

Introduction

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‘Safety and security don’t just happen, they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear.’ (Nelson MANDELA)

Human rights. A notion inherent to our lives. For our grandparents or even parents, however, this was not necessarily the case all the time. Despite all the suffering they have seen that the 20th century has brought to the world, an undoubtedly positive consequence was that human rights and the necessity of their protection became acknowledged worldwide. Step by step, *bien entendu*. And, as expected, not without debates.

Since the basic rules for society and human behaviour are also valid for the international community: the smaller the group of people/countries you want to agree on something, the more chances you have for them to actually agree. It is the same in the case of human rights. The first international human rights instrument was a regional one: a few months before adopting the Universal Declaration of Human Rights in December 1948, the American Declaration of the Rights and Duties of Man was adopted (in May 1948). The universal documents on human rights (apart from the Universal Declaration; let us focus first on the two International Covenants¹) tend to have text versions which try to incorporate as many states as possible, which entails that their texts are, *per definitionem*, less concrete than the texts from communities where there is a broader understanding. Still, despite this tendency, the United Nations’ texts are as concrete as possible, and have brought about a human rights revolution in the middle of the 20th century. Even though these texts boast only relatively effective control mechanisms, their wide acceptance has brought relevant changes to the world. They have become points of reference. They have come to the centre of interest. They have become alive.

The changes that came with the Second World War affected not only human rights and all other noble and/or abstract fields of international law but also the

1 International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966).

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international working mechanisms, such as international cooperation. International organisations became more relevant than ever before, and hence it is no surprise that many major international organisations have included human rights, one way or another, into their mission. However, it is worth drawing attention to the differences at the universal and regional levels.

At the universal level, the most important actor, the United Nations has included human rights in its charter and later developed – partly following René Cassin’s vision – legal institutions focused on human rights protection. As the two Covenants were adopted during the Cold War, ideological differences soon came to light, which explains why, to date, certain (and rather important) ratifications are missing.² Regardless, most states worldwide have accepted the obligations derived from these instruments. As expected, the control mechanisms attached to these instruments are either political (Universal Declaration) or expert-based, but do not feature real binding power (e.g. see the two covenants’ committees or those of the specific documents).³ This is however the furthest that global cooperation could get.

At the regional level, the picture is quite different, as there are regions where cooperation is strong or relatively strong (e.g. Europe, America, or Africa) and others where even an instrumental framework does not exist. Nevertheless, there are now numerous institutions and formations focused on human rights, including the Council of Europe, the Organization for Security and Co-operation in Europe, the European Union, the Organisation of American States, and the African Union, all of which have dedicated entire instruments to this issue. Meanwhile, other institutions have signalled the relevance of the topic within their own framework, such as the Community of Independent States, the Arab League, and the Islamic Conference. Despite the differences in these instruments, the mere existence of human rights instruments indicates that member states regarded it essential to address human rights in an institutionalised form. In fact, some of the regional forms of cooperation were even motivated to create instruments with binding power, implying that, in general, some of the international human rights instruments that can be regarded as the best-working ones, exist at the regional level.

But a question that emerges at this point is whether it is also valid for a special field of human rights protection, namely the protection of children’s rights? Considering that the United Nations dedicated a whole international convention to the protection of the rights of the children, can something alike be found in every regional system?

2 See the USA and the International Covenant on Civil and Political Rights; China and the International Covenant on Economic, Social and Cultural Rights.

3 See the Convention on the Rights of the Child (New York, 1989) and its Committee; the UNESCO Convention against Discrimination in Education (Paris, 1960) and its Commission.

The answer to these questions can be found in another volume of this book series⁴ that focuses on the universal protection of children's rights. The answer, just like the situation, is complex. While there is, for instance, an African Charter on the Rights and Welfare of the Child, the American system has rather devoted an institute to the protection of children and created specific documents on particular subtopics. In Europe, the protection of children appears in various forms, both directly (i.e. in the form of dedicated international treaties) and indirectly (i.e. in the form of international treaties not dedicated explicitly to children). The different chapters give an insight into the background of these solutions as well.

The present volume analyses the most important aspects of the regional protection of children's rights, focusing on specific issues and instruments in this regard. Two forms of international cooperation in Europe, the Council of Europe and the European Union, are especially addressed, and separate chapters explore children's rights protection in the Americas and Africa. Considering that other topics pertaining to children's rights must also be addressed, particular chapters have been devoted to the right to life, including the question as to where life begins. Furthermore, there are separate chapters dedicated to assessments, from the perspective of children's rights, of judicial and non-judicial proceedings, family life,⁵ the non-discrimination of children, and their protection against violence and exploitation.

In this volume, *Erzsébet Szalayné Sándor* introduces the reader to the world of human rights, describing not only the general development of such rights but also their universal and regional protection within various international organisations.⁶ *Veljko Vlaskovic* then turns our attention to the general framework of children's rights in the Council of Europe and enumerates the international conventions adopted within the Council of Europe framework that concern children's rights protection, ranging

4 The curriculum of the ICCR LL.M is based on an interdisciplinary and legal cross-border research of several countries (Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia, etc.), and consists of the following eleven books: *International Children's Rights*, *The Rights of the Child in Regional Human Rights Systems*, *Social and Personality Development in Childhood*, *The Rights of the Child in Private Law – Central-European Comparative Perspective*, *The Rights of the Child in Public Law – Central European Comparative Perspective*, *Religion and Children's Right*, *Child Protection Systems – Central European Comparative Perspective*, *Children in Digital Age – Central European Comparative Perspective*, *Child-friendly Justice – Central European Comparative Perspective*, *Interdisciplinary and Child-friendly Communication*, and *Children in Conflict with the Law*.

5 General Comment No. 19, *Protection of the family, the right to marriage and equality of the spouses* (Art. 23), 27/07/90, CCPR General Comment No. 19. (General Comments). [Online]. Available at: <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2019.pdf>. (Accessed: 30 July 2024).

6 Mertens, 2020, *A philosophical introduction to human rights*, Cambridge University Press; Domaradzki, Khvostova, and Pupovac, 2019, *Karel Vasak's generations of rights and the contemporary human rights discourse*, *Human Rights Review*, Vol. 20, pp. 423–443; Humphrey, 1976, *The International Bill of Rights: scope and implementation*, *William & Mary Law Review*, Vol. 17, pp. 527–541.

from family relations to general issues even mentioning soft law documents.⁷ *Dubravka Hrabar*'s chapter describes the situation in the European Union, including the Union's general stance towards the other international documents, its own related legislation as well, (i.e. both in primary and secondary law), and its non-binding documents.⁸ The chapter written by *Wojciech Lis* depicts into great detail the right to life (including prenatal life) and respect for private and family life from the perspective of children's rights. *Katja Drnovšek*'s chapter concerns children's rights in judicial and non-judicial proceedings, providing an overview and analysing landmark cases in this regard and paying due attention to the role of children in criminal proceedings.⁹ The delicate and complicated question of non-discrimination is addressed in the chapter by *Martin Kornel*,¹⁰ which enumerates basic documents and landmark cases. The family life- and identity-related rights of children are probed into in the chapter by *Agnieszka Wedel-Domaradzka*; the author analyses not only legal provisions but also pro-life solutions (e.g. baby-boxes) and discusses various aspects of identity issues.¹¹ *Szilárd Sztranyiczki*'s chapter concerns the protection of children against violence, addressing corporal

7 Choudhry and Herring, 2010, *European Human Rights and Family Law*, 1st ed., Oregon: Hart Publishing; Dolan, Žegarac, and Arsić, 2020, Family support as a right of the child, *Social Work & Social Sciences Review*, Vol. 21 no. 2, pp. 8–26; Kilkelly, 2010, Protecting children's rights under the ECHR: the role of positive obligations, *North Ireland Legal Quarterly*, Vol. 61 no. 3, pp. 245–261; Lowe, 2016, The impact of the Council of Europe on European family law, in: Scherpe (ed.), *European Family Law Volume I: The Impact of Institutions and Organisations on European Family Law*, 1st ed. Northampton, MA, USA: Edward Elgar Publishing, pp. 95–123.

8 Stalford, 2012, *Children and the European Union – Rights, Welfare and Accountability*, Oregon.

9 Braithwaite, Harby, and Miletić (eds.), 2019, *Children and the European Court of Human Rights – An overview of the jurisprudence*; Daly, 2011, The right of children to be heard in civil proceedings and the emerging law of the European Court of Human Rights, *The International Journal of Human Rights*, Vol. 15 no. 3, pp. 441–461; Daly and Rap, 2019, Children's participation in the justice system, in: Kilkelly and Liefwaard (eds.), *International Human Rights of Children*, Singapore: Springer, pp. 299–319; Lonardo, 2022, The best interests of the child in the case law of the Court of Justice of the European Union, *Maastricht Journal of European and Comparative Law*, Vol. 29 no. 5, pp. 596–614.

10 Besson, 2005, The Principle of Non-Discrimination in the Convention on the Rights of the Child, *The International Journal of Children's Rights*, Vol. 13 no. 4, pp. 433–461; Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994).

11 Jumakova, 2020, Content of the child's right to identity within the scope of the Convention on the rights of the child and the Latvian national framework, *Miscellanea Historico-Iuridica*, vol. XIX, 1; Marshall, 2022, An Overview of the Development of the Right to Personal Identity at the European Court of Human Rights in: *Personal Identity and the European Court of Human Rights*, New York.

punishment, abuse, and exploitation from a case law perspective.¹² Then, our interest shifts from Europe to other continents as *Katarzyna Zombory* treats, in two different chapters, the institutional framework and the practice concerning the protection of children's rights in the American human rights system (i.e. in the Organisation of American States). She first enumerates the relevant OAS documents, and then turns her attention to the institutions, not limiting herself to treaty-based solutions (i.e. the practice of the Inter-American Commission and Court of Human Rights) but rather approaching the topic from a wider perspective.¹³ Thereafter, *Cocou Marius Mensah* brings us closer to the framework and institutions focused on the protection of children in the African system, highlighting relevant comparisons that give way for appropriate assessments of the African results in related protection efforts.¹⁴ *Lilla Garayová* discusses the practice of the African system, treating the topic in a broader context, drawing attention to the special challenges of the continent, and assessing the practice of different institutions,

12 Barth, Bermetz, Heim, Trelle, and Tonia, 2013, The current prevalence of child sexual abuse worldwide: a systematic review and meta-analysis, *International Journal of Public Health*, Vol. 58 no. 3, pp. 469–483; Edwards, 1996, Corporal punishment and the legal system, *Santa Clara Law Review*, Vol. 36 no. 4, p. 984; Kaiser and Foley, 2021, Family law – the revictimization of survivors of domestic violence and their children: the heartbreaking unintended consequence of separating children from their abused parent, *Western New England Law Review*, Vol. 43 no. 1, p. 171; Weithorn, Carter, and Behrman, 1999, Domestic violence and children: analysis and recommendations, Hastings College of the Law UC Hastings Scholarship Repository, University of California, p. 11.

13 Guy, 1998, The Pan American Child Congresses, 1916 to 1942: Pan Americanism, child reform, and the welfare state in Latin America, *Journal of Family History*, Vol. 23 no. 3, pp. 272–291; Domingo, 2020, Spotlight on: The Inter-American Children's Institute, *Children's Legal Rights Journal*, Vol. 39 no. 2, pp. 178–183; Inter-American Commission on Human Rights, 2008, The Rights of the Child in the Inter-American Human Rights System, OEA/Ser.L/V/II.133, Doc. 34, [Online]. Available at: <http://www.cidh.oas.org/countryrep/Infancia2eng/Infancia2Toc.eng.htm>; Feria-Tinta, 2014, The CRC as a litigation tool before the Inter-American System of Protection of Human Rights, in: Liefwaard and Doek (eds.), *Litigating the Rights of the Child. The UN Convention on the Rights of the Child in Domestic and International Jurisprudence*, 1st ed. Springer Dordrecht. (Accessed: 30 July 2024).

14 Bösl and Diescho (eds.), 2009, *Human rights in Africa: Legal perspectives on their protection and promotion*. Macmillan Education Namibia; Chitsamatanga and Rembe, 2020, School related gender based violence as a violation of children's rights to education in South Africa: Manifestations, consequences and possible solutions. *Journal of Human Ecology*, Vol. 69 no. 1–3, pp. 65–80; Diallo and Boubacar Sidi (2018), The protection of the fundamental rights of the child in the light of the African Charter on the Rights and Welfare of the Child, *Studia Edukacyjne*, no. 49, pp. 175–184; Lloyd, 2002, A theoretical analysis of children's rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child. *African Human Rights Law Journal*, Vol. 2, p. 11.

namely the African Committee of Experts on the Rights and Welfare of the Child and the African Commission and Court of Human and Peoples' Rights.¹⁵

In general, we find that children's rights protection has much in common with human rights protection, as both essentially share the same values as their starting points. However, time also brought forth the recognition that children are special, but not in the traditional sense by which they have been historically stripped away of the opportunity of being seen as subjects (i.e. they have long been seen as objects) of law. Rather, they are special in the sense that they, as the hope of humankind's survival, need better, different types of protection. Their lives, existence, dignity, integrity, pure hope, development, and primary shelter must be protected, and they should all have access to a loving family. The reasons for this are not only individual, sentimental, and philanthropic in nature, but instead encapsulate the fact that there is no other way for us, humans, to secure a, in every possible sense, prosperous future. As Herbert Hoover said, "*Children are our most valuable resource.*" The future is what we invest in our children – all children – now, and thus let it be wisdom, strength, mercy, hope, and faith. Wisdom, strength, mercy, hope, faith as well as humankind itself will only survive if we protect our children and give them the chance to build themselves. To achieve this, we need a solid framework of appropriate rules that do not merely exist in specific letterings and documents but that get practically implemented.

The motivation behind this volume is the belief that understanding children's rights will help implementing them. For children to grow up having the opportunity to become members of society and to care for generations to come, we must both declare and make children's rights integral to our daily life. Of course, every task must start closer to home. Hence, as is the situation for the different levels of international cooperation, regional levels of cooperation can become more efficient, making it relevant to pay particular attention to solutions at the regional level vis-à-vis the protection of children's rights.

Antoine de Saint-Exupéry wrote in *The Little Prince*: "*Children have to be very indulgent towards grown-ups.*" Well, they probably are. It is nevertheless the adults' responsibility to create safe and secure circumstances for them to grow via, among other things, securing children's rights protection systems that are functional and effective.

15 Nyarko and Ekefre, 2016, Recent advances in children's rights in the African human rights system, *The Law & Practice of International Courts and Tribunals*, Vol. 15 no. 2, pp. 385–395; Benedek, 1989, The judiciary and human rights in Africa. The Banjul Seminar and the training workshop for a core of human rights advocates of November 1989, *Human Rights Law Journal*, Vol. 11 no. 1–2, 1990, p. 250; Stone, 2012, African Court of Human and People's Rights. Advocates for International Development. Legal Guide.

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