 5.

7 The Council of Europe, Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 26 November, 1987, ETS 126, art. 1.

8 The Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, 01 November, 1950, ETS 005. Hereinafter: ECHR.

9 The United Nations, Universal Declaration of Human Rights, 10 December 1984. Hereinafter: UDHR.

10 Fortin, 1999, p. 354.

11 The United Nations, Convention on the Rights of the Child, 20 November 1989. Hereinafter: CRC.

## 2. Development of the concept of child rights under the Council of Europe's normative framework

### 2.1. *Child rights in broader context of human rights and family relations*

The idea of child rights that gradually developed during the 20th century fundamentally changed the concept of family legal relations and the legal status of children.<sup>12</sup> The entire process culminated in the adoption of the CRC after a decade of drafting, intensive discussion, and negotiations among various States and non-governmental delegations within the United Nations framework. Derived from the idea of human rights, child rights comprise and recognise the particular interests of children that need to be pursued in their family surroundings and the wider community. In this context, a child must be treated as a rights-holder and not simply as a passive participant in legal relations that directly or indirectly concern her/him. Therefore, the decisive moment in creating child rights and reshaping the principle of the child's best interests was the introduction of the child's participation rights, that is, the right of the child to express views, which enabled the child to influence the decisions that affected them.<sup>13</sup>

As previously mentioned, the Council of Europe did not fully recognise child rights in the legal instruments it was producing, or at best, the idea of an independent category of child rights was not sufficiently visible in the Council's activities until the adoption of the CRC. Thus, the ECHR as probably the most important legal instrument created within the Council of Europe's framework, was not originally intended to serve children, but adults. Therefore, the term "child" is not mentioned at all in the original text of the ECHR, while the words "minor" and "juvenile" are used in only two cases.<sup>14</sup> This situation was improved in the European Social Charter as a treaty covering the second generation of human rights.<sup>15</sup> In this context, the ESC recognised that children collectively enjoyed some protection and provision rights in the fields of labour, working capacity and social and economic protection.<sup>16</sup> However, in the original text of the treaty, children's rights are mostly regarded together with the rights of single mothers as vulnerable persons, except for the employment status of children.

Furthermore, the Council of Europe has dealt with highly important family matters that inevitably affect the rights and interests of children. Considering that these treaties regulated a narrower field of family relations, the interests and legal positions of the children had to be significantly more visible. In this regard, conventions concerning the adoption of the child and parental affiliation had been adopted before the work on drafting the CRC began. Thus, the European Convention on the

<sup>12</sup> Vlašković, 2014, p. 185.

<sup>13</sup> The CRC, art. 12.

<sup>14</sup> The ECHR, art. 5 (1d), art. 6 (1). See Alston and Tobin, 2005, p. 16.

<sup>15</sup> The Council of Europe, European Social Charter, 18 October 1961, ETS 035. The treaty was partially revised in 1996, ETS 163. Hereinafter: ESC.

<sup>16</sup> See the ESC (ETS 035), Part II, art. 7, art. 17.

Adoption of Children (1967) was the closest to the contemporary understanding of child rights.<sup>17</sup> It was one of the first European treaties that directly recognised the participation interests of a child that would later take the form of the child's right to express views in the broadest possible context.<sup>18</sup> The European Convention on the Legal Status of Children Born Out of Wedlock (1975) has contributed to the abandonment of discrimination against children based on birth, although this treaty primarily deals with the issue of establishing parental responsibility.<sup>19</sup>

By the end of the seventies of the last century, the collective awareness of the necessity of recognising and codifying children's rights and interests on a global level was maturing. This social climate was also noticeable in the activities of the Council of Europe. Thus, at the very beginning of the preamble of the Luxembourg Convention (1980), it is emphasised that the 'welfare of the child is of overriding importance in reaching decisions concerning his custody'.<sup>20</sup> This individualistic formulation and approach to the welfare of each and every child also redefined the principle of the child's best interests which would be fully embraced by the CRC. Previously, the ECtHR had developed "the doctrine of positive obligation" for the member States in the ground-breaking case of *Marckx v. Belgium* (1979) largely expanding the possibilities for the protection of children as the right-holders under the ECHR.<sup>21</sup> After the adoption of the CRC, a new stage was set to which the Council of Europe adapted and further developed activities concerning child rights.

## 2.2. The impact of the UN Convention on the Rights of the Child

The CRC influenced the Council of Europe to further adjust activities concerning children's rights in two primary directions. To respect and achieve the aims of child rights, the Council of Europe has been using the approaches of partial and full revision on one side, and the creation of more child-oriented instruments on the other. The first approach has been used so that some of the already existing treaties can be terminologically and substantially adapted to the idea of child rights. Thus, the ESC was partially revised in 1996, whereas the text of the original ECA was subjected to the complete revision two years later.

17 The Council of Europe, European Convention on the Adoption of Children, 24 April 1967, ETS 058. The treaty was completely revised in 1998, ETS 202. Hereinafter: ECA.

18 The ECA (ETS 058) provided that competent authority will not grant the adoption before making appropriate enquire on the views of the child as a prospective adoptee. See art. 9 (2f).

19 The Council of Europe, European Convention on the Legal Status of Children Born Out of Wedlock, 15 October 1975, ETS 085. Hereinafter: ECCoW. Lowe, 2016, p. 100.

20 The Council of Europe, European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children, 20 May 1980, ETS, preamble, para. 1, ETS 105. Hereinafter: the Luxembourg Convention.

21 See *Marckx vs. Belgium*, App. No. 6833/1974 (13 June 1979), para. 31. The doctrine of positive obligations implies that member States do not only have the duty to refrain from interfering with the human rights and liberties from the ECHR, but some of the Convention rights may also impose the obligation to take active steps to ensure their protection and enforcement. See Fortin, 2009, p. 62; Choudhry and Herring, 2010, p. 7.

The partial revision approach had to be applied to the ESC text beginning in 1961, primarily because of the expectedly weaker monitoring mechanism that followed the implementation of economic, social, and cultural rights. Thus, most of the human rights from the ESC may be realised only progressively in the national legislation of the member States, making these provisions unsuitable for the supervision of the judicial authority. Therefore, unlike the ECHR, which can withstand the test of time through the ECtHR case law development, the ESC text needed to be partially revised.

In the case of the ECA, it was recognised that some provisions of the original text (1967) were outdated, contrary to the case law of the ECtHR. Moreover, the principle of the child's best interests was prioritised in the field of adoption, requiring a full adjustment of the former ECA to the CRC.<sup>22</sup>

The other course of action is shaped by the need for every future treaty or other legal and political instrument concerning child rights to be created within the Council of Europe framework to be child rights-oriented. A typical example is the European Convention on the Exercise of Children's Rights, which was adopted in 1996.<sup>23</sup> This treaty contributed to understanding the obligations that countries have under the CRC to achieve greater unity between the member States of the Council of Europe in the implementation of child rights in a manner that would be complementary to the CRC.

Simultaneously, the ECtHR continues to conduct an extensive and evolutive interpretation of ECHR provisions considering child rights. Although cases formally invoking the CRC are not so rare, it has been shown that the ECtHR sometimes does so reluctantly or without an in-depth analysis of the aims of child rights set by the UN treaty.<sup>24</sup> These outcomes are a consequence of the fact that the ECtHR does not interpret the treaty that is directly dedicated to child rights but to human rights in general, which often requires balancing the interests of several parties. However, the ECtHR, with its dynamic interpretation of ECHR rights, has the power to create space for more efficient protection and enforcement of child rights compared with the UN Committee on the Rights of the Child as a non-judicial monitoring body.

To summarise, treaties within the Council of Europe's normative framework concerning child rights may be divided into three basic groups: treaties on human rights, conventions referring to family relations, and child rights-oriented treaties. Although the first two categories of treaties protect child rights in the broader context of human rights or family relations, the latter conventions are entirely or dominantly focused on children, aiming to complement the CRC. This classification is far from ideal, considering that family law treaties are oriented towards children to some extent. However, child rights-oriented treaties are considered to offer a deeper, more

22 The CRC, art. 21 and the ECA (ETS 202), preamble.

23 The Council of Europe, European Convention on the Exercise of the Children's Rights, 25 January 1996, ETS 160. Hereinafter: ECECR.

24 Alston and Tobin, 2005, p. 19.

concrete meaning to member States' obligations arising from the CRC provisions. In the following section, we provide a brief overview of the treaties from all these categories.

### 3. The Council of Europe's treaties related to child rights

#### 3.1. Human rights treaties

##### 3.1.1. *The European Convention on Human Rights and the pivotal role of the European Court of Human Rights*

The ECHR was adopted in Rome in 1950 and came into force in 1953. The original text of the ECHR has been supported and supplemented so far by 16 protocols that add new rights, reorganise the supervisory mechanism, and increase the competence of the ECtHR. The list of mainly civil and political rights covered by the ECHR has expanded over time through appropriate protocols, including the right to education and the right to the protection of property.<sup>25</sup> Furthermore, Protocol No. 6 introduced the abolition of the death penalty in 1983.<sup>26</sup> Moreover, the supervisory mechanism for the implementation of the ECHR was fundamentally restructured in Protocol No. 11 by establishing the European Court of Human Rights as the single and permanent judicial authority.<sup>27</sup> In this context, the European Commission on Human Rights, which was used to assess the admissibility of applications submitted to court, has ceased to exist.

In the text of the ECHR, the duty of member States to respect human rights and liberties is formulated negatively; that is, member States are obliged to refrain from violating human rights. However, in the manner described earlier in this text, The European Court of Human Rights developed “the doctrine of positive obligations” according to which member States should not only not interfere in the exercise of the individual human rights, but must also enable these rights to be exercised.<sup>28</sup> This doctrine is a key instrument for harmonising the national laws of member States within the Council of Europe's normative framework, including child rights and family law provisions.

It is emphasised that children are considered holders of human rights granted by the ECHR equally as adults, regardless of whether this treaty recognises child rights

25 The Council of Europe, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 009, art. 1, 2.

26 The Council of Europe, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 28 April 1983, ETS 114, art. 1.

27 The Council of Europe, Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, 11 May 1994, ETS 155, art. 19.

28 See footnote 21. earlier in the text.

as a distinctive category, making no reference to them in the text.<sup>29</sup> The child's equal entitlement is the outcome of the interpretation of the ECHR provisions that the rights and freedoms will be guaranteed to "everyone" combined with the prohibition of discrimination.<sup>30</sup>

Furthermore, some ECHR parts have tremendous potential for the protection of child rights, enabling the ECtHR to contribute significantly to these matters through the continuous development of case law.<sup>31</sup> These provisions primarily involve the prohibition of torture (Article 3), right to a fair trial (Article 6), right to respect for private and family life (Article 8), and prohibition of discrimination (Article 14). Thus, the ECtHR interpreted the right to protection from torture in a way that decisively contributed to the abolition of corporal punishment of children, both in school and within the family. Most of those applications were brought against the United Kingdom during the 1980s and 1990s where the common-law test of "reasonable chastisement" was deeply rooted.<sup>32</sup> However, the dynamic and very extensive interpretation of the concept of a person's private and family life (Article 8) "has borne the most fruit, so far as children are concerned".<sup>33</sup>

Unlike the right to protection from torture (Article 3), the right to respect for private and family life is a qualified human right. This means that public authority of a member State may justify interference with one's private and family life on certain legal grounds.<sup>34</sup> With respect to Article 8(2), the ECtHR developed a formula according to which it assesses whether there are justified reasons for interference with the private or family life of an individual. Thus, there will be no violation of the right to respect for private and family life from the Article 8 of the ECHR if the interference is done in "accordance with the law", to secure "legitimate aim" or such interference was "necessary in democratic society".<sup>35</sup> The latter ground involves the "test of proportionality" where the ECtHR determines if a fair balance has been struck between the various interests that may be at stake.<sup>36</sup> The doctrine of proportionality in a certain sense prevents the supremacy of the rights and interests of the child over those of other persons, particularly the child's parents. However, it enables a more nuanced interpretation of the best interests of a child who cannot be isolated from her/his family and a wider social environment.

The scope of the concept of private life is enormous and represents a source of continuous expansion of social relations that enjoy legal protection involving various aspects of the child's life, including the protection of the child's psychological, bodily,

29 ECtHR judgement in the case of *Nielsen vs. Denmark*, App. No 10929/84 (28 November 1988), para. 58.

30 ECHR, art. 1 in connection with the art. 14. See Kil Kelly, 2001, p. 314.

31 Kil Kelly, 2010, p. 248.

32 The landmark case was *A vs. The United Kingdom*, App. No. 25599/94 (23 September 1998). See Freeman, 2010, pp. 233-235.

33 Fortin, 2009, p. 61.

34 See the ECHR, art 8(2).

35 Choudhry and Herring, 2010, p. 28.

36 Ibid.



and moral integrity. Simultaneously, the notion of family life has served as a means of expanding, redefining, democratising, and protecting family relationships.

### 3.1.2. *The European Social Charter*

As stated earlier, the ESC was the second major human rights treaty adopted within the Council of Europe's normative framework. The original text of the ESC was adopted in Turin in 1961 and came into force four years later. The Treaty of Turin was partially revised in 1996. Furthermore, the ESC has been supplemented and amended so far with three protocols extending social and economic rights from the original Charter, reforming the supervisory mechanism of the treaty, and providing a collective complaints procedure.<sup>37</sup>

In the context of child rights, the Charter provisions are primarily devoted to the protection of children as a particularly vulnerable social group. The ESC ensures that the child's employment status and exercise of the right to work do not conflict with the right of the child to life, survival, and development, and the child's right to education. The special attention is paid to the appropriate implementation and protection of the child's right to education including obligations of the States Parties 'to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker'.<sup>38</sup> Thus, the revised ESC apparently recognises the importance of preserving the child's cultural identity as well. Similarly, children are entitled to special social, legal, and economic protection.<sup>39</sup> Such types of protection imply the obligations of the States Parties to provide children with free primary and secondary education, to protect them from negligence, violence, and exploitation, and to provide special aid for children deprived of their family support.<sup>40</sup> Regarding the obligations of the States Parties to provide particular aid for the child temporarily or definitively deprived of her/his family support, the ESC considers the family as a fundamental unit of society that deserves to be provided with the necessary conditions for its full development.<sup>41</sup> When these two provisions (Articles 16 and 17 (1c)) are interpreted together, it may be concluded that the ESC recognises the special social rights of the child to family support.<sup>42</sup>

Further, it is noteworthy that the revised ESC recognised and introduced the right to housing as a particular social right, which may be of significant importance for the protection of the best interests of the child.<sup>43</sup> However, it should be considered that

37 Council of Europe, Additional Protocol to the European Social Charter, 05 May 1988, ETS 128; Protocol amending the European Social Charter, 21 October 1991, ETS 142; Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, 09 November 1995, ETS 158.

38 The ESC (Revised), art. 19 (12).

39 The ESC (Revised), art. 17.

40 The ESC (Revised), art. 17 (1 bc) and 17 (2).

41 The ESC, art. 16.

42 On the right of the child to family support arising from the UN normative framework, see Dolan, Žegarac, and Arsić, 2020, pp. 15-18.

43 The ESC (Revised), art. 31.

this is a typical social right that will be implemented gradually within States Parties depending on their available resources.

The implementation of the ESCR provisions is subject to the supervision of the Committee of Independent Experts, known as the European Committee of Social Rights. The Committee of Ministers elected these experts for a six-year period.<sup>44</sup> The supervisory mechanism functions through collective complaint procedures and a system of national reports.

Collective complaints may be lodged by various social partners, international and national trade unions, or non-governmental organisations, alleging that certain contracting parties apply ESC provisions in an unsatisfactory way.<sup>45</sup> The Committee may decide on the merits of the complaint and send it in the form of a report to the Committee of Ministers which then takes over the role of the monitoring body. Unfortunately, a significant number of the Council of Europe's member States has not yet ratified the Additional Protocol to the ESC from 1995 that introduced the mechanism of collective complaints procedure.<sup>46</sup>

Unlike the collective complaint procedure, a system of national reports was introduced into the original text of the ESC in 1961. According to the national reports system, States Parties submit reports on the implementation of the Charter to the Committee which then examines whether the situation described in the reports complies with the ESC provisions. Subsequently, the European Committee of Social Rights informs the particular State Party of its conclusions, and on that occasion, it may ask for additional clarification. A follow-up of the conclusions is further ensured by the Council of Europe's Committee of Ministers.

### *3.1.3. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the role of the Committee)*

The Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was adopted in 1987 and came into force two years later. The Convention was used solely as a formal instrument for establishing the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Thus, the Convention has no content beyond the provisions of the CPT. The members of the CPT are elected by the Committee of Ministers 'among persons of high moral character, known for their competence in the field of human rights' or having appropriate professional experience in this regard.<sup>47</sup>

The CPT was established as a result of efforts to prevent the violation of the right to protection from torture (Article 3 of the ECHR), with the particular aim of

44 The ESC, art. 25 (2) and the Protocol amending the European Social Charter, art. 3 (2).

45 Additional Protocol to the ESC Providing for a System of Collective Complaints, art. 1.

46 Chart of signatures and ratifications of Treaty 158, The Council of Europe Portal [Online]. Available at: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=158/> (Accessed: 20 July 2023).

47 The Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, art. 4(2).

strengthening the position of persons deprived of their liberty by the public authority.<sup>48</sup> For the purposes of the Convention, the notion of “deprivation of liberty” is to be interpreted within the meaning of the right to security and liberty (Article 5 of the ECHR) as explained by the case law of the ECtHR.<sup>49</sup> Furthermore, competent public authorities from the State Party must co-operate with the CPT, enabling this non-judicial body to visit any place within the national jurisdiction where people are deprived of their liberty.<sup>50</sup> Apart from periodic visits, the CPT mandate also includes the possibility of organising visits to places of detention (police stations, prisons, psychiatric establishments, and social care institutions) whenever the circumstances require it (*ad hoc* visits).<sup>51</sup> Based on insights received from visits to various places where persons are deprived of their liberty, the CPT sends a report to the government of the State Party providing concrete recommendations on the perceived shortcomings and possible ways to eliminate them. The weakest aspect of this mechanism is the unwillingness of some governments to implement the recommendations.<sup>52</sup>

The CPT pays special attention to the problems of persons from particularly vulnerable categories who are deprived of their liberty, including children. Detention, imprisonment, or the compulsory placement of children will be used only as a measure of last resort in cases where the deprivation of liberty cannot be avoided under national legislation. In such situations, child rights are inevitably jeopardised to a certain extent. The CPT indicates that the most common problems of children deprived of their liberty are the extent of detention in practice, lack of separation of children from adults, inadequate material conditions and ill treatment in detention, absence of appropriate social contacts, lack of the special measures aimed at preventing all forms of abuse, inappropriate levels of contact between children and their families, and insufficient number of trained staff to work with children.<sup>53</sup> In addition, the CPT publishes an annual General Report on its activities through which it develops certain standards for the treatment of persons deprived of their liberty, including children.<sup>54</sup>

48 The Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, preamble and art.1.

49 Explanatory Report to the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, art. 1, para. 24, p. 20.

50 The Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, art. 2.

51 Kil Kelly, 2012, p. 4.

52 Ibid, p. 6.

53 Ibid, pp. 4 – 6.

54 The CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2010, Extract from the 9th General Report [CPT/Inf (99) 12], paras. 20 – 41, pp. 72 – 79.

### 3.2. Conventions related to family law relations

#### 3.2.1. *The European Convention on the Legal Status of Children Born Out of Wedlock*

The ECCoW was adopted in Strasbourg in 1975 and came into force in 1978.<sup>55</sup> The primary goal of the Convention was to formulate common rules in the field of parental affiliation to help improve the legal position of children born out of wedlock.<sup>56</sup> Moreover, it provides equality between children born in and out of wedlock in terms of their succession rights.<sup>57</sup> Furthermore, both parents have the obligation to maintain the child born out of wedlock, as if that child were born in the marriage of her/his parents.<sup>58</sup>

The national family legislation of member States has always contained heterogeneous provisions on parental affiliation. Thus, some of these rules may come into conflict with particular child rights (e.g. the French institution of anonymous child-birth confronts a child's right to identity). However, the ECCoW has aimed to prevent the derogation of the '*mater semper certa est*' rule in another aspect, that is, to make the provisions on establishing maternity unaffected by family or civil status of the mother. Therefore, according to the ECCoW, maternal affiliation of a child born out of wedlock "will be based solely on the fact of the birth of the child".<sup>59</sup> National law must provide legal safeguards that enable childbirth integration into the family from the moment of birth. In this context, legal solutions according to which the maternity of a child born out of wedlock can only be established by voluntary recognition, court decisions, or by the bizarre use of simple adoption are not acceptable. This interpretation was soon affirmed and further developed by the ECtHR, which invoked the ECCoW in the landmark case of *Marckx vs. Belgium*.<sup>60</sup>

#### 3.2.2. *The European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children*

The Luxembourg Convention was adopted in 1980 and came into force in 1983.<sup>61</sup> Although this treaty was widely accepted by member States of the Council of Europe, circumstances were not favourable for the Luxembourg Convention to take root.<sup>62</sup>

The Luxembourg Convention provides the mechanism for recognition and enforcement of the decisions relating to parental responsibility (custody and access rights) among contracting States and for the restoration of custody of children

<sup>55</sup> See footnote 19 in this text.

<sup>56</sup> The ECCoW, preamble.

<sup>57</sup> The ECCoW, art. 9.

<sup>58</sup> The ECCoW, art. 6(1).

<sup>59</sup> The ECCoW, art. 12.

<sup>60</sup> *Marckx vs. Belgium*, para. 41.

<sup>61</sup> See footnote 20.

<sup>62</sup> Lowe, 2016, pp. 102 – 103.

in cases of “improper removal” of the child from one contracting State to another (international child abduction). Thus, the Convention enables any person who has obtained a decision relating to the custody of a child to have that decision recognised and enforced in another contracting State.<sup>63</sup> For the purposes of the Convention, a child is defined as a person under the age of 16, ‘not because of the age of legal capacity, but because a decision on custody could not be easily enforced against the wishes of the child of that age’.<sup>64</sup> The mechanism of the Luxembourg Convention is based on mutual cooperation between contracting parties, which is achieved through the central authorities determined by every contracting State to enable the State to perform its part in the implementation of the Convention provisions.

However, in practice, the Luxembourg Convention has not achieved its desired effects. This outcome is a result of the emergence of counterpart legal instruments within other international or supranational normative frameworks that suppress or overrode this treaty, particularly the Hague Convention on the Civil Aspects of International Child Abduction<sup>65</sup> and the Brussels II bis Regulation (now replaced by the Brussels II ter Regulation).<sup>66</sup>

### 3.2.3. *The European Convention on the Adoption of Children*

The original ECA was adopted in Strasbourg in 1967 and came into force the following year.<sup>67</sup> At the time it was adopted, the Convention represented a step forward in the attempts to establish and legally shape principles and practices in the field of adoption that could stand as common ground among the member States, thus, reducing the differences between their national laws.<sup>68</sup>

The ECA applies solely to the full adoption of a child which is evident from the provisions on the effects of adoption.<sup>69</sup> The Convention is not designed to deal with the procedure of cross-border adoptions, and it only imposes a duty on contracting States to facilitate the acquisition of their nationality by children adopted from other States Parties.<sup>70</sup> Since a child has to be considered the central figure of the adoption

63 The Luxembourg Convention, art. 4(1).

64 Explanatory Report to the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children, art. 1, para. 13, p. 3.

65 Hague Conference on Private International Law, the Hague Convention on the Civil Aspects of International Child Abduction, 25 October 1980.

66 Thus, in relation between the EU member States Brussels II ter Regulation will take precedence over the Luxembourg Convention, except in Denmark that is not bound by this Regulation in accordance with art. 1 and 2 of Protocol 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union. See 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), known as Brussels II ter Regulation, art. 95.

67 See footnote 17.

68 The ECA (ETS 058), preamble.

69 The ECA (ETS 058), art. 10(1).

70 The ECA (ETS 058), art. 11(1).

provisions, there are noticeable efforts in the ECA text to have the best interests of the child protected, although the Convention uses weaker formulations of the mentioned principle, such as “the welfare of children”, or “interest of the child”.<sup>71</sup> However, the 1967 Convention failed to remove discrimination that existed in a certain number of member States in the domain of parental affiliation and the exercise of parental responsibilities. Thus, cohabitants are not allowed to adopt a child and the consent of the father of a child born out of wedlock is not required.<sup>72</sup> Consequently, some of the ECA provisions have become outdated over time at both national and international levels. The ECA could not keep up with later treaties such as the ECCoW, CRC, and the Hague Convention on Intercountry Adoption,<sup>73</sup> nor with the constantly evolving case law of the ECtHR.

The text of the completely revised ECA was adopted in 2008, and the fully revised Convention came into force three years later. The old text was updated in accordance with the evolution of family law relations and the provisions of the ECA were adjusted for the CRC and other relevant international legal instruments in this area. In this context, the revised ECA is a true reflection of the individualistic approach to family law, placing single-parent adoptions on an equal footing with cases in which the child is adopted by a couple. Furthermore, the ECA (revised) is open to the possibility of adoption by same-sex couples, allowing the contracting States to extend the scope of the Convention to same-sex couples who are married, who have entered into a registered partnership, or who are living together in a stable relationship.<sup>74</sup> Further, the ECA (revised) provisions reduce the possibility of the annulment of adoption in accordance with the best interests of the child. Thus, the 2008 Convention imposes a duty on contracting States to determine the period in which the application for the annulment of adoption must be made, regardless of the grounds of nullity.<sup>75</sup>

Despite these efforts, the revised ECA has only been ratified by a relatively small number of member States.<sup>76</sup> Harmonisation of the laws of member States in the field of adoption remains a demanding process.

### 3.3. *Child rights-oriented Conventions*

#### 3.3.1. *The European Convention on the Exercise of Children's Rights*

The ECECR was adopted in 1996 and came into force in 2000.<sup>77</sup> The primary aim of the Convention is to facilitate ‘the exercise of the substantive rights of children by

71 The ECA (ETS 058), preamble, art. 8(1).

72 The ECA (ETS 058), art. 6(1), art. 5(1a).

73 Hague Conference of Private International Law, *The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, 29 May 1993.

74 The ECA (ETS 202), art. 7(2). See Fenton-Glynn, 2014, p. 169.

75 The ECA (ETS 202), art. 14(3).

76 The ECA (ETS 202) has been ratified so far by: Belgium, Denmark, Finland, Germany, Malta, Netherlands, Norway, Romania, Spain and Ukraine.

77 See footnote 23 in the text.

strengthening and creating procedural rights which can be exercised by the children themselves or through other persons or bodies'.<sup>78</sup> The intention was to adopt a treaty that would not overlap with the CRC provisions, but would complement them. In that context, the legal ground for the adoption of the ECECR was found in the Article 4 of the CRC according to which 'States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention'.<sup>79</sup>

The ECECR is designed to facilitate the exercise of the child's right to express views from the CRC in family proceedings.<sup>80</sup> According to this, every contracting State must specify 'at least three categories of family cases before a judicial authority to which this Convention is to apply'.<sup>81</sup> For the purposes of the ECECR, the "judicial authority" is understood 'as a court or administrative authority having equivalent powers'.<sup>82</sup>

Generally speaking, the Convention rests on two main and complementary parts involving the procedural rights of the child and the roles of authorities and representatives in securing those rights.<sup>83</sup> Thus, a child considered by international law as having sufficient understanding, in the case of family procedures affecting her/him, is entitled to receive all relevant information about the case, to be consulted, to express her/his views, and to be informed about the possible consequences of such views.<sup>84</sup> Furthermore, a child considered to have sufficient understanding has the right to apply, in person or through other persons and bodies, to special representatives in those proceedings.<sup>85</sup>

The judicial authority may also appoint a special representative for the child when assessing whether there are conflicting interests between the child and the holders of parental responsibility in the proceedings.<sup>86</sup> Generally, judicial authorities ensure that, during the entire decision-making process, the rights of the child are adequately protected. A special representative assists the child in exercising her/his procedural rights provided to the child with sufficient understanding of relevant pieces of information and even presenting the child's views to the court in some cases.<sup>87</sup>

Although the ECECR aims to facilitate the exercise of a child's right to express views, it faces serious criticism from child rights experts. The chief criticism is that

78 Explanatory Report to the European Convention on the Exercise of Children's Rights, II Commentary on the provisions of the Convention, para. 7, p. 2.

79 Ibid, I Introduction, para. 4, p. 2.

80 The CRC, art. 12(2).

81 The ECECR, art. 1(4). Family proceedings may refer to cases regarding: custody, residence, access, question of parentage, adoption, legal guardianship, administration of property of children, care procedures, removal or restriction of parental responsibilities, protection of cruel and degrading treatment, medical treatment. See Explanatory Report to the ECECR, art. 1, para. 17, p. 3.

82 The ECECR, art. 2a.

83 The Explanatory Report to the ECECR, art. 2, para. 29, p. 5.

84 The ECECR, art. 3.

85 The ECECR, art. 4.

86 The ECECR, art. 9(1).

87 The ECECR, art. 10.

the ECECR narrows the scope of the child's right to express views from the CRC by granting procedural rights only to children with sufficient understanding. Such a formulation inspires States to arbitrarily set a fixed age at which a child would be considered to have sufficient understanding and consequently be entitled to procedural rights from the ECECR.<sup>88</sup> Thus, it is considered that the ECECR approach is not in accordance with the CRC which determines the scope of the child's right to express views in accordance with 'the capability of the child to form her/his own views', not allowing setting a minimum age for the exercise of this right.<sup>89</sup>

Despite these criticisms, the ECECR should be considered a useful and significant instrument.<sup>90</sup> Attempts to improve the effectiveness of a child's right to express views are highly valuable, particularly considering that the ideal implementation of the aforementioned child right is often difficult to achieve in practice.

### 3.3.2. *The European Convention on Contact Concerning Children*

The scope of the Luxembourg Convention was further reduced with the adoption of the European Convention on Contact Concerning Children in 2003.<sup>91</sup> The latter treaty came into force in 2005, although only nine member States have ratified it so far.<sup>92</sup>

The terminology used in the CCC was adapted to contemporary family law and the ideas of child rights and parental responsibilities. Therefore, the notion of "access to children" has been replaced by the notion of "contact concerning children", because it appeared more adequate 'to refer to contact concerning children with different persons rather just to the rights of certain persons to access children'.<sup>93</sup> Furthermore, the CCC provides a wide definition of contact involving three levels or forms of maintaining personal relations between the child and her/his parents or other persons with family ties.<sup>94</sup> The first level includes direct or face-to-face contact, usually implying staying for a limited period of time with the persons aforementioned or at least meeting them in person. The second level comprises other, less direct forms of contact, such as telephone or social networks. Finally, the third form is designed only to provide certain pieces of information about the child to those seeking contact with her/him. This level of contact is one-sided and cannot be considered as maintaining personal relations. Thus, it can only be used separately if the competent authorities assess that the first two forms of contact are contrary to the child's best interests.<sup>95</sup>

88 Fortin, 2009, p. 237.

89 The CRC Committee on the Rights of the Child, General Comment No 12 (2009) The right of the child to be heard, 01 July 2009, para. 21. In that context see Kovaček-Stanić, 2010, p. 161.

90 Lowe, 2016, p. 108.

91 The Council of Europe, Convention on Contact Concerning Children, 15 May 2003, ETS 192. Hereinafter: CCC.

92 The CCC has been ratified so far by: Albania, Bosnia and Herzegovina, Croatia, Czech Republic, Malta, Romania, San Marino, Türkiye and Ukraine.

93 Explanatory Report to the Convention on Contact Concerning Children, II Commentary on the provisions of the Convention, para. 6, p. 2.

94 Ibid, art. 2, para. 22, p. 5.

95 Ibid.



The CCC fully embraces the concept of child's participation from the CRC raising the child's right to express views to the level of one of the general principles to be applied in making of contact orders.<sup>96</sup> Moreover, it encourages parents and other persons with family ties to the child to resolve disputes concerning contact by reaching amicable agreements through family mediation, which additionally confirms the child-oriented goals of the Convention.<sup>97</sup>

The CCC addresses the problems of implementing orders regarding contact with children at both national and cross-border levels, providing contracting States with examples of possible safeguards and guarantees that they may undertake in this respect.<sup>98</sup> According to the Convention, each State Party is required to provide a system for the recognition and enforcement of contact orders made in another country that is a party to the CCC.<sup>99</sup> Furthermore, States Parties have the duty to provide procedures whereby orders relating to contact and custody rights made in one State Party can be recognised and declared enforceable in advance by the State where the contact is to occur.<sup>100</sup> The competent authority of the State Party where the cross-border contact order is to be implemented cannot review the substance of the foreign contract order. However, the judicial authority of the addressed State may adapt to the conditions of the implementation of the contact order made by another State Party, if it is necessary to carry out this order.<sup>101</sup>

The CCC seeks to establish common principles or grounds on which all contracting States make decisions regarding contact between children and their parents or other persons. However, the application of the Convention has been made difficult to a certain extent, considering the existing legal instruments in this field involving the Brussels II ter Regulation and the Hague Convention since 1996.<sup>102</sup>

### 3.3.3. *The European Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse*

The Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse was adopted in Lanzarote (Canary Islands, Spain) in 2007 and came into force in 2010.<sup>103</sup> The Lanzarote Convention was ratified by all member States of the Council of Europe.

The Convention comprehensively deals with the protection of children from all forms of sexual exploitation and abuse, having three fundamental aims: to prevent

96 The CCC, art. 6.

97 Ibid., art. 7.

98 Ibid., art. 10 (2a-b).

99 Ibid., art. 14 (1a).

100 Explanatory Report to the CCC, art 14, para. 111, p. 23.

101 Ibid., art. 15, para. 113 – 114, p. 24.

102 Hague Conference on Private International Law, Convention on Jurisdiction, Applicable Law, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 19 October 1996.

103 The Council of Europe, Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, 25 October 2007, ETS 201. Hereinafter: the Lanzarote Convention.

and combat sexual exploitation and sexual abuse of children, to protect the rights of child victims, and to promote cooperation both at the national and international levels in tackling these forms of exploitation and abuse of children.<sup>104</sup> Preventive measures include a vast network of activities involving training and raising awareness of persons working in contact with children, education for children, preventive intervention programmes (intended for persons who fear they may commit some of the offences covered by the Convention), raising awareness of the general public, enabling the participation of children in the creation of State politics regarding this issue, and encouraging the private sector, media, and civil society to participate in the struggle against sexual exploitation and abuse of children.<sup>105</sup> States Parties also have the duty to provide and take various protective activities involving organising helplines, encouraging persons to report the exploitation and abuse to competent authorities, ensuring the measures of assisting victims, and helping them particularly with their physical and psycho-social recovery.<sup>106</sup>

Furthermore, the Lanzarote Convention imposes a duty on States Parties to adjust their substantive criminal law, ensuring that the following intentional conduct is criminalised: sexual abuse of children, child prostitution, child pornography, the participation of a child in pornographic performances, the corruption of children (child witnessing sexual abuse and sexual activities without having to participate in those activities), and the solicitation of children for sexual purposes.<sup>107</sup>

The Lanzarote Convention provisions provide for establishing a Committee of the Parties, known as the Lanzarote Committee, as a special monitoring body that takes care of the effective implementation of the Convention. Furthermore, the Committee serves as a 'centre for the collection, analysis and sharing of information, experiences and good practice between States Parties in order to improve their policies for preventing and combatting sexual exploitation and abuse of children'.<sup>108</sup>

The mechanism for monitoring the implementation of the Convention includes the different roles of the Lanzarote Committee. Thus, the Committee conducts thematic monitoring of the implementation of the Convention by adopting reports which are based on previously replied questionnaires sent by the States Parties, contributions of non-governmental organisations, and various forms of child participation.<sup>109</sup> The implementation reports involve a general description of the relevant national legislations, case-law and other documentation, an overview of any problems in implementing the Convention and the conclusions containing recommendations to

104 The Lanzarote Convention, art. 1(1).

105 The Lanzarote Convention, arts. 4 – 9.

106 Ibid., arts. 11 – 14.

107 Ibid., arts. 18 – 23.

108 Explanatory Report to the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, art. 41, para. 270, p. 39.

109 Rutai, 2020, p. 33.

improve the effective implementation of the Convention.<sup>110</sup> The recommendations from the implementation reports are mostly general in nature and they are rarely addressed to the particular States.<sup>111</sup> Furthermore, in cases ‘where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention’, the Lanzarote Committee may request the certain State to submit special report containing responses on urgent questions, including the measures the State intends to take regarding the problems that have arisen.<sup>112</sup>

Regarding the conclusions of the adopted implementation reports, the committee may also decide to issue general comments or opinions on the interpretation of the Convention.<sup>113</sup> For example, in the adopted Opinion on Article 23 of the Lanzarote Convention, the Committee holds that the solicitation of children for sexual purposes does not necessarily result in a meeting in person, but may nonetheless remain online, causing serious harm to the child.<sup>114</sup>

The various in-depth activities of the Lanzarote Committee have been significantly contributing to the implementation of the Convention. Furthermore, together with the Convention on Cybercrime,<sup>115</sup> the Lanzarote treaty adequately responds to the transnational nature of child sexual exploitation and abuse within the Council of Europe.<sup>116</sup>

## 4. The Council of the Europe's soft law regarding the child rights

### 4.1. Recommendations and other soft law instruments

The Statute of the Council of Europe allows for the production of soft law instruments within its normative framework. Numerous recommendations have been made concerning almost all aspects of private and family life. Recommendations are not legally binding in a strict formal sense and member States do not sign or ratify them. Therefore, these soft law instruments contain principles and guidelines instead of provisions. However, the effects of these factors should not be underestimated. Thus, recommendations are material sources of law, and member States are expected to comply with the standards contained in them.<sup>117</sup> Furthermore, the

110 The Lanzarote Committee, Rules of Procedure adopted by the Committee on 30 March 2012 and revised on 17 March 2016 and on 06 December 2022, Rule 27 (4).

111 Rutai, 2020, p. 33.

112 The Lanzarote Committee, Rules of Procedure, Rule 28(1).

113 The Lanzarote Committee, Rules of Procedure, Rule 30 (1a).

114 The Lanzarote Committee, Opinion on Article 23 of the Lanzarote Convention and its explanatory note, Solicitation of children for sexual purposes through information and communication technologies (Grooming), 17 June 2015, para. 17, p. 6. Grooming can be defined as “an act befriending minors and then inviting, including or coercing them into participating in or observing sexual acts and producing child pornography”. Dornfeld, 2020, p. 571.

115 The Council of Europe, Convention on Cybercrime, Budapest, 23 November 2001, ETS 185.

116 Witting, 2021, pp. 741 – 743.

117 Lowe, 2016, p. 98.

recommendations are an expression of the Council of Europe's legal and social policy, and their content often shapes the provisions of forthcoming treaties.

A significant number of the Council of Europe's recommendations and other soft law instruments concern family relations and child rights. In this context, the recommendations and other soft law instruments adopted so far by the Committee of Ministers deal, *inter alia*, with the issues of child placement,<sup>118</sup> the protection of children against ill-treatment,<sup>119</sup> parental responsibilities,<sup>120</sup> foster care,<sup>121</sup> emergency measures in family matters,<sup>122</sup> family mediation,<sup>123</sup> the nationality of children,<sup>124</sup> access to child-friendly justice (2010), and<sup>125</sup> preventing and resolving disputes on child relocation.<sup>126</sup> The Parliamentary Assembly of the Council of Europe has produced numerous recommendations, resolutions, and opinions which directly or indirectly concern child rights. Recommendations include proposals addressed to the Committee of Ministers, the implementation of which is within the competence of the governments of member States.<sup>127</sup>

#### **4.2. Review on the work of the European Commission against Racism and Intolerance in the field of child rights**

The ECRI is a human rights expert body established within the Council of Europe's normative framework, separate from the monitoring mechanism of any specific treaty.<sup>128</sup> It has the task of combating racism, racial discrimination, xenophobia, antisemitism, and intolerance from the perspective of the protection of human rights, invoking all the relevant international instruments in this field, including ECtHR case

118 The Council of Europe, the Committee of Ministers, Resolution 77(33) on placement of children, 03 November 1977.

119 The Council of Europe, the Committee of Ministers, Recommendation No. R (79) 17 concerning the protection of children against ill-treatment, 13 September 1979.

120 The Council of Europe, the Committee of Ministers, Recommendation No. R (84) 4 on parental responsibilities, 28 February 1984.

121 The Council of Europe, the Committee of Ministers, Recommendation No. R (87) 6 on foster families, 20 March 1987.

122 The Council of Europe, the Committee of Ministers, Recommendation No. R (91) 9 on emergency measures in family matters, 09 September 1991.

123 The Council of Europe, the Committee of Ministers, Recommendation No. R (98) 1 on family mediation, 21 January 1998.

124 The Council of Europe, the Committee of Ministers, Recommendation CM/Rec(2009)13 on the nationality of children, 09 December 2009.

125 The Council of Europe, the Committee of Ministers, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010).

126 The Council of Europe, the Committee of Ministers, Recommendation CM/Rec(2015) 4 on preventing and resolving disputes on child relocation, 11 February 2015.

127 Assembly public documents, The Council of Europe Portal [Online]. Available at: <https://pace.coe.int/en/pages/official-documents/> (Accessed: 30 July 2023).

128 See footnote 6.

law.<sup>129</sup> The ECRI comprises members appointed by member States, whereby each country appoints one person with high moral authority and recognises expertise in dealing with all forms of discrimination.<sup>130</sup>

The three primary activities of this international expert body are monitoring member States using a country-by-country approach, working on themes of general importance, and maintaining relations with civil society.<sup>131</sup> Country monitoring includes a previous visit to a particular country so that the ECRI can acquire insights into possible problems concerning discrimination. The ECRI then makes appropriate recommendations to the country to deal with the identified problems regarding racism, intolerance, and discrimination. The thematic work involves adopting General Policy Recommendations for all member States.

In its activities, the ECRI makes special efforts to combat racism and intolerance towards children belonging to various minority groups and communities. For example, the ECRI has recognised school education as a field that is particularly sensitive to racism and intolerance towards children and among them. Therefore, it issued a General Policy Recommendation to combat racism and racial discrimination in school education.<sup>132</sup>

## 5. Concluding remarks

The Council of Europe has attempted to achieve greater unity between countries of the European continent by connecting them through the idea of human rights. However, under the influence of the Hague Conference on Private International Law and the Brussels Regulations of the European Union, the role and importance of the Council of Europe has been increasingly suppressed. Nevertheless, the Council of Europe has much to offer, particularly regarding the harmonisation of substantive family law provisions and implementation of the idea of child rights. Simultaneously, the Council of Europe has demonstrated that it can create instruments with a significant impact on substantive criminal laws concerning the protection of children, such as the Lanzarote Convention. Furthermore, child rights are protected through the activities of various non-judicial bodies that function as part of the supervisory mechanism for the implementation of treaties or even separately, under the direct competence of the Council of Europe.

129 The Council of Europe, the Committee of Ministers, Resolution Res(2002)8 on the statute of the European Commission against Racism and Intolerance, 13 June 2002, art. 1. Hereinafter: the Statute of the ECRI.

130 The Statute of the ECRI, art. 2 (1-2).

131 Ibid., art. 10 (1).

132 The European Commission against Racism and Intolerance, General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, 15 December 2006.

The key driving force of the Council of Europe is the European Court of Human Rights which continuously develops case law and successfully adapts it to the test of time. Its influence on the harmonisation of member States' legislation in the field of family relations and the implementation of child rights remains important and valuable. Simultaneously, the European Court of Human Rights enables all participants in family proceedings to access international justice, which is particularly important for countries that are not EU members of the European Union.

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