Religion and Children's Rights

Human Rights – Children's Rights IV
ISSN 3058-0161
International and Comparative Children's Rights 4
ISSN 3058-0293

Religion and Children's Rights

Edited by
Katarzyna ZOMBORY
Márta BENYUSZ

CEA PUBLISHING

Miskolc – Budapest | 2025

Religion and Children's Rights
ISBN 978-615-7027-02-2 (printed version)
ISBN 978-615-7027-03-9 (pdf)
ISBN 978-615-7027-04-6 (epub)

https://doi.org/10.71009/2025.kzmb.racr

Published by

Central European Academic Publishing
(Miskolc – Budapest, Hungary)
1122 Budapest, Városmajor St. 12 (Hungary)

IDEA PLUS
Design, layout, ebook
IDEA PLUS (Elemér KÖNCZEY, Botond FAZAKAS)
Kolozsvár / Cluj-Napoca (Romania)

DESCRIPTION

CEA Publishing's 'Human Rights – Children's Rights' book series is inspired by the idea that the universality and indivisibility of human rights can still accommodate a regional perspective on human rights protection. Different collective identities, sensitivities, and historical backgrounds may lead to different emphases on certain human rights issues, reflecting the cultural and legal heritage of Central and Eastern Europe.

Although the series is primarily law-focused, it also embraces an interdisciplinary approach and therefore includes contributions from other academic fields.

The main areas of law covered in the series are human rights, children's rights, and the rule of law, as well as other areas of law that help ensure their effective implementation. A prominent feature of the series is its examination of the legal systems and jurisprudence of Central and Eastern European countries, though not exclusively so. As the series aims to provide useful legal knowledge to non-lawyers, it also offers general legal background necessary to understand the subject matter.

The series is divided into two distinct sub-series, each numbered separately. One sub-series is entitled 'Human Rights and Rule of Law' (HRRL) and the other 'International and Comparative Children's Rights' (ICCR). Regarding their relationship, HRRL is considered the more general sub-series, while ICCR focuses on more specific themes.

Other titles in the book series
Human Rights – Children's Rights

2024
Márta Benyusz – Anikó Raisz (eds.):
International Children's Rights

Anikó Raisz (ed.):
Children's Rights in Regional Human Rights Systems

2025
Bernadett Raposa – Balázs Péter Hámornik (eds.):
Social and Personality Development in Childhood

| CONTENTS |

| EDITORS |

Katarzyna Zombory
Director of Research, Central European Academy, Hungary

Márta Benyusz
Head of the Institute for Children's Rights and Family Law, Central European Academy; President, Association for Children's Rights, Hungary

| AUTHORS |

Márta Benyusz
Head of the Institute for Children's Rights and Family Law, Central European Academy; President, Association for Children's Rights, Hungary

Márk Birinyi
Assistant Professor, Károli Gáspár University of the Reformed Church in Hungary, Hungary

Paweł Czubik
Professor, Cracow University of Economics, Judge of the Supreme Court of the Republic of Poland

Olivér Árpád Homicskó
Professor, Károli Gáspár University of the Reformed Church in Hungary, Hungary

Rastko Jović
Professor, University of Belgrade, Serbia

Michele Riondino
Associate Professor, John Cabot University, Italy; Guest Professor, Canon Law at KU Leuven, Belgium

Vanja-Ivan Savić
Professor, Catholic University of Croatia, Croatia

| REVIEWERS |

Paweł Bucoń
Assistant Professor, The John Paul II Catholic University of Lublin, Poland

Dalibor Đukić
Associate Professor, University of Belgrade, Serbia

Montserrat Gas-Aixendri
Professor, International University of Catalonia, Spain

Aleksandra Korać Graovac
Professor, University of Zagreb, Croatia

Piotr Kroczek
Professor, Pontifical University of John Paul II in Krakow, Poland

Justyna Krzywkowska
Assistant Professor, University of Warmia and Mazury in Olsztyn, Poland

György Marinkás
Associate Professor, University of Miskolc, Hungary

Piotr Stanisz
Professor, The John Paul II Catholic University of Lublin

Pál Szontagh
Professor, Károli Gáspár University of the Reformed Church in Hungary, Hungary

| TECHNICAL EDITOR |

Josipa Kokić
PhD Student, Deák Ferenc Doctoral School of Law, University of Miskolc, Hungary;
Junior Researcher, Central European Academy, Hungary

Children in Religious Contexts: Introduction

Katarzyna ZOMBORY – Márta BENYUSZ

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child
Convention on the Rights of the Child, Preamble

The *UN Convention on the Rights of the Child*[1] (CRC) emphasises the role of culture, traditions, and religion in the protection and harmonious development of children.[2] Not only does it establish a general conceptual framework for safeguarding children's identity,[3] but it also specifically protects children's distinct cultural and religious identity.[4] While the CRC unequivocally treats religious and cultural diversity as a protected value, it also introduces minimum standards for the protection of children against harmful cultural or religious practices and violence of any kind, including sexual abuse.[5] These standards apply fully in all religious contexts and institutional frameworks, across all religions and belief systems.

Throughout the 1980s, religious communities provided substantial support for the drafting of the CRC and undertook an important role in streamlining the ratification process after its adoption in 1989. Its spiritual and ideological endorsement from religious leaders – in addition to the universal belief that all children deserve special protection – has helped the CRC become the most widely accepted human rights treaty in the world.[6] Nowadays, religious communities and churches play a significant role in promoting and spreading the principles of the CRC. This book is built on the premise that churches and religious communities should be seen as allies in the continuous efforts to foster stronger protection of children's rights and safeguard children against all kinds of violence. Including churches in these efforts, by building

1 *Convention on the Rights of the Child*, adopted in New York on 20 November 1989 by General Assembly resolution 44/25, UN Treaty Series no. 27531 (CRC hereafter).
2 See: Preamble to the CRC, Art. 14, Art. 20 para. 3, Art. 30 of the CRC.
3 Art. 8 of the CRC.
4 Art. 14, Art. 20 para. 3, Art. 30 of the CRC.
5 See: Art. 19 of the CRC.
6 The CRC has been ratified by 196 states. Current ratification status can be checked at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en.

Katarzyna ZOMBORY – Márta BENYUSZ (2025) 'Children in Religious Contexts: Introduction' in Katarzyna ZOMBORY – Márta BENYUSZ (eds.) *Religion and Children's Rights.* Miskolc–Budapest: Central European Academic Publishing. pp. 15–21. https://doi.org/10.71009/2025.kzmb.racr_0

upon their resources and networks, is vital for enhancing the children's rights regime and ensuring transparency within church-founded institutions such as schools and institutions that care for children.

Notwithstanding the vital role of religious communities in promoting child protection, States Parties are obliged to implement the CRC[7] and ensure respect for children's rights among all churches and religious communities under their jurisdiction. Of all the world's religious communities, the position of the Catholic Church in relation to the CRC is exceptional. The Holy See has ratified the international instrument and, as one of its States Parties, is consequently fully obliged under international law to ensure its implementation.

Even though religion greatly impacts the lives of children, the topic of children in religious contexts has received little attention in the scholarly literature on children's rights.[8] This is partly because of the highly sensitive, if not controversial, nature of children's religious freedoms. This book aims to fill this gap, by shedding light on the place of religion within the normative content of the CRC and providing the reader with a better understanding of children's religious rights.

The book also takes the view that religious texts and the CRC at its core share a common vision for children, including the family-centred values that both religious and rights-based approaches hold,[9] and that the major world religions largely agree on four key points that are essential to a child rights-based approach and the implementation of children's rights:

- A fundamental belief in the sanctity of life and the dignity of the child[10]
- An emphasis on the family as the best environment for bringing up children
- A priority given to children and to the rights and duties all members of society have toward them
- A holistic notion of the child and a comprehensive understanding of his or her physical, emotional, social, and spiritual needs[11]

This volume consists of three parts. The first part (*General Introduction to Children's Religious Rights*) aims to provide a general introduction and conceptual framework for examining children's religious human rights, as well as international standards of child protection against abuse and harmful religious practices. The second cluster of chapters (*Children's Religious Rights in Different Contexts*) analyses several issues related to children's rights and religion. These chapters focus on the protection of

7 'Implementation is the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction'; see: CRC, *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, CRC/GC/2003/5, 27 November 2003, para. 1.

8 For an exellent account of the interplay between religion(s) and human rights in general, see: Witte and Green, 2012.

9 Rios-Kohn, et al., 2019, p. 19.

10 The source of children's rights is the inalienable human dignity of the child, which, in most religions, stems from their creation in the image of God.

11 Rios-Kohn, et al., 2019, p. 19.

children's religious identity in different contexts, such as in the family environment and in school, as well as in alternative care and in relation to the special needs of children belonging to indigenous peoples and national minorities. The third part (*Child Safeguarding Policies in Certain Christian Churches*) examines child safeguarding policies in certain Christian churches. A central issue animating the third cluster is the approach and role of the main religious communities in Central and Eastern Europe in protecting children against violence. It highlights the added value of working with religious communities to protect children's rights.

In her paper, *Márta Benyusz*[12] analyses the contribution of religious communities in adopting international standards of child protection, most notably the CRC, with a focus on the role of the Holy See. First, she provides an overview of the role religious communities played during the drafting process and are playing now in the implementation phase. Then, she focuses on the role of the Holy See, its *sui generis* place in international law, and interactions with the Committee on the Rights of the Child. She also discusses the special approach the Catholic Church takes toward the rights of the child, as is highlighted by the role of the Pontifical Commission for the Protection of Minors and Vulnerable Adults in the establishment of a safeguarding culture where a genuine rights-based approach can be further developed.

Paweł Sobczyk[13] provides an overview of the legal basis of the protection of children's religious rights in international human rights law. He explores both universal and regional human rights documents, including European, African, and Inter-American legal instruments related to the protection of children and religious freedoms *in specie* and *in genere*. He searches for the core values and ideas underlying the protection of children's religious freedoms and examines whether their exercise can be subject to limitations.

Paweł Czubik[14] explores the impact of certain harmful cultural and religious practices, such as child marriage and female circumcision, on the psychological and physical well-being of children. He highlights that such harmful practices, though deeply rooted in cultural or religious traditions, conflict with international human rights norms. He also analyses the limitations of international legal instruments in addressing culturally and religiously motivated violence against children, advocating for more effective culturally sensitive treaties.

In the second part of the book, *Vanja-Ivan Savić*[15] explores the interplay between children's rights, parental religious freedoms, and state regulations, specifically through the lens of international and European legal frameworks. He emphasises parents' right to guide their children's religious education, as supported by various human rights conventions, while acknowledging children's evolving capacities to form independent beliefs. He ponders whether the CRC, which promotes child

12 Benyusz, 2025, pp. 25–47.
13 Sobczyk, 2025, pp. 49–74.
14 Czubik, 2025, pp. 75–91.
15 Savić, 2025, pp. 95–110.

autonomy, can be a useful instrument for balancing parental prerogatives with children religious rights.

Balázs Schanda[16] focuses on children's religious rights in the educational context. He addresses the issues of attending religious education at public schools, displaying religious symbols and wearing religious clothing in schools, and observing religious holidays and engaging in prayer. He highlights the role the educational environment plays in social coexistence, as a meeting place for different cultures where tolerant pluralism is taught to future generations.

Lucjan Świto[17] analyses the protection of a child's religious identity in various forms of alternative care, including adoption, foster care, and the Islamic practice of *kafala*. He examines whether the protection of the religious identity of a child placed in alternative care is regulated consistently and in a manner that reflects its significance and gravity. The study highlights how international, EU, and Polish laws address this issue, noting differences between approaches and legal frameworks.

Katarzyna Zombory[18] delves into the specific challenges of protecting the religious identity of children belonging to national or ethnic minorities and indigenous peoples. She highlights the role of international human rights frameworks in protecting religious identity at both the individual and community levels. She addresses the practical applications of these rights using the right of a child to access religiously appropriate food as an example.

In the third part of the book, *Michele Riondino* and *Hans Zollner*[19] present an outline of the child-safeguarding policies of the Roman Catholic Church. They examine the Church's response to child sexual abuse, which has varied significantly across countries, with differences between policies, cultural approaches, and degrees of transparency and accountability. They suggest several changes that should be introduced by the Catholic Church to implement children's rights effectively and protect children against abuse.

Rastko Jović[20] analyses child-safeguarding policies in the Serbian Orthodox Church and explores the axis between Orthodox Christianity and human rights. He highlights that the Serbian Orthodox Church acknowledges the importance of safeguarding children within the broader context of family and community, drawing upon its theological and canonical traditions, and then considers whether this translates into a formalised child-safeguarding policy with dedicated institutions for addressing these issues systematically.

Olivér Árpád Homicskó and *Márk Birinyi*[21] focus on the child protection policy of the Reformed Church in Hungary, outlining its child protection activities with a focus on institutionalised child protection services. They examine the effectiveness of

16 Schanda, 2025, pp. 137–152.
17 Świto, 2025, pp. 111–136.
18 Zombory, 2025, pp. 153–176.
19 Riondino and Zollner, 2025, pp. 179–200.
20 Jović, 2025, pp. 201–224.
21 Homicskó and Birinyi, 2025, pp. 225–242.

the Church's initiatives in addressing social inclusion and child welfare challenges, including for socio-culturally disadvantaged and talented children.

This volume, entitled *Religion and Children's Rights*, forms part of the series of 11 books[22] providing the curriculum for the International and Comparative Children's Rights (ICCR) LL.M. course. The book series aims to offer a holistic picture of children's rights. It covers both the universal and regional levels of human rights protection, provides an understanding of children's social and personality development, discusses children in conflict with the law and interdisciplinary and child-friendly communication, gives an overview of national implementation via private and public law from a Central European perspective in terms of the countries' child protection and justice systems, examines religion and children's rights, and discusses the challenges child protection and child rights-based approaches face in the digital age.

This book is addressed primarily to students of the ICCR LL.M. course. However, it can also be useful to lawyers who deal with children's rights in their everyday practice or academic research, as well as to other professionals who work with children. The volume discusses children's rights in religious contexts to present a full picture of the rights of the child and explore the international and domestic challenges to implementation, as well as contemporary concerns regarding the rights of the child. This volume should be read together with the other works in the series.

22 The curriculum of the ICCR LL.M is based on interdisciplinary and legal cross-border research in several countries (e.g. Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia) and consists of the following 11 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 Rights*, *Child Protection Systems – Central European Comparative Perspective*, *Children in the 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*.

Bibliography

Benyusz, M. (2025) 'The Role of Religious Communities in the Adoption, Implementation, and Monitoring of the United Nations Convention on the Rights of the Child, with a Special Regard to the Role of the Holy See' in Zombory, K. – Benyusz, M. (eds.) *Religion and Children's Rights*. Miskolc–Budapest: Central European Academic Publishing, pp. 25–47.

Committee on the Rights of the Child (2003) *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, CRC/GC/2003/5, 27 November 2003. [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FGC%2F2003%2F5&Lang=en

Czubik, P. (2025) 'Minimum International Standards of Protection Against Abuse and Harmful Religious Practices' in Zombory, K. – Benyusz, M. (eds.) *Religion and Children's Rights*. Miskolc–Budapest: Central European Academic Publishing, pp. 75–91.

Homicskó, O.A., Birinyi, M. (2025) 'The Child Protection Policy of the Reformed Church in Hungary' in Zombory, K. – Benyusz, M. (eds.) *Religion and Children's Rights*. Miskolc–Budapest: Central European Academic Publishing, pp. 225–242.

Jović, R. (2025) 'Child Safeguarding Policies in the Serbian Orthodox Church' in Zombory, K. – Benyusz, M. (eds.) *Religion and Children's Rights*. Miskolc–Budapest: Central European Academic Publishing, pp. 201–224.

Rios-Kohn, R. et al. (2019) *Faith and Children's Rights. A Multi-religious Study on the Convention on the Rights of the Child. Commemorating its 30th Anniversary*. New York: Arigatou International.

Riondino, M., Zollner H. (2025) 'Child Safeguarding Policies in the Roman Catholic Church' in Zombory, K. – Benyusz, M. (eds.) *Religion and Children's Rights*. Miskolc–Budapest: Central European Academic Publishing, pp. 179–200.

Savić, V.I. (2025) 'Parents–Children Relationship Related to Religious Freedom and the Concept of Parental Direction Consistent with Child Evolving Capacities' in Zombory, K. – Benyusz, M. (eds.) *Religion and Children's Rights*. Miskolc–Budapest: Central European Academic Publishing, pp. 95–110.

Schanda, B. (2025) 'Children's Religious Rights in School: Religious Education, Display of Religious Symbols and Religious Clothing in Schools' in Zombory, K. – Benyusz, M. (eds.) *Religion and Children's Rights*. Miskolc–Budapest: Central European Academic Publishing, pp. 137–152.

Sobczyk, P. (2025) 'Legal Basis of the Protection of Children's Religious Rights in International Human Rights Law' in Zombory, K. – Benyusz, M. (eds.) *Religion and Children's Rights*. Miskolc–Budapest, Central European Academic Publishing, pp. 49–74.

Świto, L. (2025) 'Protecting a Child's Religious Identity in Adoption, Kafala, and Other Forms of Alternative Care: Analysis From International, EU, and Polish Law Perspectives' in Zombory, K. – Benyusz, M. (eds.) *Religion and Children's Rights*. Miskolc–Budapest: Central European Academic Publishing, pp. 111–136.

Witte Jr., J., Green, M.C (2012) *Religion and Human Rights. An Introduction*. New York: Oxford University Press.

Zombory, K. (2025) 'The Religious Rights of Children Belonging to National Minorities and Indigenous Peoples' in Zombory, K. – Benyusz, M. (eds.) *Religion and Children's Rights*. Miskolc–Budapest: Central European Academic Publishing, pp. 153–176.

Part I
General Introduction to Children's Religious Rights

| CHAPTER 1 |

The Role of Religious Communities in the Adoption, Implementation, and Monitoring of the United Nations Convention on the Rights of the Child, With a Special Regard to the Role of the Holy See

Márta BENYUSZ

ABSTRACT

The United Nations Convention on the Rights of the Child (hereinafter, UNCRC or Convention), being the most widely ratified human rights treaty in the world,[1] bears the influence of different stakeholders who played an important role in the drafting process, its adoption, and later in its implementation and monitoring. The most important stakeholders are the State Parties to the Convention, who are the primary duty bearers of the obligations stemming from it. There are other stakeholders, such as the United Nations Children's Fund (hereinafter, UNICEF), non-governmental organisations (hereinafter, NGOs), national human rights institutions (hereinafter, NHRIs)[2] and *religious communities*. The Holy See is party to the UNCRC, and therefore is a primary duty bearer just as other State Parties. Thus, from the perspective of international law and from a narrower aspect, from the perspective of the UNCRC among religious communities, the role and the impact of the Holy See and by implication the Catholic Church is the most tangible from a legal point of view. The current chapter elaborates the *role of religious communities* in the drafting, adoption, implementation, and monitoring of the UNCRC. The *first part* of the paper will give a general overview of the impact of religious communities. The *second* and *core part* of the paper will focus on the role of the Holy See, the representative of the Catholic Church and belief – unlike representatives of other religions – has an own status in international law and the ability to enter international conventions.

KEYWORDS

UNCRC, children's rights, religious communities, Holy See, Vatican City, Catholic Church, safeguarding, rights-based approach, reporting cycle, Committee on the Rights of the Child, Pontifical Commission for the Protection of Minors and Vulnerable Adults, world religions

1 As of 15 April 2024 all United Nations State Parties have ratified the UNCRC, except the United States.

2 On the roles of UNICEF, NGOs and NHRIs, please see the book in the ICCR LL.M series on International Children's Rights.

Márta BENYUSZ (2025) 'The Role of Religious Communities in the Adoption, Implementation, and Monitoring of the United Nations Convention on the Rights of the Child, With a Special Regard to the Role of the Holy See' in Katarzyna ZOMBORY – Márta BENYUSZ (eds.) *Religion and Children's Rights.* Miskolc–Budapest: Central European Academic Publishing. pp. 25–47. https://doi.org/10.71009/2025.kzmb.racr_1

1. Religious Communities and the UNCRC

The right to religious freedom and conscience is a fundamental human right. The right to freedom of religion includes the right to shape an individual's entire life according to his or her faith, and for the religious community to self-determine itself.[3] If one belongs to a religious community, it will surely have an impact on his or her worldview, which might also influence the individual's perspective on the rights of a child. The inevitable cultural impact is also part of the UNCRC. Religious texts and the UNCRC share a common vision for children, including the family-centred values of both religious and rights-based approaches.[4] The major world religions largely agree on four key points that are essential to a child rights-based approach and the implementation of children's rights:

- A fundamental belief in the sanctity of life and the dignity of the child.[5]
- An emphasis on the family as the best environment for bringing up children.
- The high priority given to children and the idea that all members of society have rights and duties towards children.
- A holistic notion of the child and a comprehensive understanding of his or her physical, emotional, social, and spiritual needs.[6]

The belief that all human beings, including children, deserve to be respected and treated with dignity – without discrimination on the basis of race, ethnicity, ancestry, gender, socioeconomic status, or other status – exists across traditions.[7]

Besides the common values and common visions, religious communities are generally subject to national laws. Most national laws[8] are incorporated in the UNCRC, so they are obliged to respect the rights enshrined in the Convention. Article 27 explicitly refers to the child's 'spiritual, moral and social development'. The UNCRC thus offers more than a technical legal mandate; it represents an ethical blueprint for all religious communities to act upon.[9]

Several religious communities *were actively involved in the ten-year process of drafting the UNCRC*, yet this history is not well-known.[10] For instance, the International Catholic Child Bureau was a member of the core group of six NGOs, along with Amnesty International, Anti-Slavery International, Defence for Children International, the International Commission of Jurists, and Radda Barnen (a member

3 Schanda, 2018, p. 8.
4 Faith and Children's Rights, 2019, p. 19.
5 The source of children's rights is the inalienable human dignity of the child, and the dignity in most religions stems from the creation in the image of God.
6 Faith and Children's Rights, 2019, p. 19.
7 Ibid., p. 20.
8 All State Parties to the UN ratified the UNCRC, except the US.
9 Faith and Children's Rights, 2019, p. 20.
10 Ibid., p. 52.

of Save the Children International), and deeply involved in the drafting process. The Bahá'í Faith and the Friends (Quaker) community also made important contributions to the drafting process and advocated for the CRC's adoption, as did the International Council of Jewish Women, the World Jewish Congress, and the World Federation of Methodist Women.[11] The drafting history of the UNCRC contains five instances of faith-based organisations making independent proposals on specific articles being drafted. The five instances are: the International Council of Jewish Women (Article 2, Non-Discrimination), the Bahá'í International Community (Article 17, Access to Appropriate Information, and Article 29, Aims of Education), the World Federation of Methodist Women (Article 37, Children Deprived of Their Liberty), and Friends World Committee for Consultation (Article 38, Children in Armed Conflicts).[12]

Even though religious communities were involved in the drafting process – apart from the Holy See – they did not become signatories to the UNCRC, *their role can rather be described as an advocating role*, both in the drafting and adoption process, as well as in the implementation phase. The first global conference of religious leaders focusing exclusively on the UNCRC was held in the United States in July 1990, in Princeton, New Jersey, after the Convention was adopted.[13] This unprecedented conference, organised by UNICEF and Religions for Peace, gathered 150 religious leaders from 40 countries and 15 of the world's religious traditions.[14] The main objective of this multi-religious gathering[15] was to address the role of religions in protecting the world's children and to call on religious groups worldwide to take an active role in promoting the UNCRC's ratification and implementation. Inspired in part by the UNCRC's high ratification rate and the global momentum for the promotion of children's rights, the Global Network of Religions for Children (hereinafter, GNRC)[16] was established in 2000 by 294 religious leaders and child-rights workers from 33 different countries and all of the world's major religious traditions.[17] The GNRC has held six forums since its establishment to strengthen interfaith cooperation. The last forum was held in Abu Dhabi from 16–21 December 2024.[18] The event was preceded by a three-day children's Pre-Forum to provide a child-friendly space to those children who were actively involved in the Forum.[19] The Pre-Forum's aim was to create a place with a tangible child rights-based approach, where children could (i) express their views on matters that affect them and their communities, (ii) share and discuss observations from their own countries and learn about situations in other countries and contexts,

11 Ibid.
12 Ibid., p. 53.
13 Ibid., p. 54.
14 Ibid.
15 Ibid.
16 See: https://gnrc.net/.
17 Ibid., p. 56.
18 See: https://www.gnrcforums.net/sixth/.
19 See: https://www.gnrcforums.net/sixth/pre-forum/.

and (iii) present their individual recommendations and prioritise what they would like to present at the main Forum.[20]

Religious communities recognise that they are well placed to promote the UNCRC, which is based on moral and ethical values that they embrace. They continue to be important stakeholders in the promotion of children's rights and have a responsibility through national laws to comply with the provisions of the UNCRC, create communities where children can be safe, and where their dignity and childhood is protected.

2. The Holy See and the UNCRC

While discussing the impact of religions and religious communities on children's rights, from a strictly legal point of view, in terms of the implementation of the UNCRC, only the Holy See, as the central governing body of the Catholic Church is a State Party to the Convention. The Holy See – at that time led by Pope John Paul II – was a pioneer in the adoption and ratification of the UNCRC. It signed the Convention on 20 April 1990 and ratified it on the same date.[21]

Apart from the UNCRC, the Holy See has also ratified two Optional Protocols: the Optional Protocol on the sale of children, child prostitution, and child pornography, and the Optional Protocol on the involvement of children in armed conflict.[22] The Holy See has not ratified the third Optional Protocol, on the communications procedure (hereinafter, OPIC). The Holy See praised the stakeholders' efforts for OPIC's preparation and underlined that the Holy See looks at the new *Optional Protocol to the Convention of the Rights of the Child to provide a communication procedure* as an opportune contribution to strengthen the human rights system.[23] However, it will most probably not decide on ratification any time soon, as the Holy See ratified the CRC with the reservation that canon law holds supremacy over the CRC, and ratification would mean allowing an external forum to decide on internal cases.

The Holy See has a deep and profound commitment to the care and defence of children. Such activities stem from the nature of the Church and her divinely ordained mission.[24]

20 Ibid.
21 See: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en.
22 Both Optional Protocols were signed in 2000 and ratified in 2001.
23 Intervention of the Holy See at the 17th Ordinary Session of the United Nations Convention on the Rights of the Child. Statement by H.E. Msgr. Silvano Maria Tomasi. Geneva, 6 June 2011. Available at: https://www.vatican.va/roman_curia/secretariat_state/2011/documents/rc_seg-st_20110606_opc_en.html/.
24 Adolph, 2005, p. 172.

2.1. The Status of the Holy See Under International Law – Relevance From the Perspective of the UNCR

The Catholic Church has in its structure a supreme organ, the Holy See, which represents the Church internationally and – after the disappearance of the Pontifical States in 1870 – concludes treaties (concordats) and exercises the right of legation.[25] The Holy See is not only a church or a jurisdiction, but also a sovereign international actor.[26]

The Holy See is an international legal person and has the capacity to bear international rights and obligations, a capacity that is exercised in various ways.[27] The Holy See consistently enters treaties, which reaffirms its commitment to respect and promote international law.[28] This is also the manner that the Holy See entered the UNCRC. The Holy See ratified the CRC in its dual personae as the government of the Catholic Church and the Vatican City State.[29]

The monitoring body of the UNCRC, that is, the Committee on the Convention of the Rights of the Child (CRC Committee) *has taken the position* that in ratifying the UNCRC, the Holy See made a commitment to implement it not only within the Vatican City State, but also worldwide through the individuals and institutions under its authority. However, the Holy See has argued that it is only responsible for implementing the UNCRC within the walls of the Vatican City State. The Holy See's position is that it does not have the capacity or legal obligation to impose the principles of UNCRC on local Catholic Churches and institutions present in the territory of other states.[30] It takes the position that their activity is bound by national law, which means that except for the US, where the UNCRC has not been ratified, all Catholic Churches are bound by the UNCRC, but through the obligations taken upon by the State Party they are resident in and not through the Holy See.

In any event, the Holy See takes the position that there is a distinction between itself and the Catholic Church generally, which is a non-territorial entity and may be defined as a spiritual community of faith, hope, and charity constituted as a visible society founded on the communion of faith, sacraments, discipline, and governance by its internal legal system, namely canon law.[31] This position has been affirmed by courts in litigation.[32] Therefore, the Church and the Holy See need to be viewed as distinct entities, with only the latter being a sovereign international person. The Holy See is not the Church, but rather it is a central governing authority of the Church.[33] Nevertheless, in terms of the obligations stemming from the UNCRC, besides the distinction between the Holy See and a Catholic Church, the distinction between the

25 Santolaria, 2016.
26 Worster, 2021, p. 357.
27 Ibid., p. 360.
28 Ibid.
29 Tseday, 2017.
30 The Holy See, Comments of the Holy See on the Concluding Observations of the Committee on the Rights of the Child, 23 September 2014, paras. 6–8.
31 Worster, 2021, p. 359.
32 Ibid.
33 Ibid.

Vatican City and the Holy See is also relevant. The Holy See and the Vatican City are two distinct international legal persons that are capable of entering into international agreements in their own right.[34] Both exercise this right, and the Holy See is aware if the distinction.[35] The UNCRC was entered by the Holy See as a Party to the convention, which requires it to comply with the activities of the Holy See where it exercises sufficient control over persons and place.[36] This chapter does not intend to decide on the debate on whether this compliance is limited to the Vatican City State or whether there is an extraterritorial obligation, just to highlight the existence of this debate and at the same time underline that the Holy See is indeed a Party to the UNCRC and bound by its provisions.[37]

2.2. The Approach of the Catholic Church to the Rights of the Child

The Catholic Church has its own and special approach to the rights of the child, *elaborated before and further strengthened since the ratification of the UNCRC*. It is important to highlight that this approach – read together with the reservations,[38] a legitimate legal instrument to be used whenever entering an international convention, made by the Holy See to the UNCRC – does not contradict the text of the Convention. Nevertheless, this does not mean that all the practises of the Holy See or the Catholic Church are child rights-based or child-sensitive approaches. This is an area that needs constant evaluation and evolution to support the Holy See and the entire Catholic Church in adopting policies that promote the protection and empowerment of children's rights as a necessity stemming from the child's human dignity; in other words, from the child's creation in the image of God.

This approach of the Church is elaborated in numerous Church documents, most important ones including the Apostolic exhortation *Familiaris Consortio*, Charter of the Rights of the Family, Apostolic exhortation *Amoris Leatitia*, Declaration *Dignitas Infinita* – without claiming to be complete. In addition to presenting these selected documents, the Pontifical Commission for the Protection of Minors and Vulnerable Adults has also been introduced. This Commission, established in 2014 by Pope Francis, has a mandate to prevent sexual abuse within the Church, and more broadly, to advocate for a Church where the safeguarding of children is a tangible reality.[39]

34 Worster, 2021, p. 377.
35 Ibid.
36 Ibid.
37 It is important to underline that the legal obligation is to comply with the provisions of the UNCRC and not with the interpretation of the CRC Committee.
38 See subchapter on the role of the Holy See in the adoption of the UNCRC.
39 Pope Francis said the following at the establishment of the Commission: 'The Commission's specific task is to propose to me the most opportune initiatives for protecting minors and vulnerable adults, in order that we may do everything possible to ensure that crimes such as those which have occurred are no longer repeated in the Church. The Commission is to promote local responsibility in the particular Churches, uniting their efforts to those of the Congregation for the Doctrine of the Faith, for the protection of all children and vulnerable adults.'

2.2.1. Familiaris Consortio

Familiaris Consortio was issued in 1981[40] by John Paul II as an apostolic exhortation on the role of the Christian family in the modern world. The document starts by highlighting the challenges faced by families in the modern world, underlining that 'marriage and the family constitute one of the most precious of human values, the Church wishes to speak and offer her help to those who are already aware of the value of marriage and the family and seek to live it faithfully.'

The document refers to children as a 'precious gift of marriage'. In marriage, couples give themselves to one another, and children are a reflection of their love. By becoming parents, spouses take on a new responsibility, which they exercise through parental love, serving as a visible sign of the love of God for their children.[41] Nevertheless, even if procreation is not possible within a marriage, it does not lose its equal value; instead it opens the door to other important forms of service such as adoption, various forms of educational work, and assistance to other families as well as to poor or disabled children.[42]

In *Familiaris Consortio* there is a specific reference to the rights of children.[43] It also includes thoughts on the rights of women, the roles of men and fathers, and the elderly. Regarding children's rights, it underlines that special attention must be given to children by developing a profound esteem for their personal dignity, as well as great respect and a generous concern for their rights.[44] This special attention must be given to every child, but it becomes even more urgent for younger children, especially when a child is sick, suffering, or disabled.[45] The document makes it clear that, from the perspective of Catholic Church, childhood begins at the moment of conception. While the rights of children are understood within the context of the family,[46] John Paul II also stresses that children are individuals with their own rights, with equal roles in the family, and as such, they contribute in many ways to family life.[47]

40 Familiaris Consortio, November 22, 1981. See: https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html (Accessed: 10 April 2024).

41 Familiaris Consortio, 1981, para. 14.

42 Ibid.

43 Familiaris Consortio, 1981, para. 22.

44 Ibid., para. 26.

45 Ibid.

46 Familiaris Consortio in para. 36 also underlines the right and duty of parents regarding education as essential in guiding their children.

47 'Acceptance, love, esteem, many-sided and united material, emotional, educational and spiritual concern for every child that comes into this world should always constitute a distinctive, essential characteristic of all Christians, in particular of the Christian family: thus children, while they are able to grow "in wisdom and in stature, and in favor with God and man", offer their own precious contribution to building up the family community and even to the sanctification of their parents'. Familiaris Consortio, 1981, para. 26.

2.2.2. Charter of the Rights of the Family

The Holy See presented the Charter of the Rights of the Family (hereinafter, Charter)[48] on 22 October 1983. The Charter asserts that human life must be respected and protected absolutely from the moment of conception.[49] The Charter declares that children, both before and after birth, have the right to special protection and assistance, as well as their mothers during pregnancy and for a reasonable period of time after childbirth.[50] It emphasises that all children, whether born in or out of wedlock, are entitled to the same right of social protection, with a view to their integral personal development.[51] It also states that orphans or children deprived of the assistance of their parents or guardians must receive particular protection on the part of society.[52] Additionally, the Charter addresses the rights of children with disabilities by declaring that they have the right to find in the home and the school an environment suitable to their human development.[53]

The Charter recognises the original, primary, and inalienable right of parents to educate their children[54] in accordance with their moral and religious convictions.[55] This primary right must be upheld in all forms of collaboration between parents, teachers, and school authorities, particularly participatory processes that give citizens a voice in the functioning of schools and in the formulation and implementation of educational policies.[56]

2.2.3. Amoris Leatitia

The Apostolic exhortation *Amoris Laetitia*[57] of the Holy Father Francis to bishops, priests, and deacons, consecrated persons, Christian married couples, and all the lay faithful on love in the family was signed on 15 March 2016 and published on 8 April 2016.

Amoris Laetitia is very much a reflection of *Familiaris Consortio*, where children are seen as a gift of the love within marriage. The family is entrusted to a man, woman, and their children, so that they may become a communion of persons reflecting the union of the Father, the Son, and the Holy Spirit.[58] Begetting and raising children, in return, mirrors God's creative work.

48 Charter of the Rights of the Family. Available at: https://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html (Accessed: 14 April 2024).
49 Charter of the Rights of the Family, Art. 4.
50 Ibid., Art. 4, para. d).
51 Ibid., Art. 4, para. e).
52 Ibid., Art. 4, para. f).
53 Ibid., Art. 4, para. g).
54 Ibid., Art. 5.
55 Ibid., Art. 5, para. a).
56 Ibid., Art. 5, para. e).
57 Available at: https://www.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf.
58 Amoris Leaticia, 2016, para. 28.

It also underlines the uniqueness of children by stating, 'Children are a gift. Each one is unique and irreplaceable [...] We love our children because they are children, not because they are beautiful, or look or think as we do, or embody our dreams. We love them because they are children. A child is a child'. [59] The document affirms that the family is a place where parents become their children's first teachers in faith.[60] Pope Francis also underlines that children are not the property of their families but have their own unique lives to lead.[61] He further points out that children are not mere subjects but persons with rights, who are in their nature, teachers.[62]

Amoris Leatitia also raises concerns about children's sexual exploitation and abuse[63] – an area where Pope Francis has been particularly active. For instance, he established the Pontifical Commission for the Protection of Minors and Vulnerable Adults and adopted the *Motu Proprio* titled As a Loving Mother and *Vos Estis Lux Mundi* in 2019.[64] The *Motu Proprio Vos* and *Estis Lux Mundi* introduced several legislative provisions to address the crime of sexual abuse, emphasising that

> '[...] the crimes of sexual abuse offend Our Lord, cause physical, psychological and spiritual damage to the victims and harm the community of the faithful. In order that these phenomena, in all their forms, never happen again, a continuous and profound conversion of hearts is needed, attested by concrete and effective actions that involve everyone in the Church, so that personal sanctity and moral commitment can contribute to promoting the full credibility of the Gospel message and the effectiveness of the Church's mission. This becomes possible only with the grace of the Holy Spirit poured into our hearts, as we must always keep in mind the words of Jesus: "Apart from me you can do nothing" (Jn 15:5). Even if so much has already been accomplished, we must continue to learn from the bitter lessons of the past, looking with hope towards the future.'[65]

59 Ibid., para. 170.
60 Ibid., para. 16.
61 Ibid., para. 18.
62 'All the same, 15 in the concern he shows for children – whom the societies of the ancient Near East viewed as subjects without particular rights and even as family property – Jesus goes so far as to present them as teachers, on account of their simple trust and spontaneity towards others. "Truly I say to you, unless you turn and become like children, you will never enter the kingdom of heaven. Whoever humbles himself like this child, he is the greatest in the kingdom of heaven"' Amoris Leaticia, para. 18.
63 The sexual exploitation of children is yet another scandalous and perverse reality in present-day society. Societies experiencing violence due to war, terrorism, or the presence of organised crime are witnessing the deterioration of the family, above all in large cities, where, on their outskirts, the so-called phenomenon of 'street-children' is on the rise. The sexual abuse of children is all the more scandalous when it occurs in places where they ought to be most safe, particularly in families, schools, communities and Christian institutions.
64 Available at: https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20160604_come-una-madre-amorevole.html.
65 *Vos estis lux mundi*.

2.2.4. Dignitas Infinita

The Declaration of the Dicastery for the Doctrine of the Faith *Dignitas Infinita on Human Dignity* was published on 8 April 2024. The document is not specifically about children but rather addresses the infinite human dignity of a person as a whole. The Church proclaims the dignity of *all human beings*, and thus 'ardently urges that respect for the dignity of the human person beyond all circumstances be placed at the centre of the commitment to the common good and at the centre of every legal system'.[66]

Dignitas Infinita addresses issues that threaten human dignity such as gender theory, sex changes, surrogacy, euthanasia, as well as abortion, poverty, human trafficking, and war. Through its elaboration on these issues, it offers a perspective on certain topics related to children's rights.[67]

The declaration cites St. John Paul II's encyclical *Evangelium Vitae* on abortion, noting that the pontiff taught that 'procured abortion is the deliberate and direct killing, by whatever means it is carried out, of a human being in the initial phase of his or her existence, extending from conception to birth'.[68] According to Pope Francis' apostolic exhortation *Evangelii Gaudium*, also cited in the declaration, preborn children are 'the most defenceless and innocent among us' and in the present day, 'efforts are made to deny them their human dignity and to do with them whatever one pleases, taking their lives and passing laws preventing anyone from standing in the way of this'.[69]

The practice of surrogacy is another concern noted by the document, underlining that 'the immensely worthy child becomes a mere object' in the process.[70] The dignity of the child is violated 'because of this unalienable dignity, the child has the right to have a fully human (and not artificially induced) origin and to receive the gift of a life that manifests both the dignity of the giver and that of the receiver'.[71] 'Moreover, acknowledging the dignity of the human person also entails recognizing every dimension of the dignity of the conjugal union and of human procreation. Considering this, the legitimate desire to have a child cannot be transformed into a "right to a child" that fails to respect the dignity of that child as the recipient of the gift of life'.[72]

The declaration also identifies gender theory as a threat to human dignity as 'it intends to deny the greatest possible difference that exists between living beings: sexual difference'.[73] The declaration adds that the ideology 'envisages a society without sexual differences, thereby eliminating the anthropological basis of the family'. It thus becomes unacceptable that 'some ideologies of this sort, which seek to respond to what are at times understandable aspirations, manage to assert themselves as

66 Montserrat Gas Aixendri, 2024.
67 Dignitas Infinita, 2024, para. 34.
68 Dignitas Infinita, para. 47.
69 Ibid.
70 Ibid., para. 48.
71 Ibid., para. 49.
72 Ibid.
73 Ibid., para. 58.

absolute and unquestionable, even dictating how children should be raised. It needs to be emphasized that "biological sex and the socio-cultural role of sex (gender) can be distinguished but not separated." Therefore, all attempts to obscure reference to the ineliminable sexual difference between man and woman are to be rejected'.[74]

2.2.5. Pontifical Commission for the Protection of Minors

In 2013, the Council of Cardinals advised Pope Francis to establish a Commission of experts to act as an advisory body to the Holy Father, identifying child safeguarding as a priority.[75] In March 2014, Pope Francis issued a Chirograph outlining the Commission's tasks, which included advising on effective policies for the protection of minors and vulnerable adults, as well as creating educational programs for all those involved in that work. In 2015 the statutes of the Pontifical Commission for the Protection of Minors (*Tutela Minorum*) were approved.

In February 2019, Pope Francis welcomed a proposal from the Pontifical Commission for the Protection of Minors (*Tutela Minorum*) and invited the Presidents of the Bishops' Conferences from around the world to Rome for a Meeting on the Protection of Minors in the Church. The three-day gathering focused on responsibility, accountability, and transparency in the Church's response to those who have been abused.

In March 2022, Pope Francis promulgated the Apostolic Constitution *Praedicate Evangelium* to reform the governance and structures of the *Roman Curia*. In the reform, *Tutela Minorum* was given a stable and central role within the *Roman Curia*, alongside the Dicastery for the Doctrine of the Faith, while maintaining its unique position of reporting directly to the Holy Father through its President. The Commission was also entrusted with the responsibility of reviewing safeguarding policies and guidelines within the local Church.[76] The *work of Tutela Minorum* intends to establish a culture and practise of safeguarding in Catholic churches all over the world and for this purpose engage in a dialogue with local churches.

2.2.6. Summary of the Church's Approach Towards Children's Rights

Even though, the list of church documents discussed in this chapter is not extensive, it provides an overview, which allows for some conclusions[77] to be made in terms of the Catholic Church's approach towards children and their rights.

74 Ibid., para. 59.

75 Available at: https://www.vatican.va/resources/resources_briefing-consiglio-cardinali_20131205_en.html.

76 'The Pontifical Commission assists diocesan/eparchial Bishops, Episcopal Conferences and Oriental Hierarchical Structures, Superiors of Institutes of Consecrated Life and Societies of Apostolic Life and their Conferences in developing appropriate strategies and procedures, through Guidelines to protect minors and vulnerable persons from sexual abuse and to provide an appropriate response to such conduct by clergy and members of Institutes of Consecrated Life and Societies of Apostolic Life, according to canonical norms and taking into account the requirements of civil law'. Preadicate Evangelium, Art. 78 §2.

77 It is important to note, however, that the aim of this chapter is to provide an overview.

- *Definition of the child*: The child in Catholic teaching is a human being created in the image of God. Childhood starts at the moment of conception and ends at the age of 18.[78] The definition of the child as such is a central value of the church, underlining the sanctity of life.
- *"Legal" value of the child*: A child is a gift of love of the parents and a treasure in the family. Each child upholds a great and unique value within the family and childhood, and its attributes are treated as graceful period of human life.
- *Dignity of the child*: The dignity of the child (their creation in the image of God) from which the rights of the child stem is valued to a high extent. Many challenges of the XXIst century, also faced by the church, are listed as a danger to their dignity, such as abortion, surrogacy, gender ideology, sexual abuse, child-trafficking, poverty, and war. This provides a clear viewpoint of the church in debates concerning these topics.
- *Child within the family:* By reason of his or her origin, end, and formative state, the child can only be understood within the context of the family, the basic unit of society.[79] For this reason, the Holy See notes that the 'protection of children's rights cannot become fully effective unless the family and its rights are fully respected by the legal systems of States and the international community'.[80] Parents are presumed to act for the good, for the well-being, or according to the legal standard in the "best interests of the child". Such a presumption, may of course, be rebutted with proven or substantiated acts, such as child neglect, abuse, or violence committed by parents or while in the care of parents; however, beyond these types of cases civil authorities should not interfere with the primary duties and rights of parents.[81]
- *Approach toward abuse*: A zero-tolerance approach is adopted towards sexual abuse. Nevertheless, the approach to other kinds of abuses is not clear and needs further elaboration, as abuse is a great risk that jeopardises children's rights.
- *The child's well-being*:[82] The Holy See contends that a presumption exists that the well-being of the child is most successfully realised in the natural family, based on marriage between one man and one woman.[83]
- *The right of the parents*: Parents are responsible for their children and shall care for their children with parental love. They also have the right to upbring their children in line with their values.

78 Canon law provides that a minor is everyone under the age of 18. However, it should be underlined that marriage is allowed from the age of 14 for girls and from the age of 16 for boys, provisions that raise some concerns.
79 Adolphe, 2011, p. 173.
80 Ibid.
81 Ibid., p. 174.
82 Ibid.
83 Ibid. See Holy See's Initial Report on OPSC, supra note 2, para. 10(c); Holy See's Initial Report on OPAC, supra note 14, 10(c); Holy See's Second Report on CRC, supra note 2, para. 20(e)l . Cf. Holy See's Initial Report on CRC, supra note 2, paras. 5–6.

The documents analysed above highlight important principles that provide the framework of the Church's approach. Nevertheless, these documents do not provide a detailed explanation on specific issues that are also important in the dialogue on the rights of the child (some explanations can be found in different communications of the Holy See).

On 3 February 2025, Pope Francis organised an international summit on the rights of the child called the World Meeting on Children's Rights. He announced the publishing of a detailed document on children's right, which might provide further guidance to academia and practitioners.

3. The Role of the Holy See in the Drafting and Adoption of the UNCRC

The year 1979 marked the 20th anniversary of the Declaration of Children's Rights[84] celebrated during the International Year of Child, which was also a milestone in terms of the UNCRC, as from this moment the ten-year-long drafting process of the convention started.[85] In the context of the International Year of Children Pope Saint John Paul II spoke as follows,

> 'I wish to express the joy that we all find in children, the springtime of life, the anticipation of the future history of each of our present earthly homelands. No country on earth, no political system can think of its own future otherwise than through the image of these new generations that will receive from their parents the manifold heritage of values, duties and aspirations of the nation to which they belong and of the whole human family. Concern for the child, even before birth, from the first moment of conception and then throughout the years of infancy and youth, is the primary and fundamental test of the relationship of one human being to another. And so, what better wish can I express for every nation and for the whole of mankind, and for all the children of the world than a better future in which respect for human rights will become a complete reality throughout the third millennium, which is drawing near?'[86]

The *protection of life from the moment of conception*, as stressed in the speech, remained an important question for the Holy See throughout the whole drafting process of the

84 In 1959 the United Nation adopted the Declaration of Children's Rights, a document that replaced the Geneva Declaration and declared some children's rights on an international level. It was never legally binding and was replaced by the CRC.
85 See for details: ICCR LL.M book series: International Children's Rights, Chapter 2.
86 Word of Saint John Paul II.

UNCRC. In addition to defining the beginning of childhood,[87] the role of the Holy See in the drafting process is evident in its efforts to advocate for a *proper balance between parental rights and the rights of the child*, and in the *protection of children in armed conflicts*.

To make its position clear on these issues, the Holy See signed and ratified the UNCRC with three reservations.[88] The *first reservation* concerns the interpretation of the expression "family planning education and services" in article 24 (2) of the UNCRC. For the Holy See this refers only to those methods of family planning it considers morally acceptable, namely, the natural methods of family planning. The *second reservation* concerns the interpretation of the articles of the UNCRC in a way that safeguards the primary and inalienable rights of parents, particularly regarding education,[89] religion,[90] association with others[91] and privacy.[92] The *third reservation* declares that the application of the UNCRC must be compatible in practice with the unique status of the Vatican City State and the sources of its objective law (art. 1, Law of 7 June 1929, n. 11) and, given its limited scope, with its legislation on matters of citizenship, access, and residence.

The Holy See also made the following *declaration* to the UNCRC:

- The Holy See regards the UNCRC as a proper and laudable instrument aimed at protecting the rights and interests of children, who are 'that precious treasure given to each generation as a challenge to its wisdom and humanity' (Pope John Paul II, 26 April 1984).
- The Holy See recognizes that the UNCRC represents an enactment of principles previously adopted by the UN, and once effective as a ratified instrument, will safeguard *the rights of the child before as well as after birth, as expressly affirmed in the Declaration of the Rights of the Child* and restated in the ninth preambular paragraph of the Convention. The Holy See remains confident that the ninth preambular paragraph will serve as the perspective through which the rest of the Convention will be interpreted, in conformity with article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969.
- By acceding to the UNCRC, the Holy See intends to give renewed expression to its constant concern for the well-being of children and families. In consideration of its singular nature and position, the Holy See, in acceding to the Convention, does not intend to prescind in any way from its specific mission, which is of a religious and moral character.

87 The final, adopted version of the UNCRC defined the concept of the child in Art. 1 of the UNCRC; however, it leaves the determination of the beginning of life to the discretion of each State Party and only determines the end of childhood.
88 Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en#EndDec (Accessed: 15 April 2024).
89 Arts. 18 and 28 of the UNCRC.
90 Art.14 of the UNCRC.
91 Art. 15 of the UNCRC.
92 Art. 16 of the UNCRC.

The reservations and declaration made by the Holy See provide the framework for interpretating its obligations under the UNCRC and its understanding of the Convention.[93]

Apart from the concrete actions of the Holy See, from a Catholic perspective, it is important to highlight the contribution of the *International Catholic Child Bureau* (hereinafter, BICE) to the drafting and adoption of the UNCRC. BICE is an international Catholic network of organisations, established in 1948 and is committed to promoting and protecting the dignity and rights of the child. It has a presence in nearly 30 countries across four continents, through its partner organisations. BICE actively participated in the elaboration of the UNCRC and holds a consultative status with the UN and was therefore present at the Human Rights Council and the Committee on the Rights of the Child in Geneva. BICE and Defense for Children International led a group of organisations during the drafting process and contributed to the recognition of the global vision of the child, including its moral and spiritual dimensions.[94]

The Holy See signed and ratified the Convention on 20 April 1990, thereby becoming one of the first State Parties. After signing and ratifying the UNCRC, Pope Saint John Paul II reaffirmed the Holy See's commitment to children's rights and to the declaration of children's rights as outlined in the UNCRC. At the World Summit of Children, he expressed – among many other very important thoughts – that,

> '[...] the International Convention on the Rights of the Child constitutes a statement of priorities and obligations which can serve as a reference point and stimulus for action on behalf of children everywhere. The Holy See gladly acceded to and endorses the Convention on the understanding that goals, programmes and actions stemming from it will respect the moral and religious convictions of those to whom they are directed, in particular the moral convictions of parents regarding the transmission of life, with no urging to resort to means which are morally unacceptable, as well as their freedom in relation to the religious life and education of their children. Children who are to learn to be supportive of their fellow man must learn the reality of mutually supportive relationships in the family itself, where there is profound respect for all human life, unborn as well as born, and where both mother

93 H.E. Mgr. Renato Martino, Permanent Observer for the Holy See to the United Nations, spoke as follows at a press conference given on the occasion of the Holy See's deposit of its instrument of accession in New York, 'The Holy See appreciates the long and arduous efforts that led to the Convention on the Rights of the Child and has noted the positive contributions that the Convention can provide for many aspects of children's wellbeing. However, the text of this Convention is a minimal basis for reaching an agreement, and therefore contains areas with which the parties are not completely satisfied [...]. In order to avoid any further delay in this long process, and in view of the fact that the text adopted will help protect children's rights, the Holy See has approved the final text, although with reservations.' L'Osservatore Romano, weekly French-language edition, No. 20, 15 May 1990, p. 4.

94 BICE, Mission, Vision, Value Note, p. 1.

and father jointly make responsible decisions regarding the exercise of their parenthood.'

The Holy See has a serious and profound interest in the care and defence of children.[95] The Holy See's participation in the Convention has implications for the whole of humanity, with special relevance to its doctrine, internal legal system, and the laws of the Vatican City State.[96] The participation in the drafting stage was of great benefit, and by ratifying the Convention, the Holy See demonstrated its support for the good contained in it, and through its reservations and declarations, put the world on notice[97] as to its uncertainties.

4. The Dialogue Between the CRC Committee and the Holy See

Article 44 of the UNCRC establishes the State Parties' obligation to submit reports on the implementation of the UNCRC to the CRC Committee every five years. To date, the Holy See has submitted *two periodic reports*, one in 1994 and one in 2011, and has engaged in a dialogue with the Committee on the Rights of the Child. The dialogue between the Holy See and the CRC Committee is often *intense and marked by extensive debate*.

4.1. Report Submitted in 1994:[98]

The first report on the implementation of the UNCRC was submitted in 1994, and the oral hearing before the Committee was held on 14 November 1995, in Geneva.[99]

The report can be divided into three parts:[100]

1. *Affirmation of the Rights of the Child in the Teaching of the Holy See:* Under this heading the report addresses the human dignity of children from the moment of conception, emphasising that, according to the interpretation of the Holy See (and the Catholic Church) children's rights must not be interpreted outside the context of the family. It also reinforces the approach of the Holy See regarding freedom of religion by underlining that it is a fundamental civil right that should be guaranteed by States. However, from the perspective of children, parents hold the right and authority to decide about the religious upbringing of their children.[101]

95 Adolphe, 2005, p. 172.
96 Ibid., p. 177.
97 Ibid.
98 The first report of the Holy See was due for 1 September 1992, but was finally submitted on 28 March 1994.
99 Lux, 2022, p. 77.
100 Ibid.
101 State Party Report: Holy See I.

2. *The Activity of the Holy See on Behalf of Children:* This chapter outlines the activities in which the Holy See is involved.
3. *The Activities of the Pontifical Council for the Family for the Protection of the Rights of the Child:* This section again emphasises that the rights of the child are inseparable from the rights of the family and highlights that it is the Pontifical Council for the Family that is most directly involved with the implementation of the UNCRC.

The concluding observations were released in 1995. They included criticism from the CRC Committee regarding the reservations made by the Holy See to the UNCRC. The observations raised concerns about gender-based discrimination in Catholic schools and health education, particularly in relation to sexual education. This dialogue primarily focused on Church teachings, while the issue of sexual abuse committed by clergy had not yet influenced this discussion, unlike in the dialogue during the next periodic reporting cycle.

4.2. Report Submitted in 2011:

It was during this reporting cycle that the issue of sexual abuse committed by clergy emerged. The report starts with the declaration of the Holy See's seven principles:

- The basis of the rights of children is their human dignity.
- The rights of children cannot be interpreted outside the context of the family.
- It is important to protect the rights and obligations of children within the context of the family, which is based on a heterosexual marriage.
- To the greatest extent, the welfare of a child can be protected by his or her parents.
- The child has a right to life from conception to natural death.
- A child has an inalienable right to education.
- The child has a right to freedom of religion.

The report is divided into four parts:[102] Part I addresses general considerations, including the nature of the Holy See as a subject of international law. Part II responds to the Committee's concluding observations on the Holy See's Initial Report, particularly regarding reservations; the Committee's four principles and the duties and rights of parents, the education of girls, health education, and education on the UNCRC. The Holy See also discusses the principles it upholds concerning the rights and duties of the child within the family context. Part III outlines the international contributions of the Holy See in advancing and promoting the basic principles recognised in the UNCRC, covering a wide range of issues related to children (e.g., the family, adoption, children with disabilities; health and welfare; leisure and culture; and special measures to protect children, including issues of sexual abuse, drug addiction, children

102 Available at: https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2014/01/16/0032.pdf.

living on the streets, and minority groups). Finally, Part IV addresses the implementation of the Convention in the Vatican City State.

In July 2013, the CRC Committee issued a 'List of issues in relation to the second periodic report of the Holy See'. The questions focused on gender-based discrimination, status of children born out of wedlock, rights of the child to express his or her views, prohibition of corporal punishment, and sexual abuse committed by clergy, which was gradually being revealed at the time. In its responses to the list of issues, the Holy See questioned the accuracy of the information gathered by the Committee and the legitimacy of the questions regarding its obligations. This dialogue already foreshadowed the content of the concluding observations.

The CRC Committee issued its concluding observations on 25 February 2014.[103] The concluding observations on the second periodic cycle urged the Church to comply with the recommendations given in the previous reporting cycle and called for the withdrawal of the Holy See's reservations to the Convention.[104] It recommended undertaking a thorough review of canon law[105] to ensure compliance with the UNCRC.[106] It called for the establishment of a high-level mechanism with the mandate and capacity to coordinate the implementation of children's rights across all pontifical councils, episcopal conferences, as well as with regard to individuals and institutions of a religious nature functioning under the authority of the Holy See.[107] It strongly recommended verifying the financial and human resources available for the implementation of children's rights.[108] The Committee also strongly recommended the establishment of independent monitoring mechanisms with clear mandates to receive and investigate children's complaints in a child-sensitive manner, ensuring due respect for the privacy and protection of victims. The Holy See should also ensure that the mechanism is made accessible to all children attending or involved in schools, services and institutions provided by the Catholic Church. Given the unique status of the Holy See, the Committee suggested that guidelines on the relationship and collaboration between this mechanism and national law enforcement authorities should also be defined and widely disseminated. Additionally, the Committee urged the Holy See to adopt a rights-based approach to address discrimination between girls and boys and to refrain from using terminology that could undermine equality between girls and boys.[109] The concluding observations encouraged the Holy See to provide guidance to all relevant persons in authority with a view to ensure that the best interest of the child is a primary consideration in all areas, including when addressing cases of child sexual abuse. Furthermore, the

103 Available at: https://documents.un.org/doc/undoc/gen/g14/412/00/pdf/g1441200.pdf.
104 Concluding Observations 2nd Periodic Report, para. 4.
105 Ibid., para. 12.
106 Ibid., para. 14.
107 Ibid., para. 16.
108 Ibid., para. 18.
109 Ibid., para. 28.

Committee urged the Holy See to disseminate this guidance to all Catholic churches, organisations, and institutions worldwide.[110]

Soon after the adoption of the 'Concluding Observations', the Holy See issued 'Comments of the Holy See on the Concluding Observations of the Committee on the Rights of the Child'[111] in which it argued that the concluding observations profoundly misunderstood the role of the Holy See in the international legal order. Regarding the comments on canon law, the Holy See emphasised that, as a sovereign subject of international law, it reserved the exclusive competence to interpret its internal fundamental norms in accordance with relevant international law, including the freedom of religion. This included the specific reference to the exclusive authority of faith communities to organise and govern their internal affairs.[112]

Since then, there has been no official dialogue between the CRC Committee and the Holy See.

5. Conclusions

The UNCRC is a document on international level that *declared children's rights*. However, it cannot be emphasised enough that *the true source of children's rights is not the UNCRC itself, but the alienable human dignity of the child*, which in many religions is understood as stemming from the creation of children in the image of God. Therefore, religious perspectives on children and their rights predate their formal recognition in international law. The UNCRC is an international convention that reflects the contribution of many stakeholders, including religious communities. These communities bring an approach that values the sanctity and dignity of human life, which was instrumental in the drafting of the UNCRC and continues to provide significant value in its ongoing implementation. Nevertheless, these communities also need support to adopt genuine child rights-based approaches and thus, safeguard the life and upbringing of the most vulnerable.

From a strictly legal perspective – as discussed in detail early in this chapter – it is the Catholic Church, and more specifically the Holy See, that holds a tangible legal obligation under the UNCRC. It is this legal obligation from which an important debate started between the CRC Committee and the Holy See on the implementation of the CRC. This is a debate where both parties made important points. For instance, in terms of sexual abuse cases within the Church, corporal punishment or discrimination between boys and girls, and child marriage, the comments of the CRC Committee

110 Ibid., para. 30.
111 Available at: https://www.vatican.va/roman_curia/secretariat_state/2014/documents/rc-seg-st-20140205_concluding-observations-rights-child_en.html.
112 Comments of the Holy See on the Concluding Observations of the Committee on the Rights of the Child.

are valuable and have the capacity to support the Church in the process of dealing with these topics.

It is clear that the Committee treated the Holy See like any other State Party, and in so doing either misunderstood or ignored the Holy See's *sui generis* status in international law, which is integrally tied to its spiritual and moral mission.[113] The Holy See acts as the light of Christ, with all the graces that flow from this reality.[114] When the Committee recommended that the Holy See withdraw its reservations, which uphold parental rights and duties and reject contraception and abortion as legitimate means of family planning, and asked it to change its magisterium and internal legal system in a way that would render them more in line with the 'spirit of the Convention',[115] the Commission challenged what the Holy See teaches, lives, and holds out to the world, which is overstepping some competence.[116] It should be always carefully studied what can be done in order to ensure the rights of children to a higher extend but at the same time preserve the teaching of the Catholic Church, which is the path to salvation. This work cannot be done by an external monitoring body, but only within the Church itself.

113 Adolphe, 2005, p. 149.
114 Ibid., p. 177.
115 Ibid.
116 The Holy See may always argue that it falls within Art. 41 of CRC, which provides: 'Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child, and which may be contained in the law of a State Party'.

Bibliography

Adolphe, J. (2005) 'The Holy See and the Convention on the Rights of the Child. Moral Problems in negotiation and implementation'. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2182759 (Accessed: 03 February 2025).

Adolphe, J. (2011) 'The Holy See in Dialogue with the Committee on the Rights of the Child (Fall 2011)', *Ave Maria International Law Journal*, 1(1). Available at SSRN: https://ssrn.com/abstract=2159503 (Accessed: 03 February 2024).

Arigatou International (2019) 'Faith and Children's Rights: A Multi-religious Study on the Convention on the Rights of the Child', *Arigatou International*, New York, N.Y.

Declaration of the Dicastery for the Doctrine of the Faith "Dignitas Infinita" on Human Dignity Available at: https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_ddf_doc_20240402_dignitas-infinita_en.html. (Accessed: 03 February 2025).

Holy See, Summary of Presentation of the periodic reports to the Committee on the Convention of the Rights of the Child and the Optional Protocols,16 January 2014, Palais Wilson, Geneva). Available at: https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2014/01/16/0032.pdf. (Accessed: 03 February 2025).

Gas Aixendri, M. (2024) *Achieving Harmony in Human Rights: Lessons Learned from Dignitas Infinita* [Online]. Avalaible at_ https://www.ceaclaw.org/post/achieving-harmony-in-human-rights-lessons-from-dignitas-infinita. (Accessed: 03 February 2025).

Lux, Á. (2022) 'Gyermekjogok és kereszténység: a Szentszék nemzetközi jogi kötelezettségei', *Orac Kiadó Kft.*. Available at: https://real.mtak.hu/161872/1/LuxAgnes_Gyermekjogokeskeresztenyseg_pdf.pdf (Accessed: 21 April 2024).

McAleese, M. (2019) 'Children's Rights and Obligations in Canon Law: The Christening Contract', *Brill Nijhoff*, Leiden.

Pope John Paul I (1981) *Apostolic exhortation Familiaris consortio on the role of the christian family in the modern world* [Online]. Available at: https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html. (Accessed: 03 February 2025).

Pope Francis (2014) *Chirograph for the Institution of the Pontifical Commission for the Protection of Minors* [Online]. Available at: https://www.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140322_chirografo-pontificia-commissione-tutela-minori.html. (Accessed: 03 February 2025).

Pope Francis (2014) *Apostolic exhortation Evangelii gaudium* [Online]. Available at: https://www.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html (Accessed: 03 February 2025).

Pope Francis (2016) *Apostolic exhortation Amoris laetitia* [Online]. Available at: https://www.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia.html. (Accessed: 03 February 2025).

Pope Francis (2016) *Apostolic letter As a loving mother* [Online]. Available at: http://www.vatican.va/content/francesco/en/apost_letters/documents/papa-francesco_lettera-ap_20160604_come-una-madre-amorevole.html (Accessed: 03 February 2025).

Pope Francis (2023) *"Vos estis lux mundi" Apostolic letter* [Online]. Available at: https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html (Accessed:21 April 2024).

Santolaria, J.J.R. (2016) 'Vatican and the Holy See', *Oxford Bibliographies* [Online]. Available at: https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0128.xml?rskey=OQ1vyE&result=235&print (Accessed: 03 February 2025).

Schanda, B. (2018) 'A gondolat, a lelkiismeret és a vallás szabadsága' in Jakab A., Fekete B. (eds.) *Internetes Jogtudományi Enciklopédia.* Available at*:* http://ijoten.hu/szocikk/a-gondolat-a-lelkiismeret-es-a-vallas-szabadsaga (Accessed: 03 February 2025).

Tseday, G.H. (2017) 'The Holy See: The Government of the Catholic Church What is the Nature of the Holy See's Obligation under the United Nations Convention on the Rights of the Child?', *The International Journal of Children's Rights,* 25(3-4).

UN Committee on the Rights of the Child. List of issues in relation to the second periodic report of the Holy See (CRC/C/VAT/2), 19 July 2013. Available at: https://www.refworld.org/reference/annualreport/crc/2013/en/96592. (Accessed: 03 February 2025).

UN Committee on the Rights of the Child: State Party Report: Holy See, 28 March 1994. Available at: https://www.refworld.org/reference/statepartiesrep/crc/1994/en/30159. (Accessed: 03 February 2025).

UN Committee on the Rights of the Child: Concluding Observations: Holy See, 27 November 1995. Available at: https://www.refworld.org/policy/polrec/crc/1995/en/47293 (Accessed: 03 February 2025).

UN Committee on the Rights of the Child: Concluding observations on the second periodic report of the Holy See, 24 February 2014. Available at: https://docs.un.org/en/CRC/C/VAT/CO/2 (Accessed: 03 February 2025).

UN Committee on the Rights of the Child, Comments of the Holy See on the Concluding Observations of the Committee on the Rights of the Child, 23 September 2014. Available at: https://www.vatican.va/roman_curia/secretariat_state/2014/documents/rc-seg-st-20140205_concluding-observations-rights-child_en.html (Accessed: 03 February 2025).

UN Committee on the Rights of the Child, Initial report of the Holy See on the Optional Protocol to the UN CRC on the OPSC, 29 October 2012, CRC/C/ OSPC/VAT/1.

UN Committee on the Rights of the Child, List of issues raised on the Initial Report of the Holy See on the OPSC, 13 July 2013, CRC/C/OPSC/VAT/Q/1.

UN Committee on the Rights of the Child, Concluding observations on Initial report of the Holy See on the OPSC, 25 February 2014, CRC/C/OPSC/VAT/ CO/1. Available at: https://www.ohchr.org/en/documents/concluding-observations/crccopscvatco1-concluding-observations-report-submitted-holy-see (Accessed: 03 February 2025).

UN, Convention on the Rights of the Child. Adopted on 20 November 1989 by General Assembly resolution 44/25. Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_44_25.pdf (Accessed: 03 February 2025).

UN, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entry into force 12 February 2002. Available at: Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entry into force 12 February 2002 (Accessed: 03 February 2025).

UN, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Adopted and opened for signature, ratification and accession by General Assembly resolution A/ RES/54/263 of 25 May 2000 entered into force on 18 January 2002. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child (Accessed: 03 February 2025).

UN, Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Resolution adopted by the General Assembly on 19 December 2011. A/RES/66/138. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-communications (Accessed: 03 February 2025).

Worster, W.T. (2021) 'The Human Rights Obligations of the Holy See under the Convention on the Rights of the Child', *Duke Journal of Comparative & International Law,* 2021/31, pp. 351-423.

| CHAPTER 2 |

Legal Basis of the Protection of Children's Religious Rights in International Human Rights Law

Paweł SOBCZYK

ABSTRACT

In universal and regional international legal documents relating to children *in specie* (above all: The Declaration on the Rights of the Child, The Convention on the Rights of the Child) and *in genere* (above all: The Convention for the Protection of Human Rights and Fundamental Freedoms, The International Covenant on Economic, Social and Cultural Rights), freedom of religion is recognised as a fundamental right that also applies to children. Children have the right to profess their religion in accordance with their beliefs, and states have a duty to ensure that this right is respected and protected. The aim of the study is to present and compare the most important guarantees concerning the freedom of religion of the child contained in the acts of international law of universal and regional character. The analysis consists of issues concerning the core values (ideas) underlying the protection of children's freedom of religion in selected international human rights instruments (universal and regional), personal scope, subject matter, limitations on a child's exercise of freedom of religion, and measures to protect a child's freedom of religion.

KEYWORDS

child, Convention on the Rights of the Child, freedom of religion, human rights

1. Introduction

The freedom of religion of a child is the result of an evolution that the rights of minors have been undergoing since the late 19th century.[1] The first documented case of legal aid provided to a child was the 1874 case of eight-year-old Mary Ellen Wilson of Baltimore, who was cruelly treated by her foster mother. Social activist Etta Wheeler, who became aware of the family's tragic situation, sought help from the American Society for the Prevention of Cruelty to Animals, whose founder and president was Henry Bergh (1813–1888). As a result of the intervention undertaken, the girl was

1 On the history of the development of awareness of children's rights, he wrote briefly, among others Grocholewski, 2001, pp. 47–59.

Paweł SOBCZYK (2025) 'Legal Basis of the Protection of Children's Religious Rights in International Human Rights Law' in Katarzyna ZOMBORY – Márta BENYUSZ (eds.) *Religion and Children's Rights.* Miskolc–Budapest: Central European Academic Publishing. pp. 49–74. https://doi.org/10.71009/2025.kzmb.racr_2

placed with a new family, ending her months-long drama. The media success of the trial led Etta Wheeler and Henry Bergh to continue their efforts to protect children's rights, and on 15 December 1874 the American Society for the Prevention of Cruelty to Children was founded on their initiative.[2] Following these events, the activities of those protecting children's rights were greatly intensified. In 1892 the International Child Welfare Association was founded, and in 1908 the First International Congress on Moral Education was held in London. In 1913 the First International Child Welfare Congress was held in Belgium, where it was proposed to establish an international child welfare association. In 1919 an organisation called Save the Children, which is still in existence today, was established in England. A few months later, an organisation concerned with children's rights was established in Sweden under the name Rädda Barnen.

In 1920 the International Children's Aid Union was established, whose founders organised aid for children experiencing the effects of war.[3] This union, in 1924, enacted the Declaration of the Rights of the Child, called the Geneva Declaration, adopted by the League of Nations.[4] This document highlighted the fact that mankind should give its best to its children. It further stated that regardless of race, nationality or creed, children should be given the opportunity for normal physical and spiritual development.[5]

Another document of universal scope concerning the protection of children's rights was the Declaration of the Rights of the Child adopted by the UN General Assembly on 20 November 1959.[6] It contains a set of demands for the provision of proper living and development conditions for children. The main objective of the Declaration is to realise the conviction that 'mankind owes to the child the best it has to give',[7] and to ensure that children have 'a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth.' Crucially for the protection of individual rights, the Declaration recognises children as the subjects of human rights.

Because (among other things) the Declaration did not contain a control mechanism, it was not a binding document for member states. Nevertheless, it represented a milestone in the legal protection of children's rights internationally and set standards for shaping the protection of children's rights at the national level. In addition, one of the effects of the enactment of the Declaration was an increase in the activity of UNICEF, which has been allocating funds for the education of children and adolescents since 1961.

2 Wojniak, 2023, pp. 83–86.
3 Krawczak–Chmielecka, 2017, pp. 12 and 13.
4 Declaration on the Rights of the Child. Adopted by the General Assembly of the League of Nations in 1924.
5 Ibid.
6 Declaration on the Rights of the Child. Adopted by the United Nations General Assembly on 20 November 1959.
7 Klafkowski, 1979, p. 283.

On 20 November 1989, i.e. on the 30th anniversary of the adoption of the Declaration on the Rights of the Child, the UN General Assembly adopted the first legally binding document regulating the rights of the child, i.e. the Convention on the Rights of the Child.[8] Commenting on the role of the 1989 Convention, F. D'Agostino said:

> 'In recent years, it has fulfilled the vital function of an ideal cultural stimulus, not only for the parliaments of the individual States that have ratified it, but also and above all for all attention to the world of minors, and is a fundamental a step in the long (but not yet travelled) journey that the international community has moves towards an ever more precise definition and an ever more effective protection of human rights.'[9]

It is relatively widely accepted that the enactment of the Convention is one of Poland's most important achievements in the field of child rights protection.[10]

On the basis of the Convention, a body was established to supervise its implementation by the states that ratified it – the Committee on the Rights of the Child.[11]

Among the freedoms and rights of the child, Article 14 states that 'States Parties shall respect the right of the child to profess and practise his or her own religion.' The Convention does not specify what the externalisation of this right is to consist of, e.g. prayer, religious practice, participation in religious ceremonies or teaching, as other instruments of international law do. However, no one during the drafting process questioned the statement of the Swedish delegate that there is a consensus on a child's right to manifest religion or belief in precisely these forms. This means that the Convention grants a child these rights and that their material scope is analogous to that of an adult. Analysing the provisions of the Convention, it can be said that it takes a "step forward" in respecting the personality of the child. However, in relation to younger children the rights to religious freedoms are of lesser importance. It seems to be the intention of the legislator that a klawing child should be able to decide independently about his or her religion and beliefs — understood as theistic, non-theistic as well as atheistic beliefs. The child, according to this position, may also not profess any religion or hold any views on religiosity. The right to freedom of thought of conscience and religion is here the right of the child, not the right of the parents. The parents, on the other hand, only have the right and duty to guide the child in the exercise of his or her rights.[12]

8 Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 (Journal of Laws 1991, No. 120, item 526).
9 D'Agostino, 'Diritti della famiglia e diritti dei minori', Paper presented at the International Theological-Pastoral Congress, Rome 11–13 October 2000.
10 In 1978, Poland proposed its enactment to the UN Commission on Human Rights and presented a draft, which was later modified twice. Dąbrowska, 2020, pp. 89–109.
11 'The best interests of the child are the overriding principle in relation to which almost all the provisions of the Convention should be interpreted'; Bielecki, 2004, pp. 233–243.
12 Łopatka, 2000, p. 79.

In addition to acts of international law directly relating to children as subjects of rights and obligations, there are also guarantees of individual freedoms and rights concerning minors in international law. For acts of universal international law, mention should be made of the International Covenant on Civil and Political Rights of 1966.[13] Article 18 of the Covenant protects freedom of thought, conscience and religion. This also applies to children, who have the right to freely profess their religion.

Among acts of this type, albeit of a regional nature, the European Convention on Human Rights of 1950 should be mentioned first.[14] Article 9 of the Convention guarantees freedom of thought, conscience and religion, which also includes children.

The European Convention has become a model for other regional human rights guarantees, including the 1969 American Convention on Human Rights[15] and the 1981 African Charter on Human and Peoples' Rights.[16] Article 8 states the right of everyone to freedom of thought, conscience and religion, including children.

An extension of Article 18 of the African Charter, which implies the obligation of states to protect the family, women and children, in accordance with the provisions of international conventions and declarations, is the African Charter on the Rights and Welfare of the Child.[17] This document is recognised as a powerful tool to improve the lives of millions of African children.[18]

The European Union, too, has adopted measures in its acquis relating to the protection of religious freedom. Such a document is the Charter of Fundamental Rights of the European Union (CFR),[19] which in Article 10 guarantees everyone the right to freedom of thought, conscience and religion. This right includes the freedom to change religion or belief and the freedom, either alone or in community with others and in public or private, to manifest one's religion or belief in worship, teaching, practice and observance. The refusal to act contrary to one's conscience is deemed lawful under national legislation (Article 10(2) CFR). This provision is modelled on Article 9 of the European Convention on Human Rights.

In each of these universal and regional international law documents relating to children *in specie* and *in genere*, freedom of religion is recognised as a fundamental

13 International Covenant on Civil and Political Rights opened for signature in New York on 19 December 1966 (Journal of Laws 1977, No. 38, item 167).

14 Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2. (Journal of Laws 1993 No. 61, item 284). Robertson, Merrills, 1993.

15 American Convention on Human Rights adopted on 22 November 1969 in San Jose and its Additional Protocols, O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

16 African Charter on Human and Peoples' Rights. Available at: https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf.

17 African Charter on the Rights and Welfare of the Child was signed on 24 September 1990 in Addis Ababa (Ethiopia), entered into force on 29 November 1999. Available at: https://au.int/en/treaties/african-charter-rights-and-welfare-child. OAU Doc. CAB/LEG/24.9/49(1990).

18 Olowu, 2002, pp. 127–136.

19 Charter of Fundamental Rights of the European Union (Journal of Laws. EU. 2007.303.1).

right that also applies to children. Children have the right to profess their religion in accordance with their beliefs, and states have a duty to ensure that this right is respected and protected.

2. Core Values (Ideas) Underlying the Protection Of Children's Freedom of Religion in Selected International Human Rights Instruments (Universal and Regional)

The values that underpin the protection of human rights under the European Convention on Human Rights ('ECHR') form the basis for the activities of the European Court of Human Rights ('ECtHR') in ensuring respect for and enforcement of individual rights, including the freedom of religion of the child (Article 9). The Convention recognises that every person has an inalienable right to respect for his or her dignity as a human being. This provides protection against degrading treatment and other forms of violations of dignity. The Convention prioritises the freedom of the individual, ensuring the rights and freedoms that constitute the necessary conditions for the full development of the individual in society (inter alia, Articles 2, 3, 4). The ECHR introduces principles of justice to be applied in dealing with complaints of human rights violations. This ensures that individuals have access to a court and that proceedings are fair and equitable (Articles 6 and 7). The Convention ensures equality before the law and prohibits discrimination based on factors such as sex, race, colour, language, religion, political or other beliefs (Article 14). It also recognises human rights as the foundation of a democratic society, which are essential for its functioning and stability (inter alia: Articles 6(1), 8(1)).

The basis for the protection of children's rights and the foundation for ensuring the conditions for a happy and complete life for children in the Declaration of the Rights of the Child are several principles – values that the text of the document encourages society and states to put into practice.

The Declaration of the Rights of the Child recognises the dignity of every child as a fundamental value to be respected and protected (Principle 2); proclaims the equality of all children regardless of their origin, race, sex, religion, disability or any other status (Principle 1); recognises the right of every child to his or her full and harmonious physical, mental, moral, spiritual and social development (Principles 2 and 9); places an obligation on society and the state to protect children from all forms of exploitation, violence, neglect and discrimination; and ensures children's right to express themselves freely and to participate in matters affecting their lives, taking into account their age and degree of maturity (Principles 9 and 10).

The Declaration of the Rights of the Child recognises the right of every child to education and learning, which should be available to all children regardless of any differences. It also emphasises the importance of parental care for healthy development and the right to maintain contact with both parents (Principle 7).

The basis of human rights protection under the International Covenant on Civil and Political Rights, which is one of the most important international documents regulating human rights, is primarily human dignity, individual freedom, justice and equality. The Covenant recognises the dignity of each person as the foundation of human rights, which implies respect for and protection of the integrity of the individual (Introduction). It guarantees individuals a wide range of personal freedoms, including freedom of thought, conscience and religion (Article 18(1)), freedom of expression (Article 19(2)), freedom of assembly and association, and other rights that enable individuals to freely express themselves and participate in society (Articles 21 and 22). In addition, the Covenant imposes obligations on state parties to ensure equal treatment before the law and access to the courts, and provides for adequate procedures in the event of restrictions or punishment for violations of the law (Article 14). The protection of these values aims to ensure that individuals are able to develop fully and participate in social, cultural and political life.

The 1969 American Convention on Human Rights recalls in the preamble that,

> 'in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights.' The normative part of the Convention (Article 1(1)) begins with the obligation of the parties 'to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.'

The 1981 African Charter on Human and Peoples' Rights is based on a set of fundamental values that underpin the protection of freedoms and rights. The Charter recognises the dignity of each person as a fundamental value that demands respect and protection. Dignity is the basis for all the rights and freedoms contained in the Charter (Preamble, Article 5). The Charter emphasises the importance of social solidarity and community as fundamental values for Africa's social, economic and cultural development (Article 10). The Charter recognises that the rights of individuals are not separate from the rights of peoples, and that people have the right to self-determination, sovereignty over their natural resources, and the enjoyment of their common goods (Article 20). The Charter promotes democracy, the rule of law and respect for the fundamental principles of social justice, equality and fairness for all citizens (Articles 21 and 22). The Charter is committed to the promotion of peace, security and stability on the African continent as a necessary condition for ensuring respect for human rights and social development (Article 23).

The values indicated are fundamental to the protection of human rights under the African Charter on Human and Peoples' Rights. By ensuring respect for these values,

the Charter seeks to promote social justice, equality, development and peace on the African continent. The Charter guarantees a number of individual freedoms and rights, including freedom of thought, conscience and religion, freedom of assembly, freedom of association and the right to fair and equal treatment before the law.

The basis for the protection of children's rights under the UN Convention on the Rights of the Child are the values by means of which the Convention seeks to ensure that all children have the opportunity to live happy, healthy and complete lives and to realise their full potential. These values primarily include the dignity of the child and the right to development. The Convention recognises the dignity of every child as a fundamental value that needs to be respected, protected and taken into account in all relevant actions. The Convention assumes that the rights of the child are paramount and should be given the highest priority in every area of life, policy and law. It recognises the right of every child to full and harmonious physical, mental, moral, spiritual and social development (Preamble). It also promotes the active participation of children in matters affecting their lives, giving them the opportunity to express their opinions and to participate in decisions affecting them (Articles: 12–16, among others).

The Convention imposes an obligation on states parties to ensure that children are protected from all forms of violence, exploitation, neglect and discrimination, and guarantees children the right to education, schooling and health care, which are crucial for their development and future (Article 2, Article 23(3), Article 28). Furthermore, the Convention recognises the importance of the family for the well-being of the child and places an obligation on states to support the family as an environment suitable for the child's development (Preamble, Article 5, Article 20, among others).

The African Charter on the Rights and Welfare of the Child is modelled on the UN Convention on the Rights of the Child, but contains provisions that are important for the protection of children living in Africa, as exemplified by the word "welfare" in the title.[20] The relatively extensive preamble of the Charter contains extremely important formulations concerning the specific situation of children in Africa: 'the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security' (Preamble). In addition, it makes reference to 'the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child' (Preamble).

The African Charter on the Rights and Welfare of the Child – like the UN Convention on the Rights of the Child – is based on four fundamental principles:

20 The commentaries to the document draw attention to the fact that the African Charter was born in the sense of African countries that the Convention on the Rights of the Child did not take into account important socio-cultural aspects and economic realities of the African continent. Kaime, 2011; Falola, 2001.

non-discrimination; safeguarding the interests of the child; the right to life, survival and development; and the child's right to an opinion.[21]

In its preamble, the Charter of Fundamental Rights ('CFR') of the European Union refers to the roots on which the European community was formed. It emphasises the fact that, conscious of its spiritual-religious and moral heritage, the Union is built on the indivisible, universal values of human dignity, freedom, equality and solidarity, and is based on the principles of democracy and the rule of law. With regard to the rights of the child, the CFR stresses that in all actions concerning them, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration (Article 24(2)).

In the presented normative solutions, both those of universal and regional scope, attention is generally paid to two spheres of initiatives based on universal values, undertaken in relation to the child. These are activities that affect both the physical development of the minor and those that contribute to the formation of his/her personality. Both of these spheres complementarily affect the implementation of one of the basic principles relating to the respect of the rights of the child, namely the protection of welfare. This clause, despite the fact that it is not defined, is the overriding value around which all actions aimed at protecting the child and his or her best interests should be focused.

3. Personal Scope

The concept of the "child", whose subjectivity — in terms of the possibility to decide on one's own beliefs — is the point of reference for the normative solutions analysed, is sometimes defined differently depending on the ideological assumptions of the prevailing legal system. On the basis of the applicable standards of international law, only in some of them is a child actually defined. According to Article 1 of the UNCRC**,** "child" means any human being under the age of eighteen years, unless he or she attains the age of majority earlier. It is important to highlight the fact that it did not choose to explicitly extend protection to children in the womb. Although in the preamble of the UNCRC, the fact is highlighted that 'the child, by reason of his or her physical and mental immaturity, needs special care and attention, including appropriate legal protection, both before and after birth.' This ambiguous definition was intended as a compromise between those in favour of protecting life from the moment of conception and those who advocated the legality of abortion. However, the undefinition of the lower limit caused some states to note reservations. State parties were left free to precisely define the moment that can be considered the beginning of childhood.[22]

A universal document is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations

21 Dąbrowska, 2020, pp. 89–109.
22 Jaros, 2015, p. 53.

Convention against Transnational Organised Crime.[23] In Article 3 of this Protocol, as in the Convention on the Rights of the Child, "child" means a person under the age of eighteen.

The Council of Europe documents relating to minors also formulate legal definitions of a child. Examples are the Convention on Action against Trafficking in Human Beings (Article 4(d),[24] or the Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse – Lanzarote Convention [Article 3(a)],[25] where only the upper limit of 18 years of age is indicated.

In many acts of international law, other terms appear alongside the term "child". The provisions of Article 10(2)(b) and Article 14(1) and (4) of the 1966 International Covenant on Civil and Political Rights use the term "juvenile". Article 24(1) of this document uses the category "underage". In contrast, the term "minor" is used in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 (Article 76).[26] The 1966 International Covenant on Social, Economic and Cultural Rights, on the other hand, distinguishes between "children" and "young persons" in Article 10(3).[27]

The European Convention on Human Rights[28] guarantees everyone freedom of thought, conscience and religion, which includes children. The subject referred to in Article 9 of the European Convention on Human Rights is every "natural or legal person, group of individuals" who is a national of a state party to the Convention or who is under the jurisdiction of that state. In other words, Article 9 of the Convention applies to individuals, groups, organisations and other entities that benefit from the right to freedom of thought, conscience and religion.

In Article 14 of the Convention of the Rights of the Child, the subject of the law is the children themselves. This article states that: 'The child should have freedom of thought, conscience and religion.' In the context of this article, children are treated as a subject with rights to freedom of thought, conscience and religion, which means that they have the right to express their religious or philosophical beliefs. This article reaffirms the importance of respecting and protecting these rights in the context of children's rights.

23 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Journal of Laws 2015, No. 18, item 160).

24 Council of Europe Convention on Action against Trafficking in Human Beings, drawn up in Warsaw on 16 May 2005 (Journal of Laws of 2009, No. 20, item 107).

25 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, drawn up in Lanzarote on 25 October 2007 (Journal of Laws of 2015, item 608).

26 Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Geneva (Journal of Laws of 1956, no. 38, item 171).

27 International Covenant on Economic, Social and Cultural Rights opened for signature in New York on 19 December 1966 (Journal of Laws of 1977, No. 38, item 169).

28 Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2. (Journal of Laws 1993 No. 61, item 284).

Under the International Covenant on Civil and Political Rights, the subject is "all human beings". This article deals with the right to freedom of thought, conscience and religion of every person (Article 18). In this context all people, regardless of their origin, social status or nationality, are treated as subjects with the right to freedom of religion and to practise their religion or belief. This article is therefore universal and applies to all individuals.

The American Convention on Human Rights includes a general guarantee in Article 1 (2) (Obligation to Respect Rights):

> 'For the purposes of this Convention, "person" means every human being'. The subject of freedom of conscience and religion is "everyone", in accordance with the provisions of Article 12(1), 'Everyone has the right to freedom of conscience and of religion' and "no one" 'No one shall be subject to...'.

Special categories of entities in the field of religious and moral education include children, parents and guardians, in accordance with Article 12(4): 'Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.'

The African Charter on Human and Peoples' Rights, makes "every person" a subject (Article 8). This article refers to the right of every person to freedom of thought, conscience and religion. In the context of this article, every person, regardless of his or her origin, nationality, gender or other factors, is treated as a subject with this right. This article applies to all individuals within the jurisdiction of states that have ratified the African Charter on Human and Peoples' Rights.

In the case of the Convention on the Rights of the Child ('UCNRC'), the subject of the right to freedom of thought, conscience and religion is, in the first instance, the "child". In addition, the subject of this right is the parents and legal guardians in terms of their right 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' (Article 14(2)). The addressees of this standard, are also the "state parties" to the UNCRC. They are obliged, *inter alia*, to respect the child's right to profess and practise his or her own religion.[29] In this context, the subject states are those which have ratified the UNCRC, and which are obliged to respect it. In addition, states have an obligation to ensure that children have the right to profess and practise their religion in accordance with their own beliefs.[30]

29 For more information, see: Sokołowski, 1999, pp. 257–272.

30 In passing, it should be noted that the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, adopted in New York on 25 November 1981, emphasises in particular the right to organise life within the family in accordance with one's religion: 'Parents and guardians of each child have the right to organise family life in accordance with their own religious convictions, with their own religion or beliefs'. For more information, see: Misztal, 2000, pp. 5–20.

It should be noted that in the case of the applicability of the Convention to Poland, "objections" were made regarding Article 7 of the Convention and the age limit of eligibility for military or other service and participation in armed activities, from which Poland withdrew on 4 March 2013. In addition, two 'Declarations' to the Convention (which are essentially interpretations of the Convention) were submitted. In them, the Polish side states that, *inter alia*, the right to freedom of thought, conscience and religion and to express one's own views by the child and to appear in matters concerning the child, in administrative and judicial proceedings, is subject to respect for parental authority and must be consistent with Polish customs and traditions concerning the child's place within and outside the family. In the second 'Declaration', the Polish side notes that counselling for parents and education in family planning should be in accordance with moral norms.

The African Charter on the Rights and Welfare of the Child includes a definition of a child. According to Article 2: 'For the purposes of this Charter, a child means every human being below the age of 18 years'. Thus, the definition of a child is based on age and is beneficial to the child because it provides him with the legal protection and rights guaranteed by the Charter until he or she reaches the age of 18. This means that the Treaty provides broader protection for young people than the global standard established by the UN Convention on the Rights of the Child.[31] It should also be noted that, in accordance with Article 3, 'Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.'

As is apparent from Article 9(1) of the African Charter on the Rights and Welfare of the Child, 'Every child shall have the right to freedom of thought, conscience and religion.' The parents are the obligated persons for the child's freedom of thought, conscience and religion and where applicable, legal guardians, who shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child. The child's freedom of thought, conscience and religion is also subject to the freedom of thought, conscience and religion of the child's states parties, which, as is apparent from Article 9(3), 'shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.'

4. Subject Matter

Guarantees in the area of freedom of conscience and religion are now standard in the domestic law of democratic states as well as in international documents. In normative instruments, freedom of conscience is most often juxtaposed with freedom of belief, freedom of religion or freedom of thought. Despite the fact that these terms currently

31 Lloyd, 2002, pp. 11–32.

include guarantees for both believers and non-believers, the origin of the existing solutions can be traced back to efforts to secure religious freedoms for representatives of different faiths. As the Constitutional Tribunal in Poland pointed out in its Judgment of 7 October 2015, the understanding of the essence of freedom of conscience and religion has been consolidated in the case law of the European Court of Human Rights (ECtHR). It constitutes one of the foundations of a pluralistic democratic society. It creates an identity for believers, but is also of value to atheists, agnostics, sceptics and those indifferent to faith.[32]

The object of protection of the European Convention on Human Rights ('ECHR') is freedom of thought, conscience and religion. It guarantees individuals the right to freely profess their religion or belief, which includes both the practice of religion in public and in private. This protection also includes the right to change one's religion or belief and the right to freely express one's religion or belief alone or together with others, in public or in private, in teaching, practice, worship and rituals (Article 9). A fundamental right that forms an essential part of an individual's freedom to profess his or her religious or philosophical beliefs is protected.

Furthermore, Article 2 of Protocol No. 1 to the ECHR proclaims the right of parents to ensure that their children receive an education in accordance with their religious and philosophical convictions.[33] This means that children have the right to religious instruction at school in accordance with their parents' beliefs.

In the Convention of the Rights of the Child, the subject of protection is the child's freedom of thought, conscience and religion. Here, the right of the child to hold and express his or her own religious or philosophical beliefs is guaranteed (Article 14). These are important rights, giving children the right to freely profess and practise their religion or belief in accordance with their own convictions and in a manner appropriate to their age and development. This protection takes into account respect for children's autonomy and freedom of religious choice.

The 1966 International Covenant on Civil Rights guarantees freedom of thought, conscience and religion. Every person has the right to freedom of religion or belief (Article 18). This means that individuals have the possibility to choose, change and express their religious or belief, both individually and in the community. The right of individuals to hold and express their beliefs without interference from the state or other persons or institutions is also subject to protection. This provides an important foundation for freedom of religion and conscience in international human rights law.

In the 1969 American Convention on Human Rights freedom of conscience and religion was included in the category of civil and political rights. In the taxonomy

32 Explanatory memorandum to the judgment of the Constitutional Tribunal of 7 October 2015. –The Constitutional Tribunal cites, inter alia, the European Court of Human Rights judgment of 13 December 2001. – Église métropolitaine de Bessarabie and Others v Moldova, Application no. 45701/99.

33 Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Strasbourg on 6 May 1963 (Journal of Laws of 1995, No. 36, item 176).

of the document, they take their place right after the basic duties. This indicates the importance of the issue and the importance attached to this freedom by the contracting parties. In accordance with the second sentence of Article 12(1), 'This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.'

The 1981 African Charter on Human and Peoples' Rights also provides for the exercise of freedom of thought, conscience and religion by every human being (Article 8). This norm includes the right to freely choose and change one's religion or belief and the freedom to express one's religion or belief individually or in the community, whether in public or in private. The object of protection is the autonomy of the individual in matters relating to his or her intrinsic religious or philosophical beliefs, without interference from the state or other actors. This is an important guarantee of freedom of religion and conscience in the context of human rights law in African countries.

The UN Convention on the Rights of the Child grants the child the freedom to profess and practise his or her own religion (Article 14). The States Parties to the Convention respect these rights while creating appropriate guarantees for their implementation. The object of protection is the autonomy and freedom of religious choice of the child in accordance with his or her convictions. It aims to ensure that the child's rights to religious freedom are respected and protected in accordance with the age, ability and degree of maturity of the child.[34]

With the proclamation of the Convention on the Protection of the Rights of the Child, the full empowerment of the child was achieved. From that moment on, the child became entitled to the realisation and protection of his or her rights. Religious freedom was regulated in Article 14 alongside rights such as the right to associate, to hold and express one's own views, and finally the right to peaceful assembly (Articles 12–16 of the UNCRC). From this point on, one can say that a child's right to religious freedom derives primarily from his or her dignity as a human being. It is independent of the religious or non-religious orientation held. According to international standards, every individual is a subject of religious freedom. Some of them explicitly refer to the person of the child and his or her rights in this respect. For obvious reasons, the ability of a minor to exercise his or her rights is determined by the child's physical and developmental circumstances.

Unlike the other documents of international law mentioned above, the African Charter on the Rights and Welfare of the Child is limited to the formulation of general freedom of thought, conscience and religion (Article 9(1)). It does not specify the material scope of the freedom of religion, as for example in Article 9 of the European Convention.

34 For more information, see: Sokołowski, 1999, pp. 257–272.

5. Limitations on a Child's Exercise of Freedom of Religion

The right to freedom of religion – like most freedoms – is not an absolute value, and may be subject to limitations in their externalisation to other subjects.[35] Restrictions on a child's freedom of religion are formulated*, inter alia*, in the Convention on the Rights of the Child (Article 14(3)). These include the protection of state security, public order, health, morals, as well as the rights and freedoms of others. In the doctrine, it is questionable that the legislator is concerned that the exercise of religious freedom by a child may violate state security. Józef Krukowski believes that this norm is a relic of totalitarianism, as it places the interest of the state above the good of man. One can at most speak of a violation of public security.[36]

In relation to the person of the child, other considerations also play an important role, which affect the extent of the child's religious freedom. In the first instance, this concerns the rights of the parents to bring up their child in accordance with their professed views of moral principles. For the full realisation of the child's rights, the degree of maturity, also defined as the child's degree of development or developing abilities, is also important (Article 14(1) UNCRC).

In the European Convention on Human Rights,[37] the limits to a child's exercise of freedom of religion are based on the principle of balance between religious freedom and other individual rights and freedoms (Article 9). It is noteworthy that Protocol No. 1 to the Convention recognises the right of parents to bring up their children in accordance with their own religious convictions (Article 2). However, this right is limited by the need to respect the rights and freedoms of the child, including their right to freedom of religion and to choose their own beliefs.

Protocol No. 1 to the ECHR further guarantees the right to education and learning, including education about different religions and beliefs (Article 2). Children have the right to a neutral education on religious matters that does not promote any particular religion or violate their rights. Decisions regarding the religious education of children should be made with their best interests in mind. In cases where a child's interests may be jeopardised by religious practice or upbringing, states have a duty to intervene to protect the child.

The limits to the exercise of religious freedom by children under the ECHR derive from the balance between the rights and freedoms of the child and the obligations of the state in ensuring the protection and well-being of the child. Any action should take into account the best interests of the child and ensure that the child's rights and freedoms are fully respected.

35 Krukowski, 2003, p. 15.
36 Ibid., pp. 15–16.
37 Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2. (Journal of Laws 1993 No. 61, item 284).

The UN Declaration of the Rights of the Child does not contain provisions directly defining the limits of a child's exercise of freedom of religion in detail. Nevertheless, some general principles can be identified that may apply to the issue of a child's exercise of religious freedom.

Children should have the right to choose and express their religious beliefs in accordance with their age, level of maturity and their own convictions. Therefore, the child's age and ability to understand and make a choice may be important factors in determining the limits of the exercise of this freedom.

The Declaration of the Rights of the Child affirms the right of children to be protected from religious coercion. This means that no child should be forced to follow a particular religion or belief.

Decisions regarding the religious upbringing of children should be made with the best interests of the child in mind. Where a child's interests may be compromised by religious practice or upbringing, appropriate action should be taken to protect the child.

The exercise of religious freedom by children should not infringe on the rights and freedoms of others. This means that expressing one's religious beliefs must not lead to discrimination or harm to others.

Children should have access to education that promotes understanding, tolerance and respect for different cultures, religions and beliefs. This education can help children develop the ability to communicate and cooperate with people of different religious beliefs. Thus, the limits to children's exercise of religious freedom in the context of the UN Declaration of the Rights of the Child derive from the best interests of the child and respecting his or her rights and freedoms, while taking care to balance religious freedom with other values and rights.

The International Covenant on Civil and Political Rights, by its nature and content, does not contain direct provisions on the limits to the exercise of freedom of religion by children in detail. However, it does include general principles on the religious freedom of the person, which can be interpreted in the context of restrictions on the person of the child.

The Covenant recognises the right of everyone, including children, to profess their own religion or express their own beliefs in accordance with their own convictions and according to their ability and maturity. The exercise of freedom of religion by children should not infringe on the rights and freedoms of others. This means that the expression of their religious beliefs must not lead to discrimination or harm to others. The Covenant guarantees children the right to an education that promotes understanding, tolerance and respect for different cultures, religions and beliefs. This education can help children develop skills for dialogue and cooperation with people of different religious beliefs. Decisions regarding children's religious education should be made in their best interests and considering their right to freedom of religion and to choose their own beliefs, which can positively influence the child's exercise of freedom of religion (Article 18).

In this study, it has been mentioned that the American Convention (like the African Convention) is based on the European Convention of 1950. This can be seen, among other things, in the example of restrictions on the exercise of freedom of conscience and religion. The following Article 12(3) is devoted to this issue: 'Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.'

An important characteristic element of the Convention is the wording of Article 32, which shows a correlation between the duties and rights of the individual. This article of the Convention states that every person has duties towards his family, society and humanity, but these rights are limited by the requirement of the common good in a democratic society, the common security or the right of one's neighbour.

The African Charter on Human and Peoples' Rights does not contain specific provisions setting limits on the exercise of freedom of religion by children. Nevertheless, general principles relating to this issue can be identified.

Children should have the right to choose and express their religious beliefs in accordance with their age, level of maturity and their own beliefs. The child's age and ability to understand and make a choice can be important factors in determining the limits of the exercise of this freedom. The Charter on Human and Peoples' Rights imposes an obligation to protect children from religious coercion. This means that no child should be coerced into following a particular religion or belief.

According to the general principle of limits to the exercise of freedom, the exercise of freedom of religion by children should not infringe on the rights and freedoms of others. This means that the expression of one's religious beliefs must not lead to discrimination or harm to others.

The Charter on Human and Peoples' Rights guarantees children the right to an education that promotes understanding, tolerance and respect for different cultures, religions and beliefs. This education can help children develop skills of dialogue and cooperation with people of different religious beliefs, thus indirectly influencing the exercise of freedom of religion by children, in accordance with accepted legal principles and norms.

It should also be emphasised that, in accordance with the general tenets of the Charter, any decision regarding the religious upbringing of children should be made with consideration for their best interests and their right to freedom of religion and to choose their own beliefs, which can be of considerable importance in the exercise of a child's freedom of religion.

Thus, as with other documents, the limits to the exercise of religious freedom by children in the context of the African Charter on Human and Peoples' Rights derive from respect for their rights and freedoms, while taking care to balance religious freedom with other values and rights.

The UN Convention on the Rights of the Child does not contain provisions directly defining the limits of a child's exercise of freedom of religion. Nevertheless, the interpretation of the Convention and its application in the practice of international law and

national law may point to some general principles and limits to the exercise of this freedom by children.

It should first be noted that a child should have the right to profess his or her own religion or belief, but this should be in accordance with his or her age, degree of maturity and his or her own convictions. The child's age and ability to understand and choose his or her religion may constitute a certain limit to the exercise of freedom (Article 14).

According to the general principle on the exercise of freedoms and rights, a child's freedom of religion should not infringe on the rights and freedoms of others. This means that the expression of one's religious beliefs must not lead to discrimination or harm to others. Because the Convention recognises the right of parents to shape the religious upbringing of their children in accordance with their own beliefs, this right may be a limitation on a child's exercise of freedom of religion. Nevertheless, the Convention places an obligation on states to ensure that children are protected from coercion or extreme religious practices.

The limits to the exercise of children's freedom of religion under the UN Convention on the Rights of the Child derive from the balance between the rights of the child and the rights of parents and the obligations of states to ensure the protection and well-being of children.

The scope of a child's freedom of religion encompasses both the internal aspect, which boils down to the holding of certain views, and the external aspect, manifested in the manifestation of these views in private or in public. While the internal sphere of religious freedom is not restricted by the legislator, the external manifestations of the exercise of this value are regulated in a specific manner. This is the case at the level of both universal and regional solutions.

The provision on freedom of thought, conscience and religion in the African Charter does not set limits on the exercise of this freedom by children. This may be due to the fact that — in comparison with other instruments of international law of universal and regional scope concerning the freedom of conscience and religion of the child — the guarantees are relatively general. It should be noted, however, that Article 31 of the Charter sets out a number of obligations for children: 'Every child shall have responsibilities towards his family and society, the State and other legally recognised communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty: (a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need; (b) to serve his national community by placing his physical and intellectual abilities at its service; (c) to preserve and strengthen social and national solidarity; (d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society; (e) to preserve and strengthen the independence and the integrity of his country; (f) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity.' These obligations can

be regarded as restrictions on the exercise of freedom of thought, conscience and religion by children in certain cases. It should be emphasised that the inclusion of such extensive duties of the child in the Charter is one of its characteristic features.[38] Due to the content of this provision, it is considered by many scholars to be the most controversial in the entire Charter and even to contradict its main purpose, which is the protection of children.[39]

6. Measures to Protect a Child's Freedom of Religion

The protection of the value of freedom of religion should include both guarantees of a formal nature, which should be contained in normative acts, as well as an institutional dimension in the form of the establishment of institutions to uphold the rights.

Article 9 of the ECHR – as has been pointed out several times in different contexts – implies the right of every person, including children, to freedom of thought, conscience and religion. This includes the right to profess one's religion or belief individually or in community, in public or in private.

The Convention protects children from religious coercion. States are obliged to respect a child's freedom of religion and may not coerce a child to follow a particular religion or adhere to particular beliefs.

Article 14 of the ECHR prohibits discrimination on the grounds of religion. Children have the right to equal treatment irrespective of their religious beliefs. This means that children cannot be discriminated against on the basis of their religion or belief.

The strengthening of the protection of the child's (and parents') freedom of religion stems from Article 2 of Protocol No. 1 to the Convention, which recognises the right of parents to ensure that their children receive education in accordance with their own religious and philosophical convictions. This means that children have the right to religious education in accordance with their own beliefs if they are mature enough to make such a decision.

It should be mentioned that the Convention imposes an obligation on states to ensure that children are protected from religious or cultural practices that violate their human rights, such as forced marriage, genital mutilation or other practices harmful to children.

The Convention measures for the protection of the child's freedom of religion aim to ensure children's right to freely profess their religion or belief, while protecting them from religious coercion, discrimination and other forms of violations of their rights.

The primary means of protecting all the freedoms and rights guaranteed by the Convention – including, naturally, the freedom of conscience and religion of the

38 Dąbrowska, 2020, pp. 89–109.
39 Ibid., p. 103.

child – is a complaint. A complaint may be filed, *inter alia*, by a natural person who proves that the act or omission he or she is accused of directly affected (Article 34).

Article 14 of the Convention of the Rights of the Child recognises the child's right to practise their religion with their family. This means that children have the right to participate in the religious practices of their family.

In addition, the Convention of the Rights of the Child places an obligation on states to ensure that children are protected from religious or cultural practices that violate their human rights

The Convention contains provisions for the protection of a child's freedom of religion. Among these is the provision to protect children from religious coercion. This means that children cannot be coerced into following a particular religion or adhering to certain beliefs.

Article 29 states that education should develop respect for the rights and freedoms of others. This means that education should not impose any particular religion or coerce children to follow certain religious beliefs.

The above measures to protect the child's freedom of religion are intended to ensure children's right to freely profess their religion or belief, while protecting them from religious coercion, discrimination and other forms of violations of their rights.

The International Covenant on Civil and Political Rights provides a number of measures to protect a child's freedom of religion.

The Covenant makes it clear that no one may be coerced into following a particular religion or adopting particular religious beliefs. This means that children are protected from religious coercion by the state, religious institutions or others (Article 18).

The Covenant prohibits discrimination on the basis of religion. Children have the right to equal treatment regardless of their religious beliefs. This means that children cannot be discriminated against on the basis of their religion or belief (Article 20).

Of particular importance are the guarantees against religious coercion in the family and school. The Covenant protects children from religious coercion by the family or guardians. This means that parents and guardians should respect the religious freedom of their children and should not coerce them to follow a particular religion. States have a duty to ensure that children are protected from religious coercion at school. This means that religious education at school should be voluntary and should not lead to religious coercion.

The indicated measures for the protection of the child's freedom of religion in the International Covenant on Civil and Political Rights aim to ensure children's rights to freely profess their religion or belief, while protecting them from religious coercion and discrimination based on religion.

The American Convention, unlike many other international universal and regional human rights acts, begins with the Parties to the Convention committing themselves to respect the freedoms and individual rights it guarantees. The Convention is part of the centuries-long development of human rights protection on the

American continent, the institutional manifestation of which is primarily the activity of the Organization of American States, which was established in 1948 and originates from the Union of American Republics established in 1890.[40] The American Convention on Human Rights was adopted in San José (Costa Rica) on November 22, 1969, and did not enter into force until July 18, 1978.

This document is complemented by an anti-discrimination clause and an obligation on the States Parties to take all possible measures to progressively ensure the right to education, science and culture and the full enjoyment of rights derived from economic and social norms.[41] Compliance with the Convention is monitored by the Inter-American Commission on Human Rights, established in 1959, and the Inter-American Court of Human Rights, established in 1978.

The Permanent Council of the Organization of American States designated the Inter-American Commission on Human Rights as an "autonomous entity" whose primary purpose was to promote the protection of human rights. On the other hand, Article 9 of the 1960 Statute of the Commission empowered the Commission to draw up opinions and make recommendations on the need for the gradual introduction of standards safeguarding the protection of human rights into the domestic law of the member states of the organisation.[42] Subsequently, the Commission's tasks were supplemented by the preparation of so-called country reports and the reception and examination of complaints.[43]

The Inter-American Court of Human Rights has two primary functions. Firstly, it decides in the event of a breach of the Convention by a state (the so-called conclusive jurisprudence) and, secondly, it performs an advisory function by interpreting the Convention at the request of the member states or one of the bodies of the Organisation of American States (the so-called advisory jurisprudence).[44]

The African Charter on Human and Peoples' Rights contains a number of provisions for the protection of children's freedom of religion. The Charter on Human and Peoples' Rights protects children from religious coercion. States are obliged to respect a child's freedom of religion and may not coerce a child to follow a particular religion or adhere to particular beliefs. Article 17 of the African Charter on Human and Peoples' Rights guarantees the right to the protection of children's moral and cultural values. This means that children have the right to religious instruction in school according to their own beliefs, and states should respect these values in the education system. In addition, the Charter on Human and Peoples' Rights protects children from religious coercion by family or guardians. This means that parents and guardians should respect the religious freedom of their children and should not coerce them to follow a particular religion.

40 Łopatka, 1998, pp. 11–24.
41 Gołaś-Podolec, 2008, pp. 155–181.
42 Padilla, 1993, pp. 95–115.
43 Ibid.
44 Davidson, 1992, pp. 79–84.

The Charter on Human and Peoples' Rights places an obligation on states to ensure that children are protected from religious or cultural practices that violate their human rights.

The indicated measures for the protection of a child's freedom of religion in the African Charter on Human and Peoples' Rights aim to ensure children's rights to freely profess their religion or belief, while protecting them from religious coercion, discrimination and other forms of violations of their rights.

The UN Convention on the Rights of the Child – like the previously indicated documents, contains provisions on the protection of a child's freedom of religion. Bearing in mind Article 14 of the Convention on the Rights of the Child, which affirms the right of every child to freedom of religion or belief, the Convention also formulates rights and obligations that relate to the issue of the protection of children's freedom of religion.

The provision from which it follows that the Convention on the Rights of the Child protects children from religious coercion should be considered a fundamental guarantee in this regard. This means that children cannot be coerced into following a particular religion or belief. The Convention states that children's rights to express their religious beliefs must be respected at school. This means that education at school should not impose any particular religion or coerce children to follow certain religious beliefs.

The Convention places an obligation on states to ensure that children are protected from religious or cultural practices that violate their human rights. This means that states have an obligation to intervene in cases where these practices are harmful to children. Article 29 of the Convention states that education should develop respect for human rights and for one's own and other cultures. This means that children have the right to learn and understand religious and cultural diversity.

Article 5 of the Convention, which recognises the importance of fostering family values for the development of the child, should be considered as a provision indirectly addressing the title protection issue. This means that states should respect the rights of parents to bring up their children in accordance with their own religious or moral convictions.

The aforementioned measures aim to ensure children's right to freely profess their religion or belief, while protecting them from religious coercion, discrimination and other forms of violation of their rights. These safeguards offer the possibility to take a positive attitude towards religious matters as well as a negative or neutral one.

It has already been pointed out several times in this study that the African Charter on the Rights and Welfare of the Child is aimed at special protection for African children, whose status is far worse than the average in Europe or North America. With regard to the protection of the child's freedom of thought, conscience and religion, the document provides for specific protection measures, with the exception of the obligation of parents and States Parties to the Charter to take special measures for the benefit of children (Article 9(2) and (3)). It should be noted, however, that the provisions of the Charter require the creation of a mechanism for their implementation in

the form of An African Committee of Experts on the Rights and Welfare of the Child (Article 32).[45]

Article 42 of the African Charter on the Rights and Welfare of the Child provides for the following functions of the Committee:

> '(a) To promote and protect the rights enshrined in this Charter and in particular to: i. collect and document information, commission interdisciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organise meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and take recommendations to Governments; ii. formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa; iii. cooperate with other African, International and Regional Institutions and Organisations concerned with the promotion and protection of the rights and welfare of the child. (b) To monitor the implementation and ensure protection of the rights enshrined in this Charter. (c) To interpret the provisions of the present Charter at the request of a State Party, an Institution of the Organisation of African unity or any other person or Institution recognised by the Organisation of African Unity or any State Party. (d) Perform such other tasks as may be entrusted to it by the Assembly of Heads of State and Government, Secretary- General of the OAU and any other organs of the OAU, or the United Nations.'

7. Summary

The child, having reached the requisite stage of development, becomes a subject who can exercise his or her freedom of religion. While it is self-evident that this freedom is proclaimed in acts of international law of a universal and regional nature, its practical realisation is associated with certain difficulties. This is because the international legislator has made the exercise of the above right conditional on a number of issues.

The above analysis of existing international legal standards on protective human rights and children's rights allows the following conclusions to be drawn:

- The child's freedom of religion is the result of the evolution that the rights of minors have undergone from the late 19th century to the present day.
- The 1959 UN Declaration of the Rights of the Child was a milestone in the legal international protection of children's rights (despite being only a 'declaration')

45 On the subject of this Committee: Sloth-Nielsen, Regional frameworks for safeguarding children: The role of the African Committee of Experts on the Rights and Welfare of the Child. Available at: www.academia.edu/19779279/Regional_frameworks_for_safeguarding_children_The_role_of_the_African_Committee_of_Experts_on_the_ Rights_and_Welfare_of_the_Child?email_work_card=interaction-paper.

and set the standard for shaping the protection of children's rights at national level.

- The 1989 Convention on the Rights of the Child granted the child freedom of religion to the same extent as for an adult.
- The existing guarantees of the child's freedom of religion are formulated both in acts of international law concerning *in genere* "everyone" and therefore, *inter alia*, children, and in acts of international law concerning *in specie* "the child".
- In each of the universal and regional international legal documents analysed, relating to children *in specie and in genere*, freedom of religion is recognised as a fundamental right that also applies to minors.
- A child's freedom of religion, like most entitlements, is not an absolute value and may be subject to limitations in the sphere of externalising it to others.
- The scope of a child's freedom of religion encompasses both the internal aspect, which boils down to holding certain beliefs, and the external aspect, manifested in manifesting them privately or publicly. While the internal sphere of freedom of religion is not subject to restrictions by the legislator, the external manifestations of the exercise of this freedom are regulated in specific ways. This is the case at the level of both universal and regional solutions.
- The protection of the value of a child's freedom of religion should include both guarantees of a formal nature, which should be enshrined in normative acts, as well as encompassing an institutional dimension in the form of the establishment of institutions to uphold one's entitled rights.
- Freedom of religion, in the light of European Court of Human Rights case law, is one of the cornerstones of a pluralistic democratic society. It creates an identity for believers, but is also of value to atheists, agnostics, sceptics and those indifferent to faith.
- The African Charter on the Rights and Welfare of the Child has been recognised as a pioneering and most progressive document compared to other international agreements on children's rights.[46]
- Normative solutions, both universal and regional in scope, generally highlight two spheres of initiatives based on universal values in relation to the child. These are activities that affect both the physical development of the minor and those that contribute to the shaping of his or her personality.

46 Van Bueren, 1995, p. 402.

Bibliography

1. Normative Acts

Commonly applicable

African Charter on the Rights and Welfare of the Child was signed on 24 September 1990 in Addis Ababa (Ethiopia), entered into force on 29 November 1999. Available at: https://au.int/en/treaties/african-charter-rights-and-welfare-child. OAU Doc. CAB/LEG/24.9/49(1990).

African Charter on Human and Peoples' Rights, 26 June 1981. Available at: http://libr.sejm.gov.pl/tek01/txt/inne/1981.html (Accessed: 28 March 2024).

Charter of Fundamental Rights of the European Union (Dz. U. EU. 2007.303.1).

Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, as subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2. (Dz. U. of 1993, No. 61, item 284).

Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989 (Dz. U. of 1991, No. 120, item 526.).

Council of Europe Convention on Action against Trafficking in Human Beings, drawn up in Warsaw on 16 May 2005 (Dz. U. of 2009, No. 20, item 107).

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, drawn up in Lanzarote on 25 October 2007. (Dz. U. of 2015, item 608).

Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Geneva, 12 August 1949 (Dz. U. of 1956, no. 38, item 171).

International Covenant on Civil and Political Rights of 1966 (Dz. U. of 1977, No. 38, item 167).

International Covenant on Economic, Social and Cultural Rights opened for signature in New York on 19 December 1966 (Dz. U. of 1977, No. 38, item 169).

Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Strasbourg on 6 May 1963 (Dz. U. of 1995, No. 36, item 176).

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Dz. U. of 2015, No. 18, item 160).

Other

Declaration on the Rights of the Child adopted by the General Assembly of the League of Nations in 1924 (known as the Geneva Declaration). Available at: https://unicef.pl/content/download/197/file/Deklaracja_Genewska.pdf (Accessed: 28 March 2024).

Declaration on the Rights of the Child. Adopted by the United Nations General Assembly on 20 November 1959. Available at: https://libr.sejm.gov.pl/tek01/txt/onz/1959.html (Accessed: 28 March 2024).

2. Literature

Bielecki, M. (2004) 'Dobro dziecka jako przesłanka korzystania z jego prawa do wolności religijnej', *Studia z Prawa Wyznaniowego*, 2004/7, pp. 233–243.

Dąbrowska, A. (2020) 'Zalety i wady Afrykańskiej Karty Praw i Dobrobytu Dzieci', *Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia*, 67(2), pp. 89–109.

Davidson, S. (1992) *The Inter-American Court of Human Rights*, Aldershot: Dartmouth Publishing Company Ltd.

Explanatory memorandum to the judgment of the Constitutional Tribunal of 7 October 2015 – The Constitutional Tribunal cites, inter alia, the European Court of Human Rights judgment of 13 December 2001. – Église métropolitaine de Bessarabie and Others v Moldova, Application no. 45701/99.

Falola, T. (2001) *Culture and Customs of Africa*. Connecticut: Greenwood Press.

Gołaś-Podolec, M. (2008) 'Porównanie europejskiego i interamerykańskiego systemu ochrony praw człowieka', *Krakowskie Studia Międzynarodowe*, 5(2), pp. 155–181.

Grocholewski Z. (2001) 'Prawa dziecka w międzynarodowych deklaracjach i w nauczaniu Kościoła', *Śląskie Studia Historyczno-Teologiczne*, 2001/34, pp. 47–59.

Jaros, P. (2015) 'Definicja dziecka' in Stadniczeńko, S.L. (ed.), *Konwencja o prawach dziecka. Wybór zagadnień (artykuły i komentarze)*. Warszawa, pp. 51–62.

Kaime, T. (2011) *The Convention on the Rights of the Child: A Cultural Legitimacy Critique*, Groningen: Europa Law Publishing.

Klafkowski, A. (1979) *Prawo międzynarodowe publiczne*. Warszawa: Państwowe Wydawnictwo Naukowe.

Krawczak-Chmielecka, A. (2017) 'O rozwoju praw dziecka w Polsce i na świecie' in *Dziecko Krzywdzone. Teoria, badania, praktyka,* 16(2), pp. 11–23.

Krukowski, J. (2003) 'Ochrona wolności myśli, sumienia i religii dziecka' in *Roczniki Nauk Prawnych*, 13(2), pp. 5–18.

Lloyd, A. (2002) 'A theoretical analysis of the reality 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*, 2(1), pp. 11–32.

Łopatka, A. (2000) *Dziecko – jego prawa człowieka*, Warszawa.

Łopatka, A. (1998) *Międzynarodowe prawo praw człowieka*, Warszawa: Wydawnictwo Sejmowe.

Misztal, H. (2000) 'Gwarancje prawa międzynarodowego i polskiego w zakresie uprawnień rodziców do religijnego wychowania dzieci', *Studia z Prawa Wyznaniowego*, 2000/1, pp. 5–20.

Olowu, D. (2002) 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child', *The International Journal of Children's Rights*, 10(2), pp. 127–136.

Padilla, D.J. (1993) 'The Inter-American Commission on Human Rights of the Organization of American States: A Case Study', *American University International Law Review,* 9(1), pp. 95–115.

Sokołowski, T. (1999) 'Wolność myśli, sumienia i wyznania dziecka' in Smyczyński T. (ed.) *Konwencja o prawach dziecka – analiza i wykładnia,* Poznań: ARS BONI ET AEQUI, pp. 257–272.

Van Bueren, G. (1995) *The International Law on the Rights of the Child,* Dordrecht: Martinus Nijhoff Publishers.

Wojniak, J. (2023) 'Sprawa Mary Ellen Wilson i pierwsze amerykańskie organizacje na rzecz ochrony praw dziecka' in *Biuletyn Historii Wychowania*, 2023/45, pp. 81–96.

| CHAPTER 3 |

Minimum International Standards of Protection Against Abuse and Harmful Religious Practices

Paweł CZUBIK

ABSTRACT

The impact of religion on society is obvious. Also, children, the weakest yet most valuable social links, ensuring the future persistence of social and national communities, are greatly culturally influenced by the religion of their parents or guardians. The right of parents to raise their children in the faith of their ancestors is the basis of modern civilization. On the other hand, some of the world's religions create certain risks to a child's psychological or physical well-being. Practices that are linked more or less formally to religion can directly threaten a child's proper biological development. They can also deprive a child of the proper experience of childhood. Such practices as genital mutilation of girls or forced child marriage characterize the main, though not exclusive, world based on the religion of Islam. The religious origins of these phenomena require deeper analysis. The norms of international law try to introduce a certain standard of child protection, to which this text is also devoted. One may doubt it is sufficient, in view of the scale of the entrenchment of violent tradition in some religious communities.

KEYWORDS

sharia, Quranic norms, political Islam, genital child mutilation, forced child marriage, parental abduction

1. Introduction

The religion in which a child is raised undoubtedly has an impact on his or her cultural well-being. Paradoxically, it can also create risks for their psychological and even physical development. The child's dependence on his or her parents, both spiritually and materially, usually means that he or she will grow up with the world view, including religion that the parents have established. This, naturally, fully determines the young person's attitude to life and way of thinking. The existing system of values is thus passed on to the next generation. In this process, religions create a universal value system. Although the concepts of good and evil appear to be universal (and,

Paweł CZUBIK (2025) 'Minimum International Standards of Protection Against Abuse and Harmful Religious Practices' in Katarzyna ZOMBORY – Márta BENYUSZ (eds.) *Religion and Children's Rights.* Miskolc–Budapest: Central European Academic Publishing. pp. 75–91. https://doi.org/10.71009/2025.kzmb.racr_3

consequently, religions generally recognise them in similar terms), the ritualistic influence of a religion can significantly distort these notions. Religious rules or peri-religious practices can pose risks for the child, including permanent physical damage. Interestingly, these practices are most often related to the sexual sphere, and the ritual influence of religion concerns the intimate spheres of the child's body.[1]

The existing major religions of the world, for all their complexity, are largely introspective. The purpose of religious norms is to shape the beliefs and attitudes of their followers in order to achieve a state desired from the perspective of the religious rules, which will provide him or her with a privileged situation in the next life (after death, in another incarnation, etc.). Religions are generally not interested in non-believers, whose behaviour is normatively indifferent to the religion in question. At most, they are proselytising in character. A fundamental exception in this respect is Islam, which at its core (in both Shia and Sunni versions) is extrospective. The religious norms making up the Mohammedan doctrine[2] are fundamentally concerned with the position of the non-believer and indicate the duties that such a person has towards the believers. Paradoxically, the written norms of Islam refer far more often to the legal position of the unbeliever (*kafir*[3]) than to the situation of the believer. This is because the task of this religion is to order the world by subordinating all people (Islam is Arabic for submission, subordination) to the only correct attitude, according to its principles.[4] In practice, this poses a number of problems in the case of clashes between Islam and Christian religions – clashes that do not occur in the case of conflicting values between other religions.

It is a politically correct myth to claim that the phenomenon identified above applies only to Islamic radicalism in its purest form. Sunni Islam (practised by up to 90% of those who identify with this religion) does not have a separate radical and non-radical version. In it, the relationship between law and religion is absolute.

1 These practices include, for example, religious circumcision in Judaism, which is performed on 8-day-old boys (which does not seem to have a negative impact on their health). In Islamic countries, older boys (between 2 and 14 years of age) are circumcised. Ritual circumcision of girls, however, practised in some of these countries, is a drastic procedure that destroys their future sexual life and results in a huge number of complications and post-operative deaths (Kłak, 2017, pp.140–143).

2 The written norms of the Islamic religion can be found in the Koran (which contains the message of Allah) and the sunna (i.e. the words and deeds of the prophet Muhammad). The sunna consists of two types of writings: the sīrah (biographies of Muhammad – the earliest, by Ibn Ishaq, was written more than 130 years after Muhammad's death, the most famous, by Ibn Hisham, titled *Sirat Rasul Allah* – translated as the life of God's messenger – more than 200 years after his death) and hadith (collections of saying or traditions about Muhammad). The most valued hadith collections are by Sahih al-Bukhari and Sahih Muslim. Cf. Warner, 2010, p. 5; Witkowski, 2009, p. 35; Sadowski, 2017, p. 31.

3 It is worth noting here that the term *kafir* has a strongly pejorative and contemptuous connotations in Islam. As the literature on the subject points out, 51% of the texts (including 64% of the text in the Koran, 37% of the text of hadith and as much as 81% of the sīrah) is devoted to *kafirs* (see footnote below). Cf. Warner, 2010a, p. 121.

4 In this context, Islam views man as a slave, a servant of Allah, obliged to obey. Cf. Gibb, 1965, p. 46.

In Islam, the religious norm is also the legal norm.[5] This is because Islam is a holistic religion – its task is to regulate every human activity,[6] which is a complete unification of the sphere of the sacred and the profane.[7] By all means, states whose citizens are mostly followers of Islam are often characterised by a secular legal order.[8] However, a follower of Islam is obliged to reject secular norms that are contrary to Islam. A version of Islam characterised by a departure from radicalism has essentially no religious basis – it merely implies a greater or lesser liberalism for secular law and a lack of fervent belief in, and acceptance of, Islamic principles. From the point of view of a strong believer, such conduct is regarded as apostasy or heresy.[9]

Even if one were to assume (which is in principle a false assumption) that there are more or less radical versions of Islam, it should be emphasised that contemporary Europe is confronted with the most radical version – or rather, the most radical adherents. As a result of the influence of the 1951 Convention Relating to the Status of Refugees,[10] people from the Levant and the Maghreb (mainly Algeria) have been arriving in Europe, mainly in France, since the 1950s and have been granted refugee status due to religious persecution in their home country. Paradoxically, these people were actually persecuted on religious grounds (which gave them protection under the Convention) because their fundamentalist attitudes were not accepted by the secular authorities in their countries. In this way, Europe "imported" the most radical believers expelled by the Arab states.[11] In addition, in recent years there has been mass economic migration[12] from the most civilisationally backward regions of Islamic countries (such as Afghanistan, the countries of sub-Saharan West Africa,

5 Sadowski, 2017, p.163 et seq.

6 Hence, Sharia as Islamic law is a condensation and extrapolation of the norms contained in the Koran and the sunna. The written source of "everyday Sharia" for the average believer is the book *Reliance of the Traveller*, written in the 14th century and held in high regard by the major religious centres of Islam. Cf. Ibn al Naqib and Keller, 1997, cited in Warner, 2010b, p. 14.

7 Cf. Krawczyk, 2013, p. 95.

8 Although it should be noted that this legal order may be largely based on Sharia norms. Numerous norms of civil law make reference to Islam and the constitutional norm of the superiority of Sharia over secular law is the rule.

9 This explains why most Islamic fundamentalists' attacks are attacks in Islamic countries (which is not usually mentioned in the media) – directed at the secular authorities and the secularising (according to the attacker) community of followers.

10 Under Art. 1(A)(2) of the Convention Relating to the Status of Refugees, adopted in Geneva on 28 July 1951, as modified by the Protocol Relating to the Status of Refugees, adopted in New York on 31 January 1967, persecution for reasons of religion constitutes grounds for according the refugee status under the Convention.

11 Cf. Allam, 2008, *passim*.

12 Contrary to the expectations of Marxist leftist circles, this is not an influx of refugees. These persons are not refugees within the meaning of the instruments of international refugee law. In most cases, they are not fleeing persecution but are heading for Europe to improve their economic situation. The fundamental reason for their mass influx is therefore economic. It should be borne in mind, however, that for Muslims it is also of a religious nature. The financial support paid to them (for nothing, for doing no work) is seen as a *dhimmi* tax, which, according to the Koran, the infidel, recognising his subordination, is obliged to pay to Muslims. Cf. The Koran 9:29.

Somalia, Djibouti). All this brings to Europe people who are socially dysfunctional from the point of view of the principles of European civilisation. They create their own enclaves, which leads to the emergence of phenomena that had previously been completely unknown in the European reality, including pathological threats to the well-being of children growing up in such environments. At the same time, these practices are contrary to the norms of both family and criminal law in European countries. These are, in particular, forced marriages (including child marriages that involve the acceptance of paedophilic acts) and the circumcision of children (girls). It is surprising in the modern world that such cases, previously associated with remote areas of the world steeped in Islamic tradition, have become real threats in Europe today. The law and practice of European countries are compelled to counter such threats to children.

Naturally, the means of combating such phenomena are different in the international sphere and in the sphere of domestic law. The ability of the international community to influence the practice of Islamic states in this regard must be considered meagre, despite some successes.[13] Possible educational efforts aimed at raising awareness of the extent of the harm done to children are rational. The fact is, however, that given the existence of a centuries-old, religiously motivated tradition, it is difficult to imagine the possibility of effectively preventing this type of pathology.[14] However, in the case of European countries with Muslim communities, it seems that national criminal and civil law provisions, which include a public policy clause, make it possible to prevent this type of pathological practice.

This chapter highlights the basic risks for children that arise in practice in the context of customs associated with Islam (characteristic of immigrant Muslim communities that do not integrate into the states in which they reside). At the same time, it outlines the basic international legal instruments, as well as those specific to the domestic law of states, which can be seen as remedies – protective measures against criminal or discriminatory treatment of children based on religious traditions. While article 30 of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989,[15] grants children belonging

13 For example, Egypt's banning of ritual circumcision in 2007 was a purely theoretical success; in practice, the practice is still widespread.

14 Although it is doctrinally disputed that the circumcision of girls is prescribed by Islam, this confuses the genesis of the phenomenon with its religious basis. The fact is that ritual circumcision of both boys and girls has been practiced by the peoples of the Middle East and North Africa since the time of the Pharaohs of ancient Egypt, and the original basis for this was probably the polytheistic beliefs of that period. It is therefore a widespread phenomenon not only among the peoples of the Middle East who profess Islam, but also among the local Christians (e.g. Copts), but while it persists among Christian Copts only as a result of tradition, the norms of Islamic law explicitly recommend circumcision (cf. Sahih al-Bukhari vol. 7, book 72, no. 779). Circumcision as compulsory for both males and females is indicated in the Sharia law manual *Reliance of the Traveller*, chapter "e" para. 4.3 – cf. Warner, 2016, p. 45.

15 Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, UNTS vol. 1577, no. 27531.

to religious and cultural minorities the right to have and enjoy their own culture and to profess and practise their religion, it is clear that the right to the protection of cultural identity, including religion, traditions and customs,[16] cannot lead to the recognition and maintenance of cultural and religious practices that are contrary to universally recognised principles of human rights. There is a full consensus on this point in both the doctrine[17] and practice of international law.[18] It is also clear that not all cultural and religious practices are compatible with the system of human rights protection and, in particular, with norms for the protection of children. In particular, cultural and religious practices that are harmful to the dignity, health and development of the child are unacceptable. There can be no doubt that both forced child marriage and female circumcision are contrary to the best interests of the child and can in no way be justified by traditional rules rooted in religious beliefs.

2. The Position of the Woman and the Child Under Sharia Regulations

The fundamental problem of the legal status of the child under the norms of Islamic law, which create a range of risks, arises indirectly from the legal status of the woman under these norms. In principle, the legal position of a woman under Islamic law is much worse than that of a man, both in civil law[19] and in family law. The social, legal and economic superiority of men is a direct consequence of the message of the Koran.[20] In essence, the traditional rules of Islam lead to the reification of women.[21]

This also implies parental authority over children, which is usually vested primarily in the man. In Islam, a young child generally remains in the care of its mother until the age of 30 months, when it should be weaned, according to the Koran.[22] The child

16 Guaranteed to minorities (to the same extent as in Art. 30 of the Convention on the Rights of the Child) also in Art. 27 of the 1966 International Covenant on Civil and Political Rights, adopted 16 December 1966 by General Assembly resolution 2200A (XXI) UNTS vol. 999, no. 14668.

17 Zombory, 2023a, pp. 294–295.

18 Committee on the Rights of the Child, General Comment No. 11 (2009): Indigenous children and their rights under the Convention; CRC/C/GC/11), para. 22.

19 For example, the value of a woman's testimony in court is worth half that of a man (The Koran 2:282, Sahih al-Bukhari volume 3, book 48, no. 826); the compensation due to a woman is equal to half the compensation that would be due to a man in the same situation (*Reliance of the Traveller*, chapter 'o', thesis 22.1).

20 The Koran 4:35. Cf. Truskolaska, 2007, p. 98.

21 Ibn Ishaq and Guillaume, 1955, p. 651: 'Lay injunctions on women kindly, for they are prisoners with you having no control of their persons.' A man may forbid a woman to leave the house (*Reliance of the Traveller*, chapter "m", thesis 10.4). *Sunan Abi Dawud* (book 5, hadith 2155) formally equates a woman's nuptials with the purchase of a camel. Women who disobey their husbands can be beaten – The Koran 4:43 explicitly encourages the beating of disobedient wives (numerous hadiths and norms of Sharia law regulate the beating of wives).

22 The Koran 46:15.

then becomes fully dependent on the father, who can theoretically remove his wife from the parenting process and take over all responsibility. The father's decisions also determine the choice of his daughter's spouse – the will of the woman in the traditional value system need not be taken into account.[23]

Undoubtedly, a fundamental problem connected with the position of women and children under Islamic norms is that forced marriage and child marriage is *de facto* legalised paedophilia. In this case, the Muslim religion provides a basis for accepting acts that are clearly qualified as paedophilia by the legal system of civilised countries. This is linked to the biography of the Prophet of Islam himself. Muhammad, at the age of 53, took a six-year-old child as his wife and had sexual intercourse with her when she was nine years old.[24] By all means, it can be argued that this deviation should not be shocking given the medieval historical context, but it must be remembered that the figure of the Prophet and his behaviour remain a literal model for many Muslims today.[25] European states must pay particular attention to the possibility of such phenomena occurring among followers of the Prophet who take their religion too literally. While it is difficult to imagine such situations among Muslims from the Maghreb and the Levant who have been living in Europe for many decades and are the third or fourth generation born here, it is not unthinkable in the case of the mass migration from Afghanistan or sub-Saharan Africa that has been ongoing for the past decade. These are often people who had no chance of finding employment in their place of origin, mostly uneducated, but quite radical, with a host of negative life experiences, whose religiosity was shaped in the spirit of a medieval understanding of Islamic doctrine.

23 Under the Sharia legal system, a woman's consent to marriage is expressed by her silence. As a result, in contemporary Afghanistan or Bangladesh, more than half of all girls are married before they reach the age of majority. In practice, religious leaders can directly persuade people to enter into marriage with minors. Khomeini, the Shiite leader of Iran, explicitly urged fathers to make every effort to have their daughters already living in their husband's home before they enter menstrual age. Cf. Spencer, 2014, p. 106.

24 Sahih al-Bukhari, vol. 5, book 58, no. 236 and vol. 7, book 62, no. 88. By all means, it can be argued that there were (political) marriages of minors in medieval Europe, but these involved both sexes, and the consummation of the marriage took place when the minors reached the age of adulthood (the determination of adulthood was based on both biology and age – lower than today). While this is essentially a thing of the past in the Christian world (except, for example, when a minor becomes pregnant, which in many jurisdictions involves consent to marriage and "accelerated adulthood"), such situations are not uncommon in the Islamic world today. In Saudi Arabia, the legal age of marriage is 12, but girls aged 6 or 9 are often married off, and a 10 year old mother is not uncommon. Cf. Gopal, 2006, p. 146 et seq.

25 Moreover, the life of Muhammad (sīrah) is one of the three main sources of Islamic law, determining rules of conduct alongside the Koran and hadith. Given that the first written references to Muhammad did not appear until 130 years after his death, there is no serious historian today who could risk his authority by claiming that we are definitely dealing with a real figure (by contrast, the figure of Jesus was already followed by the Romans during his earthly life and is mentioned in numerous documents). Thus, it cannot be ruled out that the Prophet is a fully fictional figure (a kind of Ali Baba), or a compilation of several local leaders (highwaymen, slave traders). Cf. Alcader, 2010, p. 61.

Sometimes the problems are insoluble. In Polish practice (where the number of immigrants from Muslim countries is rather small, as Poland has not yet been affected by mass migration), there have been situations in which a refugee centre received people who declared themselves to be married[26] – an adult man with a girl of a few years. If the girl spoke only a dialect of one of the Middle Eastern languages that only her "husband" knew, a dilemma had to be resolved: whether to leave the child in the company of her "husband", in fact the only guardian in Poland known to the child (running the risk of paedophilic incidents), or to separate the 'spouses', exposing the girl to additional trauma by placing her in the company of unknown women with the same communication problems. In Western European countries, this type of situation is practically commonplace.[27]

3. International Instruments for the Protection of Minors

Unfortunately, the interest of the international community in the above-mentioned threats to the well-being of minors has not resulted in the adoption of universally applicable sources of international law that would explicitly regulate the issue in the context of religion. Among the international legal instruments that consider the problem of forced marriage (including child marriage) and female circumcision is the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, adopted on 11 May 2001 in Istanbul (hereinafter: the Istanbul Convention). However, its scope is very limited and it should be noted that it creates legal obligations for State Parties to take measures to criminalise forced marriage (including child marriage)[28] and female circumcision.[29] In practice, the implementation of these obligations varies, with some State Parties still not having

26 Naturally, such a union cannot be recognised as marriage. It is a rule of private international law to apply the public policy clause in such situations – this will be discussed further, in point 4 of this text.

27 Among the marriages of Syrian migrants, half were to women under the age of 18. In Norway, 60 married minors applied for asylum in 2015, with the youngest married girls being 11 years old. The situation is similar in Denmark, where cases like the one described in the text above and the problem of separating a child from her husband who is also her guardian have been recorded. Cf. Półtorak, 2017, p. 115.

28 According to Art. 37 of the Istanbul Convention: 'Forced marriage: 1. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised. 2. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.'.

29 Art. 38 of the Istanbul Convention provides: 'Female genital mutilation: Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised: a excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris; b coercing or procuring a woman to undergo any of the acts listed in point a; c inciting, coercing or procuring a girl to undergo any of the acts listed in point a.'.

introduced changes in this area[30] – the fundamental problem of the Convention being that it criminalises these offences in the laws of State Parties, while they are predominantly committed in the territory of states not bound by its provisions.[31]

Despite the above-mentioned advantages of the Istanbul Convention, it is noteworthy that it is part of the fight against modern civilisation, which is based on the division of social roles by redefining traditional gender roles. The letter of the Convention refers to the need to 'uproot traditions and customs' and thus comes into conflict with the nature of the state as the guarantor of the continuity of a nation, its history and traditions. It thus creates a clear conflict with the existing law and practice of states. A state that "uproots" traditions and customs, instead of gradually changing or modifying them when they are, for whatever reason, without value, is committing cultural suicide – with, in most cases, deplorable consequences – because action begets reaction.[32] A state concerned with its development should therefore avoid adopting an instrument which directly and openly damages tradition and custom, even if, as in the case of the Istanbul Convention, it does not conceal such aims. Moreover, hasty adoption of the Convention may be directly counterproductive.[33]

Returning to treaty solutions concerning the prohibition of child marriage, it should be noted that the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979,[34] and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, opened for signature in New York on 10 December 1962,[35]

30 For example, in Polish law, the introduction of the crime of ritual circumcision (defined as 'excision, infibulation or other permanent and substantial mutilation of the female genital organ') into Art. 156 of the Criminal Code did not occur until 2023 (although Poland has been a party to the Istanbul Convention since 2015). The crime is punishable by imprisonment from 3 to 20 years.

31 Unfortunately, these crimes are also carried out today in Muslim communities in Europe, and a common case is that girls are taken to their ancestral country for ritual circumcision.

32 This was the case, for example, in Iran in 1979. The Shah's fight against tradition led to the flourishing of religious fundamentalism in society, which was many times more radical than the Shia traditions cultivated in the period before the liberal policy of eradicating religion.

33 This is best illustrated by the case of Turkey, which finally denounced the Convention in 2021. (Turkish practice in applying the Convention also shows that the Convention will not be accepted in conservative Islamic societies). Poland adopted the Convention in 2015, and efforts to denounce it began in 2020. The Prime Minister's request to the Constitutional Tribunal in 2020 to examine the compatibility of the Istanbul Convention with the provisions of the Polish Constitution was withdrawn in January 2024. However, a number of countries in the Central European region are not parties to the Istanbul Convention: Hungary, Slovakia, the Czech Republic, Lithuania, Latvia, Bulgaria and Ukraine.

34 According to Art. 16(2) of this Convention: 'The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory'.

35 Art. 2 of this Convention reads: 'States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.'

also contain provisions on the invalidity of child marriage. However, these only deal with the civil law aspects of marriage (lack of legal effects, minimum age) and, unlike the Istanbul Convention, do not introduce an obligation to criminalise these phenomena.

However, it is possible that forced marriages of minors, if they involve the sexual exploitation of a child, could be considered subject to mandatory criminalisation at the level of national law, if only on the basis of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, signed in Lanzarote on 25 October 2007. As mentioned above, Sharia law allows child marriage (following the example of Mohammed), but does not allow sexual intercourse until the girl has reached sexual maturity – such intercourse will therefore in most cases constitute paedophilia according to the legal systems of civilised countries.

The issue of ritual circumcision has been of interest to European Union bodies[36] and concern for the victims of circumcision is reflected in at least several EU directives.[37] The Council of Europe[38] and the United Nations[39] have also shown a growing interest in the need to combat this drastic practice. Certainly, increasing knowledge about this phenomenon, the risk of death, the lifelong suffering and trauma caused by it can have an impact on reducing the number of such cases. However, the scale of the phenomenon in the world is so huge that the impact of these initiatives is likely to be minimal. Despite the efforts of the international community, many more generations of girls from Africa and Asia will meet this painful fate for religious reasons. The United Nations' assumptions that the practices of forced marriage and female circumcision will be eradicated by 2030 appears to be a form of wishful thinking.[40]

36 Cf. European Parliament resolution of 7 February 2018 on Zero Tolerance for Female Genital Mutilation (FGM) (2017/2936(RSP)).

37 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (*OJ L 315, 14.11.2012, p. 57–73);* Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (*OJ L 180, 29.6.2013, p. 96–116);* Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) *(OJ L 337, 20.12.2011, p. 9–26).*

38 Declaration (13/09/2017) of the Committee of Ministers on the need to intensify the efforts to prevent and combat female genital mutilation and forced marriage in Europe, adopted by the Committee of Ministers on 13 September 2017 at the 1293rd meeting of the Ministers' Deputies.

39 UN General Assembly resolution of 20 December 2012 on 'Intensifying global efforts for the elimination of female genital mutilations' (A/RES/67/146).

40 Let the example of Sheikh Tantawi (d. 2010), Grand Mufti of Egypt, Grand Imam of Al-Azhar University in Egypt, an unquestioned authority for a billion Sunnis, indicate how unrealistic this is. He claimed that circumcision was 'a laudable practice that did honor to women' (Abdo, 2002, p. 59). Cf. Spencer, 2014. p. 116. Although it is commendable that Tantawi, probably influenced by Egypt's criminalisation policy (since 2007), considered circumcision to be a religiously indifferent issue and did not allow his own daughter to be circumcised.

4. The Public Policy Clause in International Instruments and National Law as a Means of Protecting Minors

Possible discriminatory violations of children's rights may also occur in civil law. Civil law norms may have a religious basis. In the case of Islam, this is the rule – many verses of the Koran (and a number of hadith) contain norms that have an impact on civil law (mainly inheritance law, family law and contract law). By definition, the essence of Islam is the subordination of man to God, but also the ordering of different categories of persons through the subordination of one to the other. The aforementioned fundamental subordination of women to men results in different rights in the area of civil law. This also applies to the rights of female children. From the perspective of the law of European states, the impact of those norms of Sharia law that introduce a gender differentiation of children is relevant. This is particularly so in the case of inheritance law.

According to the rules of the Koran, a woman should receive half the value of the inheritance received by the male heir.[41] Such norms actually limit women's (including girls') legal capacity to inherit.[42] In addition, in legal orders based on Islam, the performance of legal acts by women is limited (limitation of legal capacity) if they act without a male guardian.[43] Given that in the legal orders of most countries the restriction or (until a certain age) absence of legal capacity is a common mechanism of protecting children from making dispositions that are disadvantageous to them, the application of Sharia solutions that are discriminatory towards women to children is not justified.

The jurisprudence of the EU states seems to be drifting towards a greater acceptance of foreign law, or even the functioning of parallel legal spaces within one state[44] – and, interestingly, not only where this entails a more liberal view of reality. A sense of colonial guilt (more or less justified in Western European societies) contributes to the acceptance of solutions based on Islamic law that are far removed from any sense of justice.[45] For the time being, however, such discriminatory (and therefore illegal) effects of possible foreign laws in the legal order of a state are eliminated through the application of

41 The Koran 4:11.

42 Regardless of this, it is worth emphasising that the rules of inheritance based on Sharia are quite complicated (they differ in the case of Sunnis and Shiites) and most of them can actually be covered by the public order policy in the case of effecting on the territory of a culturally different state. Cf. Witkowski, 2009, pp. 184–196.

43 Cf. Kamarad, 2017, p. 97. The guardian is necessary for the conclusion of marriage. If a woman marries on her own and without the permission of her guardian, her marriage is invalid ("ashes and nothing" – Masabih, book 27 hadith 40) and she commits adultery punishable by death (Sahih Muslim, book 17, hadith 4206).

44 For an exemplary overview of theoretical concepts in the pluralist approach to law, cf. Olson, 2017, pp. 233–254.

45 Cf. Liska, 2017, pp. 126–128.

so-called public policy clauses.[46] Instead of applying the law that would be applicable to the case if it were not contrary to public policy, the court applies its own law.

It should also be noted that, in today's European legal area, the applicability of foreign succession law is most often the result of the European conflict-of-law rules contained in articles 20-22 of the European Succession Regulation No. 650/2012.[47] The applicability of foreign succession law to the succession of a European citizen in proceedings before the European courts may result from his habitual residence in a foreign state at the time of death (Article 21 of Regulation 650/2012) or from his choice of foreign law (Article 22 – if he possesses the nationality of the foreign state in question). If the application or choice of a foreign law results in a legal order that violates the public policy standards of the country where the court is carrying out succession proceedings, it is natural to invoke the public policy clause and for that court to apply its own law and not a foreign law.[48] In this regard, it should be noted that Regulation 650/2012 has its own provision containing a public policy clause[49] (thus, formally, the above-mentioned public policy provisions of the laws of the member states do not apply to succession proceedings conducted in European Union countries bound by the Regulation).[50] The public policy clause of Regulation 650/2012 may eliminate the application of the succession rules of Islamic law.

46 For example, in Polish law, the public policy clause is contained in Art. 7 of the Private International Law Act (Act of 4 February 2011 – Private International Law, consolidated text Journal of Laws of 2023, item 503): 'Foreign law shall not apply, should the effects of its application be contrary to the fundamental principles of the legal system of the Republic of Poland.' (There is also a similar provision in civil procedural law). Many European and Latin American countries provide for very similar solutions. Sometimes the scope of conflict with foreign law is more clearly defined in these provisions – e.g. in Latvian law: 'The law of a foreign state is not applicable in Latvia if it is in conflict with the social or moral ideals of Latvia, or mandatory or prohibitory norms of Latvian law' (Art. 24 of the Civil Code of Latvia, Valdības Vēstnesis vol. 41 of 20.02.1937, as amended).

47 Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (*OJ L 201, 27.7.2012, p. 107–134).*

48 Theoretically, the application of foreign norms may lead to discrimination on the grounds of age (exclusion from inheritance or limitation of inheritance in the case of children who do not inherit if the male spouse is still alive), gender (limitations on women's inheritance), religion (exclusion of apostates who have abandoned Islam for another religion or atheists), or children born out of wedlock. There may also be a gross imbalance in the shares received by the spouse and descendants in the succession process. Limitation or exclusion of testamentary succession, which is contrary to Roman law, can also be seen. Some of these problems are reflected in the inheritance rules of Islamic law, which, as mentioned above, are quite complicated (for example, according to the inheritance rules of Islamic law, only one third of an estate can be disposed of by will, and it is impossible to appoint an heir by will who is entitled to inherit by operation of law) – cf. Witkowski, 2009, p. 194.

49 Art. 35 of Regulation 650/2012 states: 'Public policy (*ordre public*): The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.'

50 Regulation 650/2012 is not binding on Denmark and Ireland.

5. Problems of Parental Abduction in Interreligious Marriages

Children are particularly at risk in intercultural and interfaith marriages where there are significant differences in the values and religious traditions of the parents. The mutual infatuation, which is partly due to the different customs and beliefs of the partner, fades over time and is often replaced by the radicalisation of one's religious views – essentially a desire to exert exclusive influence on the children of the couple. This is particularly the case in mixed marriages where one of the spouses (usually the man) is an adherent of Islam.[51] Although divorce is not forbidden in Islam (it is in fact easy to obtain,[52] which can be connected with the refusal to recognise divorce judgements from countries where Islam permeates the legal space of family law[53]), the need to share property or custody of children with a woman, as a result of a secular court ruling, is often seen by the Muslim spouse as contrary to Islam and an affront to his dignity as a believer. This often triggers "honourable" reactions, including attempts to remove the ex-wife from the process of bringing up the children, e.g. through their abduction and deportation to the Muslim husband's country of origin.

When a marital relationship breaks down, the spouses may undertake illegal actions leading to parental abduction of children. In addition to the above-mentioned behaviour of Muslim fathers, it sometimes happens that the non-Islamic wife, feeling threatened or anticipating the abduction of the child to a Muslim country, takes the child abroad herself (usually to another EU country) in order to interrupt or impede contact with the child's father. This type of parental abduction is covered by the Convention on the Civil Aspects of International Child Abduction, signed in The Hague on 25 October 1980.[54] Although the mechanisms of the Hague Convention, as

51 In principle, this is only the case if the Muslim is a man. This is because Islam approves of such marriages, provided that the children are brought up in the Muslim faith. A woman brought up in the Muslim religion cannot marry a non-Muslim. Such a situation is also impossible under the secular legal systems of the many countries where Islam is the dominant religion. The influence of Sharia on secular law is clearly visible in this case.

52 The acceptance of divorce in Koranic law is also due to the attitude of Muhammad himself (who, incidentally, was the only follower of Islam to have special permission from Allah to have more than four wives – he had eleven wives, excluding slave concubines – cf. Bielawski, 1973, p. 25). Muhammad increased the number of his wives by taking over the wives of murdered enemies (cf. Sahih Bukhari, vol. 3, book 46, no. 717), as well as by "gifts" from co-religionists (when the Prophet took a liking to a co-religionist's wife, that man would get a divorce and the Prophet would marry a formally free woman – cf. The Koran 33:36–40.

53 There is a particular problem with *talaq* divorces (the divorce becomes effective when the husband has uttered the word *talaq* to his wife three times; it can also be sent by SMS). Thus, divorce is possible on the declaration of one of the parties (of a particular gender) without considering the will of the other, and the permanence of the marriage is compromised. A public policy clause should eliminate such a solution, which is similar to rulings from Islamic countries where child custody is determined by the courts only in favour of the father.

54 UN Treaty Series, vol. 1343, No. 22514.

set out in its Article 12, provide for an order for the immediate return of the child[55] (who has not reached the age of 16) to the State Party from which he or she has been wrongfully removed, the court should also take into account factors related to the personal situation of the child. Under Article 13, however, a judicial or administrative authority of the requested State is not obliged to order the return of the child if the person, institution or organisation opposing the child's return demonstrates that there is a grave risk that the return of the child would expose him or her to physical or psychological harm or would otherwise place the child in an intolerable situation. It also follows from the same provision that a judicial or administrative authority may refuse to order the return of the child if it finds that the child is opposed to being returned and has reached an age and degree of maturity at which it is appropriate to take his or her views into account. It should be noted in this regard that, for the countries of the European Union, the provisions of the Hague Convention should be interpreted in accordance with the modifications resulting from the European regulations.[56] The relevant provisions of the regulations refer to the need (and not merely the possibility) to hear the child when he or she is mature enough to express such an opinion.[57] In addition, under Article 20 of the Hague Convention, the return of the child may be refused in accordance with the provisions of Article 12 if the return would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms. These provisions may be particularly relevant in the case of a child from a culturally mixed family where the child's mother is threatened with violence by the father seeking the child's return. It should be noted that in modern Hague Convention jurisprudence, the application of the above-mentioned rules – preventing the return of the child – is increasingly common.[58] This evolution is undoubtedly taking place in the context of social changes

55 The Hague Convention's solutions uphold a policy of zero tolerance of parental abduction and, as such, can sometimes be difficult to reconcile with the standards of other international legal instruments that emphasise the need to be guided by the best interests of the child. Cf. Zombory, 2023b, pp. 226–227.

56 There are two sets of rules that come into play in contemporary cases (as a result of the application of the Hague Convention to the abduction of children under the age of 16): the new Brussels II Regulation (No. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, *OJ L 338, 23.12.2003, pp. 1–29*), which applies to judgments rendered in proceedings commenced before 1 August 2022, while the Brussels II ter Regulation (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), *OJ L 178, 2.7.2019, p. 1–115)* applies to proceedings after that date, pursuant *to Art. 100 of the latter Regulation.*

57 In accordance with Art. 11(2) of the new Brussels II Regulation and Art. 21 of the Brussels II ter Regulation.

58 Cf. Order of the Supreme Court of the Republic of Poland of 15 December 2021, I NSNc 277/21. Cf. also Order of the Supreme Court of the Republic of Poland of 8 September 2022, II CSKP 1298/22.

in Europe,[59] including those connected with the different religion of immigrants. Judicial assessment in such cases is very difficult, since fundamental religious and cultural differences between the parents lead to great difficulty in establishing the child's own religious identity,[60] and a court decision blocking or ordering the return of the child in practice often determines the establishment of such a basis (although it should be noted that court decisions under the Hague Convention, according to its Article 19, do not prejudge custodial rights).

6. Conclusions

One issue not covered in this chapter is forced labour (including child labour). Although it is the subject of numerous conventions adopted under the auspices of the International Labour Organisation,[61] in practice it remains one of the problems of modern civilisation, affecting in particular Buddhist and Hindu areas of South-East Asia as well as Islamic areas of Africa and Asia. However, it would appear that the harm caused to children by these practices has less to do with religion and more to do with poverty.[62] It is worth noting that, in the case of this phenomenon, developed countries reward the fact of adopting relevant conventions and eliminating child labour at the level of national legislation with commercial measures, such as preferential tariffs (under, for example, the Generalised System of Preferences,[63] whose

59 Cf. Beaumont et al., 2015, pp. 43–45; cf. also the ECtHR judgment of 21 May 2019, *O.C.I. and Others v. Romania*, para. 35; cf. also the ECtHR Grand Chamber judgments of 6 July 2010, *Neulinger and Shuruk v. Switzerland*, para. 139; 26 November 2013, *X. v. Latvia,* paras. 106–108.

60 Kuźnicka, 2016, p. 181.

61 Cf., for example, the 1930 International Labour Organisation Convention (No. 29) concerning Forced or Compulsory Labour and the 1957 Convention (No. 105) concerning the Abolition of Forced Labour.

62 It is worth mentioning that one of the most dangerous occupations is the participation of underage boys as jockeys in camel races, which is one of the favourite pastimes in the wealthy Arab countries of the Persian Gulf (although the use of minors as jockeys is theoretically forbidden in many of these countries). The treatment of workers (including children), mainly from poor foreign countries (Philippines, India), as slaves is unfortunately in accordance with the letter of hadith and Islamic tradition. It should be pointed out that Islam, which traditionally celebrates human inequality (the superiority of Muslims), was for centuries based on slavery (cf. Mez, 1981, pp. 168–178), which, for example, was officially abolished in Saudi Arabia only in 1962 (cf. Pagés, 2020, p. 293).

63 See European resolutions – Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (*OJ L 303, 31.10.2012, pp. 1–82*). The European Union's GSP mechanism provides in Art. 9 of the above-mentioned regulation for the so-called incentive arrangements, which can be used by developing countries if they have ratified certain UN and ILO conventions on respect for fundamental human and labour rights and on the environment and principles of good governance. The treaties include those addressing child labour: the ILO Convention (No. 138) Concerning Minimum Age for Admission to Employment of 1973 and the ILO Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999. Cf. also the solutions of The U.S. Generalized System of Preferences (Title V of the Trade Act of 1974, 19 U.S.C. §§ 2461 – 2467).

use is allowed under the rules of the legal system of the World Trade Organisation or under the preferences provided for in free[64] or preferential trade).[65]

It may be worthwhile to learn from the experiences with child labour to promote the protection of children from the above-mentioned forms of religiously motivated violence in an economically analogous way (leaving aside the effectiveness of the above-mentioned trade mechanisms in the case of the rich Islamic states of the Gulf region, which base their economic prosperity on oil extraction). Compliance with possible minimum standards of national law could be encouraged. The Istanbul Convention, on the other hand, is definitely not suitable for this purpose, as it is an ideological instrument, created on the basis of a left-wing ideology that aims to redefine the social position of the sexes, and also creates a non-transparent expert body (GREVIO) with a significant influence on the actions of the State Parties. Neither this objective nor the structure of the Istanbul Convention will meet with the approval of Islamic states whose legislation is traditional or directly based on the Sharia. Therefore, if the international community decides to promote changes in domestic criminal law, it should define these standards in the content of an international treaty that is open to adoption – based on conservative values (and thus acceptable to states in the Middle East region). *De lege ferenda*, it is worth considering the adoption of such a treaty.[66]

64 The basis for the creation of free trade areas as an exception to the MFN clause is Art. XXIV of the General Agreement on Tariffs and Trade (GATT).

65 Preferential trade arrangements with developing countries (constituting, e.g., a unilateral free trade area) are the result of the modification of GATT Art. XXIV, mentioned in the footnote above, by the provisions of the so-called Enabling Clause (*Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries. Decision of 28 November 1979*, GATT/L/4903, GATT/BISD 1980, vol. 26, pp. 203–205).

66 It is worth noting that a draft of such a treaty – the Convention on the Rights of the Family – was drawn up in 2018 by the Warsaw-based Ordo Iuris Institute for Legal Culture. It is based on constitutional values also contained in the constitutional rules of Islamic states (cf. https://ordoiuris.pl/sites/default/files/inline-files/Konwencja_o_Prawach_Rodziny_z_komentarzami_PL_1.pdf). This Convention is a reasonable alternative to the Istanbul Convention – without reproducing its mistakes and leftist ideological message. The Convention on the Rights of the Family also addresses the issue of forced marriage and ritual circumcision. Art. 12 of the draft states: '1. No one can be forced to marry. 2. Forced marriages are invalid.' On the other hand, according to Art. 37 of the draft: '1. The States Parties shall ensure that perpetrators of violence are subject to criminal liability applying effective, proportionate and dissuasive sanctions for the following intentional conduct: 1) seriously impairing a person's psychological integrity through coercion or threats, 2) repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, 3) committing acts of physical violence against another person, 4) engaging in non-consensual acts of a sexual nature with another person, 5) causing another person to engage in non-consensual acts of a sexual nature with a third person, 6) approving sexual violence, 7) forcing an adult or a child to enter into a marriage, 8) luring an adult or a child to the territory of a State Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage, 9) coercing or procuring a woman to undergo circumcision, infibulation or performance any other mutilation to the whole or any part of her labia majora, labia minora or clitoris as well as inciting, coercing or procuring a girl to undergo any of the said acts, 10) performing a forced abortion on a woman as well as performing an illegal abortion with her consent and 11) performing surgery on a woman which has the purpose of terminating her capacity to naturally reproduce without her prior and informed consent or understanding of the procedure'.

Bibliography

Abdo, G. (2002) *No God but God: Egypt and the Triumph of Islam*. New York: Oxford University Press.

Alcader, J. (2010) *Prawdziwe oblicze Islamu*. Komorów: Wydawnictwo Antyk Marcin Dybowski.

Allam, M. (2008) *Kamikadze made in Europe. Czy Zachodowi uda się pokonać islamskich terrorystów?* Warszawa: Universitas.

Beaumont, P., Trimmings, K., Walker, L., Holliday, J. (2015) 'Child Abduction: Recent Jurisprudence of the European Court of Human Rights', *International and Comparative Law Quarterly*, 64(1).

Bielawski, J. (1973) *Islam, religia państwa i prawa.* Warszawa: Wiedza Powszechna.

Gibb, H.A.R. (1965) *Mahometanizm*. Warszawa: Państwowe Wydawnictwo Naukowe.

Gopal, J. (2006) *Podszepty Gabriela. Islam. Bilans krytyczno-historyczny*. Zgorzelec: Ahriman-International.

Ibn al-Naqib, Keller, N. (trans.) (1997) *Reliance of the Traveller.* Maryland: Armana Publications.

Ibn Ishaq, Guillame, A. (trans.) (1955) *The Life of Muhammad*. Lahore: Oxford University Press.

Kamarad, E. (2017) 'Klauzula porządku publicznego w odniesieniu do stosowania prawa krajów islamskich jako prawa obcego' in Czubik, P., Magoń, K. (eds.) *Islam w międzynarodowej i krajowej przestrzeni prawnej*. Cracow: Stowarzyszenie Ryza, pp. 95–104.

Kłak, Cz.P. (2017) 'Penalizacja obrzezania rytualnego kobiet. Propozycja zmian w polskim prawie karnym' in Czubik, P., Magoń, K. (eds.) *Islam w międzynarodowej i krajowej przestrzeni prawnej*. Cracow: Stowarzyszenie Ryza, pp. 140–154.

Krawczyk, R. (2013) *Islam jako system społeczno-gospodarczy*. Warszawa: Oficyna Wydawnicza Uczelni Łazarskiego.

Kuźnicka, D. (2016) 'Prawo do tożsamości jako prawo dziecka – wybrane zagadnienia', *Folia Iuridica Universitatis Wratislaviensis*, 5(2), pp. 181-198.

Liska, I. (2017) 'Conflict of Values in a Global Space, in the Background of Different View of Natural Law', *Baku State University Law Review*, 2017/3.

Mez, A. (1981) *Renesans islamu*. Warszawa: Państwowy Instytut Wydawniczy.

Olson, G. (2017) 'Arguments for Cultural Approaches to Law',*German Law Journal*, 2017/18.

Pagés, A. G. (2020) *Prawdziwe oblicze islamu*. Cracow: Wydawnictwo AA.

Półtorak, M. (2017) 'Ochrona przed wczesnymi i wymuszonymi małżeństwami w prawie międzynarodowym i unijnym a prawo szariatu' in Czubik, P., Magoń, K. (eds.) *Islam w międzynarodowej i krajowej przestrzeni prawnej*. Cracow: Stowarzyszenie Ryza, pp. 453–464.

Sadowski, M. (2017) *Islam. Religia i prawo*. Warszawa: Wolters Kluwer.

Spencer, R. (2014) *Niepoprawny politycznie przewodnik po islamie i krucjatach*. Warszawa: Fronda.

Truskolaska, J. (2007) 'Rodzina w islamie', *Roczniki Nauk Społecznych*, 35(2).

Warner, B. (2009) *The Hadith: The Sunna of Mohammed,* [no place of publication indicated]: Center for the Study of Political Islam.

Warner, B. (2010a) *A Two-Hour Koran*, [no place of publication indicated]: Center for the Study of Political Islam.

Warner, B. (2010b) *Sharia Law for Non-Muslims*, [no place of publication indicated]: Center for the Study of Political Islam.

Warner, B. (2016) *The Islamic Doctrine on Women,* [no place of publication indicated]:Center for the Study of Political Islam.

Witkowski, S.W. (2009) *Wprowadzenie do prawa muzułmańskiego.* Warszawa: Wydawnictwo Naukowe Scholar.

Zombory, K. (2023a) *Prawnomiędzynarodowa ochrona praw kulturalnych mniejszości narodowych – wybrane zagadnienia*. Warszawa: Wydawnictwo Instytutu Wymiaru Sprawiedliwości.

Zombory, K. (2023b) 'Protecting the child's best interest in international parental abduction of children: mediation in the 1980 Hague Convention cases', *Prawo w działaniu*, 2023/54. Available at: https://doi.org/10.32041/pwd.5408.

Part II
Children's Religious Rights in Different Contexts

| CAPTER 4 |

Parents–Children Relationship Related to Religious Freedom and the Concept of Parental Direction Consistent With Child Evolving Capacities

Vanja-Ivan SAVIĆ

ABSTRACT

In this article, the author analyses and elaborates parent–child relationship in relation to religious freedom by examining international legal documents (conventional law), which regulate interactions in the most important social structure of society—family. The author explains the international conventional framework, which deals with the rights of children and parents, with particular emphasises on the European Court of Human Rights and Article 9 of the European Convention on Human Rights ECHR. The author explains that secularisation of contemporary society seeks to limit religious presence in the public domain to the extent possible, including religious education of children, which again, is parental prerogative. It primarily focuses on religious education in public schools. Meanwhile, there is a constant need to invent mechanisms that protect children from unwanted and harmful influences, regardless of whether they are internal (from the family) or external (from the society) and therefore emphasises the role of the committee that oversees the implementation of the Convention on the Rights of the Child. However, the recommendations of the committee are more observational and do not provide concrete guidelines or solutions as to how specific requests have to be implemented, if given. The article provides some suggestions that would place the right of the child to religious belief in balance with other potential rights of a child that exist in other legal areas.

KEYWORDS

Children, Parents, Religious Freedom, Parental Direction, Religious Education, Children Evolving Capacities, Europe

1. Introduction

Religion remains an important social phenomenon, even in the evolving secular landscape, where there is a tendency to restrain religious life as much as possible to the private sphere. Nevertheless, in certain parts of the world, particularly Europe, where religion extends to various aspects of public life, numerous questions have been raised.

Vanja-Ivan SAVIĆ (2025) 'Parents–Children Relationship Related to Religious Freedom and the Concept of Parental Direction Consistent With Child Evolving Capacities' in Katarzyna ZOMBORY – Márta BENYUSZ (eds.) *Religion and Children's Rights.* Miskolc–Budapest: Central European Academic Publishing. pp. 95–110. https://doi.org/10.71009/2025.kzmb.racr_4

Various international treaties, together with local laws and constitutions, in particular, regulate the religious lives of citizens. This article paper focuses on a specific group of citizens: minors or those who are (still) under parental supervision and guidance. It is reasonably clear that adults are free to choose their religious beliefs and practices; even in the most secular world there is at least formal consensus that freedom of religion (and freedom from religion) is part of the core of human rights, which guarantees freedom of choice according to personal sentiment and choice that is connected with their freedom of conscience. While there is clarity regarding the religious freedom of individuals who are by local law treated as adults, religious freedom of children is not well-defined and elaborated. This can be attributed to children still being considered a part of nuclear families where parents are responsible for their general and religious education (if they follow one). In this sense, the family is considered a bearer of religious identity, and parents (both mother and father) are free to educate their children according to their beliefs and practices. Simultaneously, we are aware that the state assumes a regulatory position when children interfere with public space, and especially when they have to be protected, where parents are held guarantors for the well-being of their children. However, it is unclear as to what happens when family creeds contradict public order and public morals of the state, and the family is disrupted, with parental beliefs contradicting that of their children? The State enters the field of religious life in various ways; France[1] forbids religious symbols in the public sphere, while in Italy,[2] the state insists on placing a crucifix in the classroom. Nevertheless, there is no clarity as to how much penetration into family life should be allowed for the state with regard to religious education of children and especially parent–child relationships.[3] Conventional law and local laws occasionally collide and there are also different approaches across Europe. The European Court of Human Rights is disinclined to enter this field exceedingly, but when it does, it uses the margin of appreciation doctrine that allows it to consider specific characteristics of each state—cultural, historical and legal—in order to bring different conclusions within the same framework of decision making. This means that in this field, homogenous solutions do not exist, and only firm ground for all states are minimal standards set up by international treaties and conventions. This area of law is nevertheless, lightly said, vague.

2. International Conventional Framework

This paper focuses on international documents and solutions that shape common standards, albeit through the prism of family life as a core social phenomenon of society and with respect for parent–child relationship, which as a matter of fact, is the most important social structure, even today.

1 *S.A.S. v. France*, Application. No. 43835/11 ,filed 10 July 2012.
2 *Lautsi v. Italy*, Application No. 30814/06, 18 March 2011.
3 See more in: Savić, 2015.

The European Convention on Human Rights guarantees freedom of religion in Article 9,[4] and it is the most important legal source concerning freedom of religion, thought and conscience. Additionally, the Convention and its narrative are addressed to citizens, but does not specify which citizens it is concerned about. For a complete understanding, it is imperative to consider national legislation of member–states, which differently define the personal status of its citizens and the relationship between parents and children through agency and representation. However, apart from the Convention, which is the major document outlining the framework for freedom of religious life, other documents and conventions that fall under the scope of freedom of religion are relevant Protocols to European Convention on Human Rights (ECHR (1952)), Universal Declaration on Human Rights (1948), International Covenant on Civil and Political Rights (1966), Declaration on the Elimination of All Forms on Intolerance and of Discrimination Based on Religion or Belief (1981), Convention on the Rights of the Child (1989) and EU Charter on Fundamental Rights (2012).

This has to be observed through the Convention on the rights of the Child from 1989,[5] in which children possess the right to follow religion autonomously, without considering that minors are members of the family and that in reality it is not possible to extract themselves from the religious life of the family.[6] Although the right of the child to have religious faith is welcoming and necessary, extensive interpretations could lead to jeopardising other conflicting conventional rights that exist with regards to parent–child relationship. The preparatory works of the Convention could examine this incongruity to prevent ambiguity surrounding the interpretation as to which rights concern children and which belong to the child's family or parents.[7] This contradicts, for instance, the Universal Declaration of Human Rights, which explicitly states that parents have prior right in respect to education for their children,[8] which includes religious education that exists in most European countries with the exception of Slovenia and Albania and to some extent the French Republic.[9] Furthermore, the First Protocol to the European Convention on Human Rights clearly states that

4 '1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others'. Available at: https://www.echr.coe.int/documents/d/echr/fs_freedom_religion_eng (Accessed: 19 September 2023).

5 Convention available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child, (Accessed: 29 May 2024).

6 Radina, 2018, p. 3.

7 Ibid.

8 Universal Declaration of Human Rights, Art. 23, para. 3.: 'Parents have a prior right to choose the kind of education that shall be given to their children.' Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights (Accessed: 20 September 2023).

9 Savić, 2021, p. 140.

the right of education belongs to parents in accordance with their religious and philosophical beliefs.[10]

> 'No person shall be denied the right to education, which is in practice a right to access to such education as the State has undertaken to provide, and as regulated by that State. Regulations may, for example, make education compulsory up to a certain age, permit (or ban) home schooling, and allow schools to exclude unruly pupils. The article does not require any particular system of education; even less does it require access to a particular school. It is neutral as between public and private education and has been interpreted to guarantee freedom to establish private schools.
> Education that is provided, whether public or private, must respect parents' religious and philosophical convictions. But so long as the curriculum and tuition are objective and pluralistic, the fact that it may conflict with some parents' convictions is not a breach'.[11]

Furthermore, the European Union (EU) Charter on Fundamental Rights states that the rights of the child are connected with their parents' rights to educate children according to their religious, philosophical and pedagogical beliefs,[12] which, in the context of parent–child relationship, focuses on the choice of parents and not child. It does not, however, mean that children do not have rights, but according to conventional law, bearers of the right for the child are his/her parents. It is reasonable to understand that children will be included into the process of deciding when they reach a specific age, but in any case, children must not be victimised or oppressed in any ways because his/her parents want to practice their faith. The safety and well-being of the child comes first, as well as public order and public morals, which will always prevail. In practicing those rights, it is clear that national legislature will be respected as elucidated in Article 14, para. 3. This important fact illustrates that the EU, as it is the case in the Council of Europe respects specific national characteristics, namely within family law and personal status. Family law, which deals with family

10 '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'; Protocol No. 1 to the European Convention on Human Rights. Available at: https://www.refworld.org/legal/agreements/coe/1952/en/35969 (Accessed: 20 September 2023).

11 See Council of Europe's web Toolkit available at: https://www.coe.int/en/web/echr-toolkit/protocole-1 (Accessed: 20 September 2023).

12 Art. 14 of the Charter of the Fundamental Rights of the European Union: '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.' Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT (Accessed: 20 September 2023).

life, is intrinsically connected to the core values of society, and defines the culture of life. Therefore, the intention of the creators of EU law was not to interfere in the field of family law and parent–child relationship when discussing religion. It aligns with the application of the European Convention of Human Rights by the Strasbourg Court, which extensively applies British margin of appreciation doctrine allowing the court to consider relevant specific characteristic of the state and enable it to deliver different decisions in accordance with the national laws of member states.[13]

The margin of appreciation doctrine,[14] a doctrine of the European Court of Human Rights, is particularly important in the application of Article 9 of the Convention because major cases of defending religious freedom include specific characteristics of a particular state and the law of personal status together with family law—regulating life of the family, where relationship between parents and children exist—are specially present there, and as such are protected by national laws associated with cultural and historical considerations, which do not exist on as such scale in other fields of law. Furthermore, family law and life of the family are not disconnected from society; for that reason, admission to the court was granted to the Lautsi family, which insisted on removal of crucifixes from Italian classrooms—the judgement was very well known—by application of the margin of appreciation doctrine of the European Court of Human Rights, which suggests that the Cross belongs to classrooms in Italy for not only historical and cultural reasons, but also religious (which might seem obvious) reasons and circumstances.[15]

3. Dangers of (Over)Secularisation

In the European context, although we live in a deeply secularised continent, there are nevertheless major differences, specially looking through the west–east perspective, which clearly defines the line between countries where religion continues to be a part of public life and those countries which went so far in the process of secularisation that it started to be considered that if you want to be democratic you have to be non-religious—but being non-religious and secular is not neutral, it is also a specific

13 An exceptional overview of the conventional law with regard to parents' choice of education of children, which is used in this paper as a guideline for structured presentation of relevant conventional law is given in Hrabar, 2018b, pp. 37–38.

14 'The margin of appreciation, typically described as a "doctrine" rather than a principle, refers to the room for maneuver the judicial institutions at Strasbourg are prepared to accord national authorities in fulfilling their Convention obligations. However, the term is not found in the text of the Convention itself, nor in the *travaux préparatoires.* It first appeared in 1949 in proposals made by the European Movement in the debate about the kind of transnational human rights institutions, processes and norms which should be created in post-war Europe. The term "margin of appreciation" was adopted officially for the first time by the European Commission of Human Rights in its 1958 report in the case brought by Greece against the UK over alleged human rights violations during counter-insurgency operations in Cyprus.' Greer, 2010, p. 2.

15 For more see: Savić, 2021.

worldview.[16] Secular tendencies in some places went to the extent that the notion was developed that religion has to be restricted or limited to private places, like home.

> '...When we put all this in the perspective of the legal system, and especially within a constitutional framework, at this point we may conclude that if the state belongs to a group of countries who advocate separation of church and state into terms such that religious institutions do not interfere with state business and are not a part of legislative or juridical processes, then it would be right to say that a particular state is secular and has a secular constitution and that it thus follows a secular model. It does not mean that those systems are made in such a way that they exclude religion from the public space or that they even have some sort of specific cooperation or cultural–legal value.' [17]

It implies that there would be countries that hold secular values but nevertheless operate within a framework where religion is a relatively important component of everyday reality. Meanwhile, there are tendencies that create an atmosphere and opinions that a true democratic society is one that insists on the removal of religion from public space, even from postal stamps. Georgetown scholar Jose Casanova explains that most of the conflicts in the twentieth century were not products of religious hostilities or religious intolerance, but rather of modern secular ideologies,[18] which in reality produce religious intolerance that may sound paradoxical but correct.

Most western legal systems, and in that sense most Eastern and Central European legal systems, have been declared as such and fall under one of three models of relationship between church and state; countries that have a state church like England and Denmark, states that separate the church and state and the third group that has a certain cooperation model.[19] Regardless of the model that those countries have, they could be considered secular, but secular does not mean that religion is completely extracted from public life, on the contrary, in France, the departments Bas-Rhin, Haute-Rhin and Moselle have specific arrangements with the Catholic church.[20] However, secularisation develops its rigid form and 'although many coun-

16 See: Professor Weiler, J. (New York University) argument before the Grand Chamber in Lautsi. Available at: https://www.youtube.com/watch?v=ioyIyxM-gnM (Accessed: 22 September 2023).
17 Savić, 2020, p. 264.
18 Casanova, 2009, p. 1058.
19 Doe, 2011, pp. 30–38.
20 'The history of these nowadays French territories developed differently so that the current legal situation in this region differs significantly from the rest of France. The local law still in force dates back to the law Germinal year X (8 April 1802) that merged a Concordat signed on 15 July 1801 and organic articles of the Catholic and Protestant religion. The Israelite religion was established a couple of years later via a decree from 17 March 1808. Thus, four congregations are officially recognized by the state: the Catholic Church, the Lutheran Church (Confession d'Augsbourg, d'Alsace et de Lorraine), the Reformed Church Alsace-Lorraine and the Israelite religion. The law of the recognized denominations is historically characterized by the principle of non-separation, which nowadays exists only in theory. In fact, the public authorities intervene inter alia in the fields of creation and modification of e.g. dioceses, parishes, consistories etc. as

tries are aware of religion, they might not be "religiously aware" in the sense that they respect the notion of a secular, but rather secularized, society and secularization as a process'.[21] 'In his article "Who is Afraid of Religious Freedom? The Right to Freedom of Religion and Belief and Its Critics", Silvio Ferrari contends that it is not possible to consider the right of religious freedom in a coherent, non-discriminatory manner, because there are two realities that have to be considered: '(a) a historical and cultural framework of a particular system that guarantees religious freedom and (b) the claim of even-handedness that can be found in this guarantee, and can overcome specific limitations of particular groups'.[22]

Concurrently, all European countries' constitutions respect privacy and integrity of family life, which is also required by conventions and treaties, while respecting the unforgeability of home. Paradoxically, secular movements would maintain integrity of freedom and home, but when considering religion, they would restrict religious education of children in schools, and religious education starts at home and is subsequently transferred to public space, e.g. kindergarten and/or school. All European countries, to higher or lower value on the scale, recognise that parents are responsible for children's wellbeing, and it is not only conventional, but also domestic family law issue. Children do not "belong" to the state, they "belong" to parents; it is both a conventional and internal legal settlement. Assuming otherwise would seriously harm the basic integrity of parents, children and family. Undeniably, the state is required to be vigilant, but only as a corrective authority and guardian in the event of something going wrong, like violence, inappropriate methods of teachings, etc. The right of parents to educate children and educate them about religion and faith cannot be bleached by interfering into the substance of parents' education, only if that would be possible at all. Family is a coherent body of personal and communal life and parents either have or do not have rights; in the European context, they do.

4. Religious Education

Central to children's rights is religious education, especially when we elaborate children's rights derived from their parents' right of representation. Religious education in Europe has many different forms and arises from the model of church–state relationship, which is accepted in a particular state, and then again, each model has its sub-variations. Even in countries that have established state churches and in those that have adopted a cooperation model of religious education, it is considered a sensitive topic considering that children are the most vulnerable group in society. Accordingly, it is imperative to make a special effort to determine the right balance

well as in the nomination procedures of most of the ministers whose salaries are being paid by the state'. Bloss, 2003, pp. 23–24.

21 Savić, 2020, p. 273.

22 Ibid., p. 275, and see Ferrari, 2016.

for everyone, although very few European countries have legal systems that do not possess any religious education in their curriculum—Albania, Slovenia, and (to a limited extent) France.[23] However, when celebrating holidays, religious holidays, in greetings, for instance many teachers use generic methods under pressure. For instance, "Merry Christmas" is often replaced with "Happy Holidays", and "Happy Easter" with "All the best", although domestic laws surrounding official holidays in many countries identify them as unmistakably religious in nature and origin and both religious and non-religious people enjoy those non-working days.[24]

It is important to address this question from the perspective of the European Convention of Human Rights and its application by the Strasbourg Court where religious education as a part of freedom of religion is connected with Article 8 of the Convention, "Right to respect private and family life",[25] and Article 10 of the Convention, "Freedom of Expression",[26] which can be analysed in *Folgerø and Others v. Norway*; *Lautsi and Others v. Italy*; *Osmanoğlu and Kocabaş v. Switzerland* (Article 9) and *Catan and Others v. the Republic of Moldova and Russia* (Article 8) and *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (Article 10).[27] Furthermore, Article 2 of the First Protocol has to be examined and interpreted in line with other international legal instruments.[28] It is worth noting that the Court expressly states that the meaning of the term "respect the right of parents" means much more than just acknowledging or taking it into account, but rather indicates specific obligations of the state towards parents, which is elaborated in *Campbell and Cosans v. the United Kingdom,* in which parents confronted physical punishments of children in school, and that "convictions" on which parents have right to enjoy and practice contain a specific level of conviction and importance as in *Valsamis v Greece*.[29] In this case, the Court acknowledges the right of parents to

23 For more see: Savić, 2021.
24 Ibid.
25 '1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'. Art. 8 of the European Convention for Human Rights. Available at: https://www.echr.coe.int/documents/d/echr/guide_art_8_eng. (Accessed: 23 September 2023).
26 '1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'. Ibid.
27 Hrabar, 2018a, p. 330.
28 Ibid.
29 Ibid., *Valsamis v Greece*, Application No. 21787/93, 18 December 1996.

guide children on the path of their religious and philosophical conventions, and did not find violation of the ECHR.

Hrabar elaborates in her synthesis that the Strasbourg Court clearly and sharply defines that Article 2 of the first protocol should be applied to all school subjects and not only to those with religious prefix. Accordingly, the subject which, for instance include education on sex education and ethics also fall under the rights of parents to educate their children according to their moral, religious and philosophical convictions, as in cases *Jimenez Alonso and Jimenez Merino v. Spain*[30]; *Dojan and Others v. Germany*[31] and *Appel-Irrgang and Others v. Germany.*[32] Contrarily, it decided that parents cannot refuse children's right on education such as in *Konrad and Others v. Germany.*[33] Furthermore, Hrabar adds that a child cannot sue his/her parents on the grounds that they have used their right guaranteed by the Protocol,[34] as using rights cannot produce sanctions—this was defined in *Eriksson v. Sweden.*[35] In *Efstratiou v. Greece*[36]; *Valsamis v. Greece,* the Court points and reaffirms, underlines, the right of parents to guide their children on the path of their religious and philosophical convictions.[37]

Here, it is evident that conventional law clearly places religious education and religious life as part of family life, belonging to family, and when we discuss religious upbringing of children, it belongs to parents as those who are the most responsible for home and protection of family life. Concurrently, the state has, and it is its guarantor's position (and obligation) to protect children if they are victimised by parents, which for instance do not allow attending regular, by law proscribed, school education. This will obviously be also connected with particular domestic laws of each state and special position of particular religion within society and laws that regulate religious life, and to some extent it will be *questio facti* as a result of *lex fori*. In a broader sense, it will be a question of public morals and public order.

5. Convention of the Rights of the Child, Committee and Children's Evolving Capacities

The central convention on children's rights is undoubtedly the United Nations Convention on the Rights of the Child, which took effect in 1989. Considering that the primary focus of the convention is the child, a separate entity, there are numerous issues, which are connected with the existence of other international instruments that do not allow the separation of a child from the parents: mother and father. At this juncture,

30 Ibid., *Jimenez Alonso and Jimenez Merino v. Spain,* Application No. 51188/99, 25 May 2000.
31 Ibid., *Dojan and Others v. Germany,* Application No. 319/08, 2455/08, 7908/10, 13 September 2011.
32 Ibid., *Appel-Irrgang and Others v. Germany,* Application No. 45216/07, 6 October 2009.
33 Ibid., p. 331.
34 Ibid.
35 *Eriksson v. Sweden,* Application No. 60437/08, 12 July 2012.
36 *Efstratiou v. Greece,* Application No. 24095/94, 18 December 1996.
37 Ibid.

it is important to briefly explain the role of the Committee on the Rights of the Child,[38] which is interpretative and includes the control mechanism used to explain the actual meaning of the Convention. Despite the fact that the Convention has been widely accepted, it is interesting that it includes many reserves and interpretive statements, especially on Article 14.[39] However, the Committee's role is relatively inconsistent, in that it calls upon parents' rights and recognises them as an important aspect of the child's wellbeing, while underlining the rights of children to follow their own faith, although there are clear guidelines on how to balance these rights.[40] However, the Committee was getting closer to the reservation adopted by the Holy See interpreting Article 14 as protecting the genuine rights of parents.[41] Although this paper basically analyses the situation in the European context, it is imperative to emphasise that the Convention is globally important and has wider reception, reservations, concerns and commentaries. For instance, some Islamic countries expressed concerns about accepting the religious freedom of a child, but the Committee explained that a careful reading of the Convention, particularly Article 14, offers an option to interpret it in accordance with Sharia.[42] When the work of the Committee is analysed, it seems that also it follows the pattern of the primary right of the parents and freedom of religion of a child as a subordinate right; else, as Radina said, it may be concluded that the major task of this body is, in reality, removing reservations as much as possible.[43] Regardless of the main aim of the Committee, it remains clear that, at least, in the formal sense, parents have been accepted as the primary bearers of religiosity of the child. Importantly, the Committee stated that the human rights of the children cannot be fulfilled without the human rights of their parents or in isolation from the society where they live, work, study and play.[44] Accordingly, as it is a case with the judicature of the European Court of Human Rights, open space for the application of the margin of appreciation doctrine, since the Committee acknowledges differences

38 'The Committee on the Rights of the Child (CRC) is the body of 18 independent experts that monitors the implementation of the Convention on the Rights of the Child by its State parties. It also monitors the implementation of the Optional Protocols to the Convention, on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. Over the past 30 years, children's lives have been transformed by the most widely ratified human rights treaty in history. The Convention on the Rights of the Child has inspired governments to change laws and policies, so more children get the healthcare and nutrition they need. There are better safeguards in place to protect children from violence and exploitation. An increasing number of children have had their voices heard and participated in society. However, there is still more work to be done'. Available at: https://www.ohchr.org/en/treaty-bodies/crc (Accessed: 29 May 2024).

39 Radina, 2018, pp. 105–106.

40 Ibid., p. 107.

41 Ibid., Committee on the Rights of the Child, Reservations, declarations and objections relating to the Convention on the Rights of the Child, 11 July 1994, CRC/C/2Rev.3, 11 July 1994, p. 19.

42 Ibid., pp. 107–108.

43 Ibid., p. 8.

44 Ibid., p. 108. Example: Committee on the Rights of the child, Concluding observations: Uzbekistan, CRC/C/15/Add. 167, 7, November 2001, pt. 35.

between communities, religious environment and family values and points of the options of interpretations, which clearly sets up a very broad framework for decisions and recommendations of the Committee towards specific problematic solutions in various countries. What remains clear is that everyone accepts that children have to be protected from victimisation, but what victimisation means could again be considered a cultural issue. It is interesting that the "best interests of the child" as requested by the Convention, cannot be clearly defined, but children have to be put aside from manipulation of religion by dangerous religious (and political) practices, since there are countries that have state or dominant religion.[45] However, this also could be interpreted differently, specifically taking into account aggressive secular movements that do not see any good in religious life.[46]

When analysing children's evolving capacities, it is important to take into account particular national legislation, especially constitutions of examined countries, because it is not possible to unify all cultural and ethnographic characteristics into one scheme, but what can be done is dedication to expand as much as possible children's rights to remain children in the first place and allowing them to live their childhood free from pressure and allowing them to grow. This is a sensitive issue, but children who are married (when national legislation allows them to enter matrimony) have to have rights, which are closer to citizens who have acquired full responsibility (liability). This is also obvious when children perform their duties and earn money in cases that are connected with their labour law rights. This is also a sensitive issue; for instance, the Committee distinguishes the right of the parent to be a child's guardian from the explicit right of children on religious freedom, which does not fall under derogation principle.[47] The problem lies in the fact that there is no appropriate mechanism that would work on balancing, when the line is crossed and who can tell when parents "believe too much" on behalf of the child, and also is it practically possible that children develop their own religious beliefs apart from the family where they live. In the contemporary context, it is possible to imagine various situations where children "play" on their own, not to mention the rebellious phase during the formative years of adolescence. Another issue is that various countries may have double standards in interpreting this right, and have a flexible approach when a child wants to adopt a dominant religion of society that is different from the religious beliefs of their parent, or when a child "has to stay" in the religion of their parents who are considered alien to the community where they live, and then be more strict and not so welcoming in situations when the child wants to change the religion that is considered minority religion in that particular environment. The right of the child should be connected to the child's age and not parents' prerogative; again, the Committee does not make any concrete conclusion but rather complicates issues. The

45 Ibid., p. 111.
46 See supra, pp. 4–6.
47 Radina, 2018, p. 112.; Committee on the Rights of the Child, Summary record of the 277th meeting: Republic of Korea, CRC/C/SR.277, 26 January 1996, pt. 31.

answer possibly lies in attempts to position the child in the role of someone who has the right to be heard; when the child has developed abilities to be involved in discussion on his/her religiosity and choice of religious community or belief. It is interesting that the Committee expressed its concerns to Croatia, because Croatia guarantees parents the right to decide the religion of their children without consulting them.[48]

If we acknowledge that children have to be involved to a more or lesser extent in deciding their religious life, we have to examine the options for the exact age at which children could be involved in deciding, or when they could have a right to change their religion, if different from parental one. The activities of the Committee clearly demonstrate that in many cases, it is interested in the age of the child in respect to choosing a religion or attending school. Again, different countries have different practices—in Denmark, children below 18 are not allowed to join any religious community without the permission of parents; in Iceland, it is not possible for parents to change the religion of the child after age 12 without taking the child's opinion; in Germany, children can choose their religion after they turn 14, except in the state of Bavaria where the age limit is 18; in the United Kingdom, children are obliged to attend ceremonies with religious prefix, only in the final years of higher education, is it possible for them to exclude themselves without the permission of their parents (it seems that they can exclude themselves even earlier but with parental acceptance), while in Scotland and Northern Ireland, they do not have any right.[49] In conclusion, the Committee considers age 14 as the acceptable limit for allowing children to choose religion on their own or engage in religious practices.[50] It is unclear how this age limit was chosen to be considered in the child's best interest; it contradicts the rights of parents guaranteed by the majority of European constitutions.

6. Procedural Matters and Suggestions

The Committee declares that the opinion of children and parents have to be taken into account, but it seems that those are just declaratory statements.[51] Children are part of the family and are dependent on their parents, who are usually the guardians. Issues

48 Radina, 2018, p. 113. See Constitution of the Republic of Croatia, Art. 64. where there is a guarantee that parents will be independent in their choice of education of their children. Religion is not even mentioned in this paragraph, but it remains clear that education expressively involves religious education, both at home and in public spaces. 'Parents shall bear responsibility for the upbringing, welfare and education of their children, and they shall have the right and freedom to make independent decisions concerning the upbringing of their children'. See consolidated text of the Croatian constitution available at the webpage of the Croatian Parliament: https://sabor.hr/index.php/en/information-access/important-legislation/constitution-republic-croatia-consolidated-text (Accessed: 25 September 2023). See also: Committee on the Rights of the Child, Summary record of the 280th meeting, Croatia, CRC/C/SR.280, 28 March 1996, pt. 12.

49 Ibid., Radina, 2018, pp. 114–115.

50 Ibid., p. 115.

51 Ibid., p. 110.

such as religious freedom have to be examined and counter-balanced with other relevant legal sources of domestic law. As noted earlier, it is important to see what responsibilities and liabilities children have in other areas of law. Since law should be coherent, it is not possible to annul impacts of other regulations arising from other branches of law, e.g. civil, inheritance, criminal, matrimonial or labour. Since there is no clarity as to what the law of religious freedom for children really means, we will focus on internal jurisdiction to understand better the parent–child relationship and greater good of children.

There are numerous situations where the child has a specific position in civil procedural law,[52] and in accordance with continental legal tradition, a child receives full liability and responsibility. This occurs in cases where the child is aged 16 and has become a parent.[53] In this case, the parental rights of the child's parents, including those who are connected with religion, cease to exist. Another important reason for acquiring those rights is if a child enters marriage after he/she has reached 16 years of age, and if the Court concludes that the child is mature enough, mentally and physically, and that there are justified reasons for matrimony.[54] In that case, in my opinion, children have full authority to choose a religion, and if they have their children to educate them in accordance with their beliefs or non-beliefs. There are numerous reasons and situations when children will be treated as parties, especially in cases with troubled marriages, situations of separation and divorce, when children will be in position to start the procedure in front of the Court, by themselves or by their representative—typically in cases when a child wants to change the previous Court decision regarding whom the child wishes to live with.[55]

There is another set of rules connected with the child's right to be heard, to express his/her views, opinions and emotions and in continental legal terminology better known as "Anhörung des Kindes", which means that the Court will allow a child to express his/her views according to the level of maturity.[56] This is different from that one in which the child receives full legal responsibility (and liability) and replaces parental guidance with his/her own. When both parents think differently about the religion of the child, it could be one of those situations where the child's opinion is considered important. In procedures such as divorce or separation—it is possible, although not very likely to happen—that parents will require the Court to decide about

52 It is important to emphasise that there are various solutions regarding the situation how the child is taking part in the proceedings; the differences in jurisdictions are huge, but this paper focuses on international and socio-theoretical approach; accordingly, those were not included in the text.
53 Aras, 2009, p. 211.
54 Ibid., p. 210.
55 Ibid., p. 206.
56 Ibid., p. 212.

the religion of the child.[57] Arbitration in family matters in the contemporary world is relatively more likely knocking on the doors of Europe.

Additionally, criminal law opens certain (similar) interpretational opportunities; in most countries of Europe, delict responsibility and liability is designed in a manner that children receive a fair amount of it when they reach age 14 or 16.[58] The valuable guide on age limit in particular countries where and when the child can change his/her religion excluding parental permission is given on the website of the European Union Agency for the Fundamental Rights,[59] where we can see that most countries do not regulate this issue and therefore conventional law applies.

7. Conclusion

Parents are responsible for the wellbeing of their children, both physical and mental, which also includes the right to educate their children according to their religious and philosophical attitudes, beliefs and creeds. Meanwhile, the Convention on the rights of a child, although with good intention, moved parental rights in this respect into a relatively vague area where children have the right to religious freedom although clear definitions as what that means do not exist. When examining comparative law solutions, which were also elaborated in this article, the national laws of a vast number of countries offer different solutions for family life, which is logical, since family life is a reflection of national tradition, history and customs. Religion plays an important part of family and social cohesion, and it has to be very careful when the Convention is interpreted, by using lenses of particular culture and legal reality. In the European context, children follow the religion (or non-religion) of their parents. The major doubt concerns the age limit when a child becomes independent, including on religious issues. Accordingly, as in many jurisdictions, there is a transition age when children start receiving liabilities and responsibilities in their journey towards "full legal maturity". There are situations where interventions of the Courts would not only be desired but necessary, although again in accordance with to the benefit and wellbeing of the child.

57 For instance, baptism. Meanwhile, Canon Law of the Catholic Church allows that only one parent approach a priest and ask for sacrament. For most clergy *savus animarum*, saving the souls (lat.) is the priority and usually does not require legal document from the Court (priest even do not need to know matrimonial situation in detail), but priests in some countries will wait for the decision of the Court. The question would be what would happen to a religious official who has performed the religious act on the child without consent of the other parent and if that parent decides to initiate a legal action. Furthermore, it is important to consider if the priest is aware of the lack of permission from the other parent, or if he should know. It would also be essential if the state in question has signed and ratified an international treaty with the Holy See or treaty with any other religious community and what is mentioned there.

58 This is covered by Juvenile Criminal Law in respective countries (e.g. Juvenile Courts Act in Croatia).

59 Available at: https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/change-religion (Accessed: 29 May 2024).

Bibliography

Aras, S. (2009) 'Postupovna sposobnost djece u obiteljskim statusnim izvanparničnim stvarima', *Zbornik radova povodom 20. godišnjice Konvencije o pravima djeteta* ('Procedural liability of Children in Personal Family Arbitrary Proceedings', *Selected Papers collected for the 20th Anniversary of the Convention on the Right of a Child*), Zagreb: Pravnik.

Bloss, L. (2003) 'European Law on Religion: Organizational and Institutional Analysis of National Systems and Their Implications for the Future European Integration Process', *Jean Monnet Program Working Paper 13/03*, New York University Law School.

Casanova, J. (2009) 'The Secular and Secularisms', *Social Research*, 76(4), Winter 2009. Available at: https:// berkleycenter.georgetown.edu/publications/the-secular-and-secularisms.

Charter of Fundamental Rights of the European Union, C 364/01, 18 December 2000. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT (Accessed: 20 September 2023).

Committee on the Rights of the child, Concluding observations: Uzbekistan, CRC/C/15/Add. 167, 7, November 2001.

Committee on the Rights of the Child, Summary record of the 277th meeting: Republic of Korea, CRC/C/SR.277, 26 January 1996.

Committee on the Rights of the Child, Summary record of the 280th meeting, Croatia, CRC/C/SR.280, 28 March 1996.

Committee on the Rights of the Child, Reservations, declarations and objections relating to the Convention on the Rights of the Child, 11 July 1994, CRC/C/2Rev.3, 11 July 1994, p. 19.

Doe, N. (2011) *Law and Religion in Europe: A Comparative Introduction*. Oxford: Oxford University Press.

ECtHR, *Appel-Irrgang and Others v. Germany,* Application No. 45216/07, 6 October 2009.

ECtHR, *Dojan and Others v. Germany*, Application No. 319/08, 2455/08, 7908/10, 13 September 2011.

ECtHR, *Efstratiou v. Greece,* Application No. 24095/94, 18 December 1996.

ECtHR, *Eriksson v. Sweden,* Application No. 60437/08, 12 July 2012.

ECtHR, *Jimenez Alonso and Jimenez Merino v. Spain*, Application No. 51188/99, 25 May 2000.

ECtHR, *Lautsi v. Italy*, Application No. 30814/06, 18 March 2011.

ECtHR, *S.A.S. v. France*, Application No. 43835/11 (Filed 10 July 2012).

ECtHR, *Valsamis v Greece*, Application No. 21787/93, 18 December 1996.

European Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette-International treaties, no. 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10. Available at: https://www.echr.coe.int/documents/d/echr/convention_ENG (Accessed: 19 September 2023).

European Union Agency for the Fundamental Rights. Available at: https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/change-religion (Accessed: 29 May 2024).

Ferrari, S. (2016) 'Who Is Afraid of Religious Freedom? The Right to Freedom of Religion and Belief and Its Critics', *Religion and Human Rights*, 11 Brill 224.

Greer, S. (2010) 'The Interpretation of the European Convention on Human Rights: Universal Principle or Margin of Appreciation?', *UCL Human Rights Review*, 2010/3.

Hrabar, D. (2018a) 'The Reflection of Parental Religious and Philosophical Convictions on Child's Upbringing and Education in Croatian Legislation', *Selected Papers of the Zagreb Law School*, 68(3–4), Zagreb: University of Zagreb, Faculty of Law.

Hrabar, D. (2018b) *Istanbulska konvencija i zamke rodne perspektive*. Zagreb: Dubravka Hrabar publisher – personal edition.

Professor Weiler, J. (New York University) argument before the Grand Chamber in Lautsi. Available at: https://www.youtube.com/watch?v=ioyIyxM-gnM.

Protocol No. 1 to the European Convention on Human Rights. Available at: https://www.coe.int/en/web/echr-toolkit/protocole-1 (Accessed: 29 May 2024) and at: https://www.refworld.org/legal/agreements/coe/1952/en/3596 (Accessed: 29 May 2024).

Radina, A. (2018) *Pravo djeteta na slobodu vjeroispovijedi* (*The right of a child to choose religion*). Doctoral thesis, University of Zagreb: Faculty of Law.

Savić, V.-I. (2015) 'Still Fighting God in the Public Arena: Does Europe Pursue the Separation of Religion and State Too Devoutly or Is It Saying It Does Without Really Meaning It?' *Brigham Young University Law Review*, 2015/679.

Savić, V.-I., (2020) 'It Works Better If It Is Not Too Secularized: The Croatian Constitutional Model for Regulating State–Church Relations' in Babie, P., Rochow, N., Scharffs, B. (eds.) *Freedom of Religion or Belief, Creating the Constitutional Space for Fundamental Freedoms*. Cheltenham: Edward Elgar Publishing.

Savić, V.-I., (2021) 'Our Father – In or Out, Religious Education and Secular Tendencies in Croatian Public Schools in the European Context', *Law, Identity and Values*, 2021/1, Budapest– Miskolc: CEA Publishing.

UN Convention on the Rights of the Child, Official Gazette SFRY, No. 15/1990, Official Gazette–International Treaties, No. 12/93, 20/97c. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (Accessed: 29 May 2024), and available at: https://www.ohchr.org/en/treaty-bodies/crc (Accessed: 29 May 2024).

United Nations General Assembly: The Universal Declaration of Human Rights (UDHR), New York: United Nations General Assembly. Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights (Accessed: 19 September 2023).

| CHAPTER 5 |

Protecting a Child's Religious Identity in Adoption, Kafala, and Other Forms of Alternative Care: Analysis From International, EU, and Polish Law Perspectives

Lucjan ŚWITO

ABSTRACT

The right to religious identity, as well as freedom of conscience and belief (religion), are among the fundamental human rights protected in many national legal orders and in supra-state norms. These rights are universally applicable regardless of age; extending to adults and children alike. Undoubtedly, universal law guarantee parents a primary role as educators, including the right to raise and educate a child in accordance with their own religious and philosophical beliefs. However, religiously inclusive upbringing is not the domain of parental upbringing alone, and the right to maintain religious identity is not only enjoyed by children growing up in their natural family environments but is also enjoyed by children in foster parental care in the broadest sense. The right of a child to be raised in the 'religion of the fathers' is a right in itself and is protected not only because of the educational rights of the parents; the preservation of religious identity is protected primarily as a personal right of the child himself or herself. Further, a child under alternative care has the right, with the development of maturity, to make his or her own choices and decisions on worldview issues. However, until they reach this state, they have the right to have their religious identity, brought from their generational family, protected in this alternative care. The article presents (in outline) various forms of alternative care in the broadest sense, such as adoption, foster care, and Islamic *kafala*, indicating how the protection of the religious identity of the child covered by these forms of alternative care is presented from the perspectives of international law, EU law, and national legal orders (essentially, taking the example of Polish law).

KEYWORDS

adoption, foster care, *kafala*, religious identity, religious upbringing, freedom of religion and conscience, worldview

Lucjan ŚWITO (2025) 'Protecting a Child's Religious Identity in Adoption, Kafala, and Other Forms of Alternative Care: Analysis From International, EU, and Polish Law Perspectives' in Katarzyna ZOMBORY – Márta BENYUSZ (eds.) *Religion and Children's Rights.* Miskolc–Budapest: Central European Academic Publishing. pp. 111–136. https://doi.org/10.71009/2025.kzmb.racr_5

1. Introduction

The concept of religious identity was introduced in the sociological and psychological sciences in the early 20th century, becoming the subject of multiple approaches and concepts. For example, according to A. Harbatski, religious identity is a form of group and personal consciousness, built on the awareness of one's belonging to a particular religion and forming an idea of oneself and the world through relevant religious dogmas.[1] Conversely, J. Gunn, writing about religion in the dimension of identity, emphasises the special role of a person's belonging to a religious group, pointing out that this identity is less about sharing theological doctrines, but rather about a certain dimension of history, culture, ethnicity, and tradition.[2]

The right to religious identity, as well as freedom of conscience and belief (religion), are among the fundamental human rights protected in many national legal orders and in supra-state norms. The aforementioned rights apply regardless of age; thus, they apply not only to adults but also to children.

Acts of universal law guarantee parents a primary role in their function as child educators, including the right to raise and teach children in accordance with their religious and philosophical beliefs. Article 26(3) of the Universal Declaration of Human Rights of 10 December 1948[3] explicitly states that parents have the right to choose the kind of education for their children. Further, Article 18(4) of the International Covenant on Civil and Political Rights of 19 December 1966[4] and Article 13(3) of the International Covenant on Economic and Cultural Rights of 19 December 1966[5] unequivocally obligate state parties to ensure parents' right to the religious and moral education of their children in conformity with their convictions, as does Article 2 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,[6] which explicitly recognises the right of parents to ensure their child's education and teaching in conformity with their own religious and philosophical convictions.

Setting aside the differences that exist between Article 14(3) of the Charter of Fundamental Rights of the European Union[7] and Article 14(2) of the Convention on

1 Harbatski, 2015, p. 136.
2 Gunn, 2003, p. 201.
3 Universal Declaration of Human Rights, adopted in Paris on 10 December 1948, UN General Assembly resolution 217 A, pp. 71–79.
4 International Covenant on Civil and Political Rights, adopted in New York on 16 December 1966, UN General Assembly resolution 2200A (XXI).
5 International Covenant on Economic, Social and Cultural Rights, adopted in New York on 16 December 1966, UN General Assembly resolution 2200A (XXI).
6 Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950 under the auspices of the Council of Europe, ETS No. 5.
7 Charter of Fundamental Rights of the European Union, adopted in Lisbon on 12 December 2007, Official Journal of the European Communities, 2012/C 326/02.

the Rights of the Child[8] (the first act emphasises the right of parents to raise their children in conformity with their religious and philosophical convictions and the second concerns the exercise of freedom of thought, conscience, and religion by the child himself), religiously sensitive upbringing is undoubtedly not the domain of parental upbringing alone, and the right to maintain religious identity is not only granted to children growing up in their natural family environment but also to children in foster parental care.

The right of a child to be raised in the "religion of the fathers" is a right in itself and is protected not only because of the educational rights of the parents. The preservation of religious identity is protected primarily as a personal right of the children themselves, although it is clear that this identity does not determine the worldview once and for all.

The right to change one's religion or deviate from existing beliefs and convictions is one of the attributes of freedom of conscience and religion, provided that such decisions are accompanied by the capacity for informed discernment. A child placed in foster parental care possesses the right to make independent choices and decisions regarding worldview issues as they achieve sufficient maturity. However, until such maturity is attained, the child retains the right to have their religious identity, as inherited from their generational family, preserved and respected within foster care.

2. Forms of Alternative Care – Outline of Issues

In many jurisdictions worldwide, alternative care is mainly implemented based on two main formulas: adoption and foster care. Among followers of Islam, a different welfare institution in the form of *kafala* is also practised.

2.1. Adoption and Foster Care in General

Adoption is a family law institution that, in modern times, occurs – with greater or lesser differences – in the legal orders of many countries of Europe and the world.[9] It consists in the creation, by means of a procedure prescribed by law, of family ties intended to perform the same or at least similar function as the "natural" knots of blood and descent.

Without going into a detailed analysis, it is worth mentioning, for illustrative purposes only, that in Western European countries, the principle of the welfare of the child is the basic principle of adoption, which means that it must be applied at all stages of the adoption procedure and that the primary purpose of the institution is to ensure the welfare of the child deprived of his or her family. For example, a court in Greece will rule on an adoption if the personality, health, family relations, and

8 Convention on the Rights of the Child, adopted in New York on 20 November 1989, UN Treaty Series No. 27531.

9 Compare considerations of systemic similarities and differences: Khazova, 2007, pp. 97–103.

financial situation of the adopter and adoptee, as well as their ability to match each other, serve the welfare of the adopted child. Under the provisions of the German law, while a threat to the welfare of the child is an obstacle to the termination of the adoption, the adoption may be terminated if the prevailing interests of the adopter require such a termination.

In most countries, adoption is decided by the court, but there are other options. In Switzerland, it occurs by court decision in some cantons, but by administrative decision in others. In Denmark, it is decided by the local administrative body of the Regional Government Department (Statsamt) and can also be dissolved by an administrative decision of the Minister of Family and Consumer Affairs. In Norway, too, (full) adoption occurs through an administrative decision issued by the Ministry of Justice in the interests of the child.

The primary type of adoption is a full adoption, although this is not necessarily the only type of adoption regulated by law – as evidenced by French, Belgian, and Italian laws.

Domestic adoptions take precedence over international ones – hence, one can speak of the application of the principle of subsidiarity of international adoption in these countries. In addition, in most countries, there are no laws regulating them separately, apart from the requirements in some countries for adopters (citizenship, domicile, habitual residence or other connection to the forum), the fulfilment of which determines the admissibility of adoption. In Portugal, for example, priority in adoption is given to Portuguese nationals and, to adopt a child there, one must have an established legal residence in that country; in Spain, the adopter can be a person with an established legal residence there; and in Denmark, the adopter can be a person with a habitual residence in another country, as long as the applicant or his or her spouse is a Danish citizen and adoption in the country of his or her residence is not possible, provided, however, that the adoption decision issued in Denmark is valid in the country of his or her residence. Further, in Greece, international adoption is conditional on the Greek citizenship or Greek origin of the adopter and his or her residence in the territory of that country.[10]

Common to all legal systems are the adoption prerequisites: the minimum age of the adopter (sometimes also the maximum), the age difference between the parties, and the consent of statutorily defined persons to the adoption. Adults with full legal capacity – alone or jointly with their spouses, as long as they are married (sometimes also in unions that are not traditionally understood as marriages) – can, as a rule, adopt.

The solutions adopted in other countries of the so-called Eastern Bloc are not uniform. By way of example, in Bulgaria, *adoptio plena* and *adoptio minus plena* are used – both ruled by the court in the interest of the child. In Croatia, Serbia, and Slovenia, adoption is full. In Croatia, it is adjudicated by the court in the interests of the child and lasts until the adopted child reaches the age of 18 years. Serbian and

10 Bagan-Kurluta, 2009, pp. 11–12.

Slovenian adoption is not dissolvable, decided by an administrative body (Center for Social Work). The rule is that a Slovenian child can be adopted by a Slovenian citizen. However, in the absence of such potential adopters – international adoption is permissible. Czech adoption is also full and, in some cases, not dissolvable. In Hungary, a full adoption decided by an administrative body can also be terminated by an administrative decision, which is preceded by an agreement between the adopter and the adopted.[11]

Adoption, it should be emphasised, is not a form of foster care. It does not aim to temporarily replace inefficient parents, but, by its very design, replaces them permanently.

Instead, the purpose of foster care is primarily to work with the family to reunite the child with his or her family or, if this is not possible, to seek adoption of the child and, if adoption is not possible, to provide care and education in a foster care setting. The purpose of foster care is to meet the emotional needs of the child, with particular attention to the needs of living, health, and education as well as cultural and recreational needs, to ensure that the child is prepared for a dignified, independent, and responsible life, overcoming the difficulties of life in accordance with the principles of ethics, to establish and maintain close, personal, and socially acceptable contacts with family and peers.

A child placed in foster care is legally the child of his or her parents, while an adopted child is legally the child of those who adopted him or her.

The history of foster care dates back to the 14th century and has Christian origins (foster care became more widely known in the late 16th century, when the French pastor St Vincent à Paulo, concerned about the high infant mortality rate in orphanages for the poor, began placing them with women in the countryside). Modern systemic solutions for the custody of children deprived of the care of biological parents are being developed by international organisations such as FICE (Fédération Internationale des Communautés Éducatives) and IFCO (International Foster Care Organisation), among others. The solutions in each country vary in detail, but in fundamental respects, they are similar, showing many parallels with the foster care system in place in English legislation. By way of example only, it should be pointed out that the main principle of organising "child care" in the UK is to return the child to his or her biological family as soon as possible, or to provide him or her with another family environment. At the same time, institutional forms are being systematically reduced in favour of family forms. In addition, institutional forms are taking the form of small therapeutic facilities, and public facilities are being replaced by private ones. Children are placed either in family care (foster families) or in institutional care (children's homes, local authority homes, homes run by NGOs, private registered nursing homes, and preschool hostels).

In the UK, the following types of foster care are distinguished: emergency – emergency care usually lasting a few days; short-term – a child may be in short-term care

11 Ibid., pp. 11–13.

for up to a few months; long-term – may last several years or until the child reaches adulthood; special – when a special commitment is required, such as for children with disabilities.

Other forms of care include temporary care (short breaks) to support biological parents, often in the case of sick, handicapped children, which lasts from a few hours to a week or a month; care for juvenile offenders (remand); pre-adoption care (fostering for adoption); so-called Family and Friends or Kinship Care, where the child is cared for by a local council, the child lives with someone he or she knows, usually a family member; the institution of a therapeutic specialist (specialist therapeutic) for children with complex needs or difficult behaviour; and care for young mothers.

It should be noted that foster families are treated in the UK ultimately as the most appropriate form of care for children placed outside the natural family. Within foster families, a distinction can be made between foster parents who are employees of local community institutions, foster parents who are relatives, and foster parents where the parent is a person with whom the child has lived for at least 3 years. Inspection and qualification of foster families is handled by local authorities through their respective institutions.[12]

2.2. Alternative Care Based on the Example of Polish Law

In Polish family law, there is a whole range of solutions that regulate the issue of providing a child deprived of a family environment (or having such an environment, but of an incomplete or dysfunctional nature) with a widely understood alternative care.

The most complete formula, as a result of which a legal and family relationship similar to that existing between parents and child is established, is adoption. The principal effect of adoption is the creation of an artificial kinship relationship between the adopter and the adopted. Accordingly, all legal effects normally associated with kinship will also exist between the adopter and adoptee. This fundamental effect of adoption cannot be changed by the will of the parties. Consequently, neither the reciprocal relationship between the adopters nor the agreement of the adoptive spouses to relieve one of them of the obligations arising from a joint adoption affects the legal effect of the rights and obligations arising from the adoption, both for the adoptee and for each adopter.[13]

The institution of adoption in the Polish Family and Guardianship Code[14] is based on eight basic principles: the principle of the welfare of the child, the non-material nature of adoption, the equal treatment of adopted children and children of the natural parental relationship *(adoptio naturam imitatur*), the non-contractual form of the establishment of adoption (the establishment of the adoption relationship occurs

12 Cf. Foster carers. Types of Foster care. Available at: https://www.gov.uk/foster-carers/types-of-foster-care, (Accessed: 5 August 2023).

13 Cf. Judgment of the Supreme Court of 4 December 1968, II CR 375/68, LexPolonica nr 300813, OSNCP 1969, nr 10, poz. 174.

14 Act of 25 February 1964, Family and Guardianship Code, Journal of Laws 2023, Item 2809, hereinafter referred to as the "Family and Guardianship Code".

by court decision, not by legal action), the limited terminability of adoption, the secrecy of adoption, and state supervision of adoption.

The Polish Family and Guardianship Code distinguishes three types of adoption: a) full adoption *(adoptio plena* – Articles 121-123 of the Family and Guardianship Code); b) full non-separable adoption, also known as complete adoption *(adoptio plenissima* – Article 125[1](1) of the Family and Guardianship Code); c) incomplete adoption *(adoptio minus plena* – Article 124(1) of the Family and Guardianship Code).

The distinctive feature of full adoption is that it extends not only to the adopter and adoptee themselves, but to the adopter's entire family as if the adoptee had been born as the adopter's natural child. As a result of full adoption, the rights and obligations of the adoptee arising from kinship to his or her relatives cease, as well as the rights and obligations of these relatives to him or her. The effects of the adoption extend to the adopted person's descendants (Article 121(3) of the Family and Guardianship Code).

A full adoption that is not dissolvable is one that the parents have agreed to without naming an adopter. It is a peculiar variant of full adoption and is characterised primarily by non-dissolvability. In a total adoption, the adopters become, in the eyes of the law, the natural parents of the child, and the fact of adoption cannot be proven.

Partial adoption, unlike full adoption, essentially creates only a relationship between the adopter and the adopted; the adopted person is not fully integrated into the adopter's family and does not become a brother or sister of the adopter's children, a grandchild of the adopter's ascendants, or a relative of the adopter's distant relatives. Nonetheless, the adoptee's offspring who comes into the world will be included in the adoption relationship, which means that the adopter will be the grandparent of the adoptee's children. However, there is no kinship between these descendants and other relatives of the adopter. The adoptee retains all ties of kinship with the natural family and will remain a member of it, with the proviso that under the provisions treating the so-called small family, the adoptee is part of the adopter's family, not his or her natural parents.[15]

Another form to regulate the situation of a minor is the establishment of foster care. The issue of foster care in the *strict sense* is regulated in Section 2a of the Family and Guardianship Code and Part III of the Act of 9 June 2011 on Family Support and the System of Foster Care.[16] According to Article 32(1) of the same law, foster care is provided when parents are unable to provide care and upbringing for a child.

The Polish legislature distinguishes two forms of foster care: family foster care and institutional foster care (Article 34 of the above-mentioned law). Family foster care is carried out by kinship foster families, non-professional foster families, or professional foster families, while professional foster families can act as emergency foster families or specialised professional families. Foster family care can also take the form of a family orphanage.

15 Ignatowicz, 2023, p. 573.

16 Act of 9 June 2011 on Family Support and the System of Foster Care, Journal of Laws 2024, Item 177, hereinafter referred to as the "Foster Care Act".

Meanwhile, institutional foster care is provided in the form of a foster care centre, a regional foster care centre, and an interventional pre-adoption centre. The court places the child in institutional foster care if it is not possible to place the child in family foster care or it is not reasonable for other important reasons. This regulation expresses the principle of preference for family forms of foster care.

The norm of Article 35(1) of the Foster Care Act takes, as a rule, that the basis for placing a child in foster care is a court decision. Exceptions to this rule are provided only in cases of urgent necessity, at the request or with the consent of the child's parents and on the basis of an agreement concluded by the district governor with the foster family or the operator of the family child's home, of which the court is immediately notified. The agreement is intervening in nature and expires at the conclusion of court-ordered foster care proceedings (Article 35(2) of the Foster Care Act). Placing a child in foster care without a court decision is also allowed in cases where the child has been brought by the Police or Border Guard to a professional family acting as a family emergency shelter or to an intervention-type care facility (Art. 58(1)(2) and 103(2)(2) of the Foster Care Act), as well as when there is an imminent threat to the life or health of the child due to family violence (Art. 58(3) and 103(2)(3) of the Foster Care Act in conjunction with Art. 12a of the Act on Prevention of Domestic Violence of 29 July 2005).[17] The exceptions indicated in Article 35(1) of the Foster Care Act thus relate to emergency situations requiring the immediate provision of temporary care, and are, in each case, linked to the obligation to immediately (within 24 hours) notify the court of the placement of the child in foster care (Articles 58(3) and 103(8) of the Foster Care Act and Article 12a(4) of the Domestic Violence Act). The notice triggers ex officio guardianship proceedings.

According to Article 112^1 of the Family and Guardianship Code, the duties and powers of foster parents (institutional foster care institutions) include the following: exercising day-to-day custody over the person of the minor, raising them, and representing them in claiming benefits intended for their upkeep, while other rights and duties belong to the child's parents, as long as they have parental authority. In a situation where parents have been deprived of this authority or where their authority has been suspended, leading to the establishment of custody entrusted to a foster family (Article 149(4) of the Family and Guardianship Code), all the powers comprising custody of the child's person and property belong to the foster parents as guardians.

It should be noted that the creation of a foster family does not create a family and legal bond between the foster parents and the child, as it happens with adoption. A child admitted to a foster family does not acquire the status of a child of foster parents. No maintenance obligations or entitlements arise between the child and foster parents, and no inheritance under the law occurs between them.

17 Act of 29 July 2005 on Prevention of Domestic Violence, Journal of Laws 2024, Item 424, hereinafter referred to as "Domestic Violence Act".

2.3. Kafala

Nor does Muslim law deny children deprived of parental care the opportunity to grow up in a family. As an aside, it is worth noting that in Islam, children are considered orphans *(yatim*) if they have no father, regardless of whether their mother is alive. After the death of the father, even if the mother is alive, the obligation to provide for the child rests with the closest male relative.[18]

In the Muslim world, surrogate parental care is understood in a significantly different way than in the tradition of European law (EU law). The term "adoption" itself does occur in Arabic *(tabannin*); however, Islam prohibits adoption, which would involve the establishment of a legal and family relationship identical to that between the biological parents and the child. The ban derives from a Quranic parable about the Prophet Muhammad's marriage to the ex-wife of his adopted son Zaid. Recognising that accepting a child for upbringing does not create a family bond enabled Muhammad to enter into the aforementioned marriage, which was thus no longer an impure union.

The Quran forbids adoption *strictly* speaking; however, it allows for the existence of a foster care institution in the form of a *kafala*. The adoption of a child into the family under this formula does not mean the termination of the legal bond between the child and his or her biological parents. *Kafala* does not result in a relationship of kinship between the child and the adopters. The child retains the name of their biological father and does not inherit from their adoptive 'parents' (although these may donate or bequeath 1/3 of their assets to the child in their will). Under the *kafala*, the guardian is responsible for the child and is obliged to provide for the child's needs, ensure their maintenance, and educate them in the spirit of Islam. As a general principle, rules apply to a child covered by a *kafala* as they apply to those outside the family: "mother" and "sisters" are required to cover their hair (and, in more traditional communities, other parts of the body), as is the foster "daughter" in the company of the "father" and "brothers".[19] There are also no legal obstacles that would prevent a marriage between a foster "father" and a "daughter".

The *kafala* care system, although the details may vary across countries, as a general rule, imposes an obligation on *kafala* caregivers to raise their child in the spirit of Islam, while Islam excludes the possibility of changing one's religion. The European model of human rights, including the right to religious freedom, is not practised in Islam.

In Islamic doctrine, the rights of the individual come from God and His revelation – *the Quran* – and are not inherent in humans by the law of nature. The human person is treated not as a subject of rights, but as an individual obligated to appropriate behaviours, attitudes, and actions towards their municipality, and above all,

18 See: Piwko, 2010, pp. 157–173; Tomkiewicz, 2017, pp. 149–164.

19 These restrictions do not apply if the child was less than 2 years old at the time of admission to the family and was breastfed by the foster mother.

towards God.[20] Therefore – according to this doctrine – Muslim society should govern itself according to God's law as it is defined by the *Quran* and the *Sharia*, the system of Muslim law developed by Muslims over the centuries.[21]

Muslim countries differ in the application of religious law; however, as far as religion is concerned, they unequivocally refer to *Sharia* as their basis in the joint declarations of human rights promulgated. Without going into the entire depth of the issues concerning the concept of human rights in Islam,[22] by way of example only, it should be pointed out that Islamic states not only did not adopt the 1948 Universal Declaration of Human Rights, but on 5 August 1990, developed the so-called Cairo Declaration of Human Rights in Islam,[23] from which it follows that all mankind by its very nature is Muslim, and therefore, freedom of religion cannot be accepted. Already in its preamble, the Cairo Declaration of Human Rights states that Islam is above other religions:

> 'Affirming the civilizational and historical function of the Muslim community, which is the best community that God ever created, which, by combining temporal life and eternal life, and knowledge and faith, has given mankind a universal and harmonious civilization; affirming the desirable role of this community today, as a guide for mankind in chaos due to different and contradictory beliefs and ideologies, because it is capable of offering a solution to the chronic problems plaguing this materialistic civilization [...]. '

The same preamble also stresses the prohibition against opposing what is required by *Sharia* law: 'In the belief that fundamental rights and universal freedoms in Islam are part of the Islamic religion, no one has the right to oppose them'. Article 10 of the Cairo Declaration of Human Rights, in turn, states that, 'Islam is man's natural religion'. It is unlawful to exert any form of pressure on a person or to take advantage of his ignorance or poverty to convert him to another religion or to atheism'; according to Article 19, 'No punishment is inflicted except in accordance with Islamic law'. This means accepting corporal punishment under *Sharia* law, including the death penalty for apostasy. While *the Quran* does not contain an explicit provision prescribing the death penalty for apostates, the death penalty for deviants is recommended by many hadis, including several recognised by all schools of Islam. A defector should be punished by death according to the teachings of the three schools of Sunni (Hanbali, Maliki, and Shafi'i), while the Sunni Hanafi school and Shia Jafari school prescribe imprisonment until 'return to the bosom of Islam', although even in this case, the death penalty is not excluded.

20 Baecker, 2005, p. 89.
21 Cf. Armour, 2004, pp. 35–36.
22 Cf. more: Bisztyga, 2013; Mrozek-Dumanowska, 1999; Jabłoński, 2005.
23 The declaration was signed by 45 foreign ministers at the 19th Islamic Conference of Foreign Ministers: Cairo Declaration on Human Rights in Islam, adopted in Cairo on 5 August 1990, University of Minnesota, Human Rights Library, U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993) [English translation].

The institution of *kafala* is "recognised" by the provisions of acts of international law. *Kafala* is mentioned in Article 3(e) of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (the Hague Convention) of 19 October 1996.[24] This provision stipulates that measures referred to in Article 1 of the Convention may deal in particular with 'the placement of the child in a foster family or in institutional care, or the provision of care by *kafala* or an analogous institution'. *Kafala* is also mentioned explicitly in the Convention on the Rights of the Child adopted by the United Nations (UN) General Assembly on 20 November 1989.[25]

3. Protection of the Child's Religious Identity In Alternative Care in Light of Supra-State Regulations

The issue of protecting the religious identity of a child, including a child in alternative care, is an issue that, as a rule, does not escape the attention of national legislators and supra-state bodies. However, in acts of international and EU law, this matter is regulated relatively modestly and mainly in the context of norms concerning parental authority, the prohibition of discrimination or, in general, the realisation of rights related to freedom of conscience and religion. The regulations of international and EU law on the subject are quite succinct and, in essence, have a slogan-like character. At the outset, however, it should be noted that the term "international law" and "EU law" here is a kind of shorthand, covering different areas of law.

"International law" is a set of norms recognised by states or nations as binding based on their mutual relations, including relations with international organisations. It is usually contained in or derived from the content of agreements between sovereign states. The term usually refers to two legal disciplines: public international law, which governs relations between states and international organisations and deals with areas such as human rights, the law of treaties, the law of the sea, international criminal law, and international humanitarian law; and private international law (conflict-of-law rules), which is a set of rules of procedural law that determines which legal system governs a given legal dispute and which jurisdiction that dispute falls under. These standards are applied in legal disputes with a cross-border element, such as those related to contracts between parties from different countries or when there is a cross-border element in a multi-jurisdictional country.

EU law, however, is – to put it somewhat simplistically – the collection of acts that make up the legal system of the EU. The entire acquis communautaire, including, for example, the rulings of the Court of Justice of the EU, is called the *acquis*. The basic

24 Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, HCCH, concluded on 19 October 1996, Official Journal L 048.

25 Convention on the Rights of the Child, adopted in New York on 20 November 1989, UN Treaty Series No. 27531.

division of EU law is the division into primary law – established by member states as part of international law, and secondary law – established by the institutions of the Union (regulations, directives, decisions, opinions, recommendations). If there is a conflict of legal norms between primary and secondary law, primary law takes precedence. However, this is not an exhaustive division – as it also includes international agreements to which the EU is a party, general principles of law, and common law. The literature also sometimes uses terms such as "European family law". Most often, this term is used to designate EU administrative regulations. The term is also sometimes used to refer to conflict-of-law rules on certain family matters, as well as rules on jurisdiction and the effectiveness of foreign judgments, which are of EU origin and contribute to the private international law and civil procedural systems of the Member States. It is not uncommon under this term to present comparative remarks on different family law systems.

3.1. An International Law Perspective

Concerning acts of international law, it is first necessary to point to the Declaration of the Rights of the Child, adopted by the UN General Assembly on 20 November 1959. The Preamble to this act emphasises that the UN, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. It was pointed out that the child, because of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth, and that mankind owes the child the best it has to give. It emphasised:

> '[...] the General Assembly proclaims this *Declaration of the Rights of the Child* to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures [...].'

Principles 2, 6, 7, and 10 are relevant to the issues addressed in this paper. Principle No. 2 stipulates that the child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop (physically, mentally, morally, spiritually, and socially) in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration. Principle No. 6 emphasises that a child, for the full and harmonious development of his personality, needs love and understanding, and should, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security. Meanwhile, children without a family or sufficient means of support should be given special care by society and state

authorities. Principle No. 7 also states that a child shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility. It also declared that the best interests of the child shall be the guiding principle of those responsible for his education and guidance, and at the same time, stressed that the responsibility for raising the child lies in the first place with his parents. Principle No. 9 mandates the protection of the child against all forms of neglect, cruelty, and exploitation. The last principle, No. 10, mandates the protection of the child from 'practices which may foster racial, religious and any other form of discrimination', educating the child in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

The International Covenant on Civil and Political Rights,[26] opened for signature in New York on 19 December 1966, states in Article 24 that every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property, or birth, the right to measures of protection on the part of his family, society, and the State.

Much more detailed than the above international agreements, standards concerning the legal position of the child are provided for – created on the initiative of Poland and widely accepted globally – by the Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989. By setting out minimum standards of law, including substantive private law, the Convention has the effect of harmonising the law in the contracting states.[27]

As an aside, it should be noted that the Vienna Convention on the Law of Treaties of 23 May 1969,[28] in Article 19, does not allow for reservations that are incompatible with the object and purpose of the treaty; however, many countries ratifying the Convention on the Rights of the Child have made such reservations to particular provisions of the Convention. Reservations incompatible with the object and purpose of the Convention on the Rights of the Child have been made by several Arab states with regard precisely to provisions on freedom of conscience and religion. A sizable group of these countries (Iran, Pakistan, Syria, Tunisia, Saudi Arabia, Qatar, Brunei, Djibouti, Oman, Singapore) have made so-called general reservations stating that they will not comply with those provisions of the Convention on the Rights of the Child that are contrary to Islam.[29]

The Preamble to the Convention reiterates, following the 1959 UN Declaration of the Rights of the Child, that the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection. It also stressed the need to take 'due account of the importance of the traditions and cultural

26 International Covenant on Civil and Political Rights, Journal of Laws 1977, No. 38, Item 167.
27 Buck *et al.*, 2011, pp. 88–163; Leblanc, 1996, p. 378; Kaime, 2011, pp. 22–26.
28 Vienna Convention on the Law of Treaties, adopted in Vienna 22 May 1969, UN Treaty Series, vol. 1155.
29 Schulz, 1999, p. 130.

values of each people for the protection and harmonious development of the child'. Article 8 requires states to take measures to respect the right of the child to preserve his or her identity, including family relations, as recognised by law without unlawful interference. Where a child is illegally deprived of some or all of the elements of his or her identity, states shall provide appropriate assistance and protection with a view to speedily re-establishing his or her identity. In light of Article 12, a child should have the right to freely express his or her own views (to this end, he or she has the opportunity to speak out in any judicial and administrative proceedings concerning him or her, 'either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law', as long as he or she is capable of forming his or her own views.

Undoubtedly, these rights are fully applicable to children placed in foster care, and they are binding on all state authorities, institutions, and persons involved in foster care.

The standard of Article 20(1) of the Convention on the Rights of the Child stipulates that 'a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State'. The jurisdiction of the courts and other entities in this matter derives from the regulations of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children of 19 October 1996 (the 1996 Hague Convention). The norm of Article 6 of this *Convention* stipulates that for refugee children and children who, owing to disturbances occurring in their country, are internationally displaced, the jurisdiction is vested in the authorities of that Contracting State in which the children reside as a result of the displacement (paragraph 1); the provisions of the preceding paragraph also apply to children whose habitual residence cannot be established. Notwithstanding the above aspects, in accordance with Article 11(1) of the Convention, in all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.

The provision of the Convention on the Rights of the Child that directly relates to the issue under consideration here is Article 20(2) and (3). It clearly provides that a child who is temporarily or permanently deprived of his or her family environment shall be placed in foster care by States Parties in accordance with their national law, which,

> '[...] could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (paragraph 3).'

The issue of upbringing taking into account the religious identity of the child, including a child subjected to substitute forms of parental care, has also been recognised in the Convention against Discrimination in the Field of Education, drawn up under the auspices of UNESCO in Paris on 15 December 1960. The norm of Article 5(b) of this Convention stipulates that parents and, in appropriate cases, legal guardians, should be able to ensure 'the religious and moral education of children in conformity with their own convictions', and also adds that 'no person or group of persons should be compelled to receive religious instruction inconsistent with his or her conviction'. It is worth mentioning that upbringing shapes identity and, therefore, the protection of the continuity of upbringing in principle aims to protect the child's identity, including his religious identity.

3.2. EU Law Perspective

As far as European Union (EU) law is concerned, it should be noted at the outset that it follows from the principle of delegated powers in the Treaty that the EU's legislative competence does not extend to substantive family law. This means that there are no normative acts in EU law on, such as the relationship between parents and children, and the EU has no competence to conclude international agreements regulating these matters.[30]

The EU treaties do not explicitly mention the family as a value of the EU or its protection or support as an objective of the organisation. Similarly, the rights of the child related to his or her religious identity are not explicitly addressed in the basic international agreements between EU member states. The existence of such protection can only be interpreted from the vague declarations in these acts.

In the Treaty of 7 February 1992 on the EU[31] after the Lisbon amendment on 1 December 2009, when listing the values of the EU, Article 3 speaks in general terms of, among other things, respect for the dignity of the human person and non-discrimination, while the listing of the goals of the Union mentions the protection of children's rights. The thought of protecting human rights, especially the rights of the child, is repeated in the description of the EU's actions in external relations.

The Charter of Fundamental Rights of the European Union, which has the force of law equal to the treaties, generally states that the EU respects 'the diversity of the cultures and traditions of the peoples of Europe'. In Article 10, the Charter guarantees everyone the right to freedom of thought, conscience, and religion. This right includes freedom to change one's religion or belief and freedom, either alone or in community with others and in public or in private, to manifest one's religion or belief, in worship, teaching, practice, and observance. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right (Article 10(2) of the Charter). Directly concerned with the rights of the child is Article

30 Baratta, 2008, pp. 189–194; Lamont 2009, pp. 371–372.

31 Treaty of 7 February 1992 on the European Union, Journal of Laws 2004, No. 90, Item 864/30, as amended.

24, which declares the right of children to such protection and care as is necessary for their well-being. Additionally, it is stipulated that children's position and views shall be taken into consideration on matters which concern them in accordance with their age and maturity. It also declares that the best interests of the child must be a primary consideration in all actions concerning children by public authorities and private institutions.

The European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children,[32] drawn up under the auspices of the Council of Europe in Luxembourg on 20 May 1980, and the European Convention on the Exercise of Children's Rights,[33] drawn up in Strasbourg on 25 January 1996, do not contain any regulations that directly or indirectly refer to the religious rights of the child.

By contrast, in the European Convention for the Protection of Human Rights and Fundamental Freedoms, concluded by the member states of the Council of Europe and opened for signature on 4 November 1950 (entered into force in 1953), the key guarantees ensuring the protection of freedom of thought, conscience, and religion or belief are found in two provisions: in Article 9 and Article 2 of Protocol No. 1.

Article 9(1) stipulates that everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance. Further, according to paragraph 2 of this provision, the freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others. In contrast, Article 2 of Protocol No. 1 stipulates that 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.

It should be mentioned that Article 5^1 of the Framework Convention for the Protection of National Minorities, drawn up in Strasbourg on 1 February 1995 (entered into force in 1998)[34] stipulates that the Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions, and cultural heritage.

32 European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, adopted in Luxemburg on 20 May 1980 under the auspices of the Council of Europe, ETS No. 105.

33 European Convention on the Exercise of Children's Rights, adopted in Strasbourg on 25 January 1996 under the auspices of the Council of Europe, ETS No. 160.

34 Framework Convention for the Protection of National Minorities, adopted in Strasbourg on 1 February 1995 under the auspices of the Council of Europe, ETS No. 157.

Recently, the need to strengthen the protection of the rights of children subjected to foster care to preserve their identity has been clearly recognised within the EU, and there have been fairly unequivocal (for the characteristics of EU law indicated above) attempts to regulate this protection. Indeed, at the meeting of the Council of the EU on 25 October 2019, an agreement was adopted, also on the initiative of Poland, to amend Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.[35] The amendments include a provision that explicitly 'obliges EU member states to preserve the child's rights to cultural, religious and linguistic identity in foster care proceedings'[36] and a mechanism to ensure the implementation of this right.

This mechanism is based on a system of notification by the state that conducts foster care proceedings for a child of a state with which the child has a significant relationship. The latter country is informed of the fact that such proceedings are being conducted. It should be noted that the authority conducting the proceedings on foster care, if it is aware of the child's close ties with another state, may apply as follows at the earliest possible stage of the proceedings: a) the mode of the Regulation, that is, by notifying the central authority of the Member State with which the child has a significant relationship (in Poland, it is the Minister of Justice) or b) the mode of the Consular Convention – Article 37(b) of the 1963 Vienna Convention on Consular Relations.

As a result, the authority in charge of foster custody proceedings will apply the mode of notification it deems most appropriate in the case, taking into account the mandatory nature of the Consular Convention. Such information allows the state with which the child has a significant connection to take appropriate measures to find and identify families from a similar cultural background, and preferably relatives of the child who are willing to take foster care of the child.

Regardless of the notification, a country interested in the fate of its citizens may inform about a close relationship with the child of that country, such as the existence of relatives of the child in that country who are ready to take custody of the child.

The information provided is not binding on the state that is conducting the proceedings, and the final decision on who will be appointed as the child's foster care provider belongs to the authority conducting the proceedings, which should consider all the circumstances of the case and be guided primarily by the welfare of the child. Nevertheless, the regulation obliges Member States to ensure, in proceedings for the establishment of foster care, the right of the child to preserve his or her identity as

35 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, Official Journal of the European Union L 338, ["Brussels II bis"].

36 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, Official Journal of the European Union L 178/1, ["Brussels II bis"].

defined in Articles 8 and 20 of the UN Convention, and to this end, take appropriate measures at the earliest possible stage of these proceedings.

The introduction of the described mechanism should, as planned, make a real contribution to raising and strengthening respect for children's rights to their identity. The introduction of this mechanism in EU law can also contribute to increasing the effectiveness of and compliance with both the Consular Convention and the UN Convention on the Rights of the Child (which have not always been applied although they are in force in member states).

It should be emphasised that a possible violation of the provisions of the Regulation by a Member State may lead to the following outcomes: a) A complaint for violation of a treaty obligation by a Member State – in case of violation of the provisions of the Regulation by the authorities of a Member State; the complaint can be filed by the European Commission as well as by another Member State. The assessment of whether there has been a violation is made by the Court of Justice of the EU. b) Actions for damages for the violation of EU law by a Member State – related to the principle of liability of public authorities to individuals when the state has violated a provision that grants rights to an individual; the violation is sufficiently serious and there is a causal link between the violation and the damage. It is up to the Court of Justice of the EU to assess the violation.[37]

Recital (11) to the aforementioned Regulation stipulates that any type of placement of a child in foster care, that is, according to national law and procedure, with one or more individuals, or institutional care, for example, in an orphanage or a children's home, in another Member State should fall within the scope of this Regulation unless expressly excluded, which is, for example, the case for placement with a view to adoption, placement with a parent or, where applicable, with any other close relative as declared by the receiving Member State. As a result, 'educational placements' ordered by a court or arranged by a competent authority with the agreement of the parents or the child or upon their request following the deviant behaviour of the child should be included [...] as well. Recital (84) states:

> '[...] where a decision on the placement of a child in institutional or foster care is being contemplated in the Member State of the habitual residence of the child, the court should consider, at the earliest stage of the proceedings, appropriate measures to ensure respect of the rights of the child, in particular the right to preserve his or her identity and the right to maintain contact with the parents, or, where appropriate, with other relatives, in light of Articles 8, 9 and 20 of the UN Convention on the Rights of the Child [...].'

Regulation 2019/1111 Brussels II ter entered into force in EU Member States (except Denmark) on 1 August 2022.

37 Cf.: https://www.gov.pl/web/sprawiedliwosc/wielki-sukces-polski-unia-europejska-bedzie-chronic-tozsamosc-kulturowa-dzieci (Accessed: 5 August 2023).

4. Protection of a Child's Religious Identity in Polish Law

The Republic of Poland, in ratifying the Convention on the Rights of the Child of 20 November 1989, made a declaration in which it expressed the position that it believes that the child's exercise of, among other things, the right to freedom of thought, conscience, and religion 'shall be carried out with respect for parental authority, by Polish customs and traditions concerning the child's place within and outside the family'.

The Polish legislator, in Article 48(1) and Article 53 in conjunction with Article 72(1)–(3) of the 1997 Constitution of the Republic of Poland,[38] guaranteed parents the right to raise their children in accordance with their own beliefs, primarily in the sphere of upbringing, religion, and worldview, with the provision that educational activities are to respect the child's subjectivity and rights, in particular, freedom of conscience, religion, and belief. The right of parents to the religious upbringing of their child is also indicated in Article 12(1) of the Concordat,[39] as well as in several other legal acts in force in Poland, including Article 12(1) of the Act of 7 September 1991 on the Educational System[40] (which stipulates that public kindergartens, primary schools, and lower secondary schools organise religious instruction at the request of parents), Article 2(4) of the Act of 17 May 1989 on Guarantees of Freedom of Conscience and Religion[41] (according to which citizens may bring up their children by their beliefs in matters of religion), or Article 18(1) of the Act of 17 May 1989 on the Relationship of the State to the Catholic Church in Poland[42] (according to which the State recognises the right of the Church to teach religion and the religious education of children and young people by the choice made by their parents).

It should also be noted that according to Article 32 of the Act of 21 April 1936 on the State's Relationship with the Muslim Religious Union,[43] religious instruction for young people of the Muslim faith in 'scientific institutions whose program includes the education of young people under the age of 18, maintained in whole or in part by the State or local government bodies', is compulsory.

The right to religious upbringing has also been guaranteed by the Polish legislature to children subjected to foster care. Article 40(5) and Article 93(4) of the Act

38 Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997, No. 78, Item 483.
39 Concordat between the Holy See and the Republic of Poland of July 28, 1993, Journal of Laws 1998, No. 51, Item 318.
40 Act of 7 September 1991 on the Educational System, Journal of Laws 2022, Item 2230, as amended.
41 Act of 17 May 1989 on Guarantees of Freedom of Conscience and Religion, Journal of Laws 1989, No. 29, Item 155, as amended.
42 Act of 17 May 1989 on the Relationship of the State to the Catholic Church in Poland, Journal of Laws 1989, No. 29, Item 154, as amended.
43 Act of 21 April 1936 on the State's Relationship with the Muslim Religious Union, Journal of Laws 1936, No. 30, Item 240, as amended.

of 9 June 2011 on Family Support and Foster Care[44] stipulates that a foster family, a family foster home, and a foster care centre should not only provide 24-hour care for a child, but also, among other things, meet the child's religious needs. Further, according to Article 18(1) of the Act on the Relationship of the State to the Catholic Church, decisions regarding the religious upbringing of children and young people may also be taken by their legal guardians.

5. Summary

An analysis of the current legal solutions regarding the protection of the religious identity of a child placed in alternative care in the broadest sense leads to the conclusion that the scope of this protection is not only varied but also, in some cases, quite questionable.

The strongest protection of a child's religious identity is undoubtedly in adoption, assuming, of course, that the child placed with an adoptive family from a similar cultural and religious background. In such a situation, by creating legal and family relations analogous to those found in natural families, the child's right to be raised with respect for his or her religious identity is also 'reinforced' by the right of the (adoptive) parents to raise the child in accordance with their religious beliefs (fideistic worldview).

In the case of foster care, the situation is more complex and problematic. The guarantees of preserving a child's religious identity are undoubtedly greater when a child is placed with a related foster family than when placed with an unrelated foster family environment or an institutional care facility.

However, regardless of the above aspects, it should also be borne in mind that foster care covers not only children whose parents have been deprived of parental authority, or who do not have biological parents, but also frequently those whose biological parents retain full parental authority or have it only slightly limited. It should be noted that natural parents only lose influence over issues concerning their child's religious upbringing when they lose the prerogatives of parental authority. In *Eriksson v. Sweden*,[45] in its judgment of 22 June 1989, the ECHR held that parents and legal guardians may lose the right guaranteed in Article 2 of Protocol No. 1 if they are deprived of parental rights as a result of a court judgment or the termination of an adoption. Conversely, in *Olsson v. Sweden*,[46] in its judgment of 24 March 1988, the Court held that where parental rights are merely restricted, for example, as a result of illness, the placement of a child with a foster family or 'placing of the child in care' does not create a situation where the children are not to be brought up in accordance with the parents' beliefs or religion.

44 Act of 9 June 2011 on Family Support and Foster Care, Journal of Laws 2011, No. 149, Item 887, as amended.

45 *Eriksson v. Sweden*, application No. 11373/85, 22 June 1989.

46 *Olsson v. Sweden*, application No. 10465/83, 24 March 1988.

Such a state of affairs, for reasons that are quite clear, can generate numerous problems. After all, how would it look in practice (and in legal terms) to implement the mentioned protection of the religious identity of a child placed with a foster family of people professing, for example, Catholicism or with a non-religious worldview, in the case where the child's parents—who have not been deprived of parental authority—are, for example, Jehovah's Witnesses demand that the child be raised in the spirit of this religion? In principle, it is difficult to answer such a question unequivocally, just as it is difficult to explain fully why the guarantees related to the preservation of the identity of the child in foster care have been strengthened, in EU law only for cross-border cases. In this context it is worth emphasising that the provisions of the Brussels II ter Regulation referred to above apply only to foreign foster care (albeit within the EU) since the essence of this EU regulation is to define the principles of establishing foster care in cases beyond the jurisdiction of a single state. Therefore, it only applies to situations where the child in foster care either emigrates or is placed there as a result of such placement.

However, the institution of the *kafala* appears to be the most controversial issue. The fundamental question arising from this context is whether the related prohibition on educating a child in the Islamic spirit and the punishments for apostasy imposed by the *Sharia* are compatible with the values of the European cultural sphere, including the protection of human rights. If not, the question arises whether this system should be respected in the European legal order. An attempt to answer this question is illustrated using the example of the Republic of Poland.

On the surface, it would seem that since the *kafala* is an institution of Islamic law and the Quran does not belong to the sources of Polish law as defined in Article 87(1) and (2) of the Polish Constitution, there is no legal basis to respect the solutions adopted in *Sharia* in Polish law. The above conclusion is not without reason; however, it does not mean that the thesis of the existence of references between the said institution and Polish law should be entirely dismissed. The fact is that the *kafala* is 'recognised' by certain provisions of international law to which Poland is a party, and this institution is not excluded by private international law either.[47]

Taking into account the content of the indicated paragraph 2 of Article 20 of the Convention on the Rights of the Child, it can be said that since this provision orders state parties to provide alternative care to a child deprived of a family environment in accordance with their domestic law, and the legislation in force in Poland does not provide for *kafala*, it is clear that the courts in Poland, when ruling on foster care for a minor follower of Islam, will not apply it in the form of the *kafala* system. However, can the conclusion be drawn from this fact that *kafala* is a completely irrelevant to the Polish legal order and the courts are in no way obliged to take it into account in their decisions?

47 Act of 4 February 2011 on Private International Law, Journal of Laws 2011, No. 80, Item 432, as amended, hereinafter referred to as the "PIL Act".

Analysing the above problem in relation to adoption itself, it should be stated that in the case of foreign adoption (adoption, as a result of which the child moves to another country; adoption of a child from outside the Republic of Poland), the *kafala* problem is partly solved by private international law and the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 29 May 1993 (the 1993 Hague Convention). This is because, according to Article 57(1) of the PIL Act, although adoption is governed by the native law of the adopter, according to Article 58(1) of the PIL Act, adoption may not take place without observance of the native law of the person to be adopted, concerning the consent of that person, the consent of his or her legal representative, and the permission of the competent state authority. Thus, the primary obstacle to the adoption in Poland for a minor immigrant follower of Islam may not be the *kafala* per se, but rather the lack of consent of the competent entities specified in international law. For instance, adoption is explicitly prohibited in Pakistan, among other countries. In contrast, it is not regulated by law in Algeria, Iraq, or Afghanistan, among others.[48]

A more complex issue is that of *kafala* and foster care. Articles 56(1) and 59(1) of the PIL Act provide that the law applicable to matters of parental responsibility and access to the child, and custody and guardianship, is to be determined by the 1996 Hague Convention. That Convention lays down in Article 16 that parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State, whereby, in accordance with Article 1(2) of that Convention, the term 'parental responsibility' includes parental authority or any analogous relationship of authority determining the rights, powers, and responsibilities of parents, guardians, or other legal representatives concerning the child's property or person. According to Article 20 of the aforementioned 1996 Hague Convention, the provisions of this Chapter (Chapter III Applicable Law) apply even if the law designated by them is the law of a non-contracting state. It should be emphasised that the Brussels II ter Regulation also regulates foster care abroad for all children with permanent residence in the EU (except Denmark) – with well-established case law showing that nationality is only one of the criteria for examining this link (ECJ judgment of 2 April 2009 C-523/07).

It follows, therefore, that Polish authorities will be obliged to protect the cultural or religious identity of a Muslim child placed in Polish foster care, and if there are children in the territory of the Republic of Poland who have been cared for in the form of *kafala* in their place of habitual residence, this fact should be respected under Polish law.

Such an interpretive direction, mandating that the *kafala* system be respected in the domestic legal order, also seems to derive from earlier case law of the European Court of Human Rights. In its 4 October 2012 judgment in *Harroudj v. France* (Application no. 43631/09), the ECtHR explicitly noted that Article 20 of the Convention on the Rights of the Child explicitly recognises the *kafala* system, which is derived from

48 See: Bagan-Kurluta, 2009.

Islamic law, as a form of foster care. In this judgment, the Court also noted that the refusal to grant the adoption of a child who had been entrusted to a French citizen in Algeria under the *kafala* form of care does not violate the right to respect for family life, as stipulated in Article 8 of the European Convention on Human Rights. In this ruling, the ECtHR pointed out that 'the recognition of the kafala system by international law is a decisive factor in assessing how States address this issue within their national legal systems and how they regulate potential conflicts of law that may arise'. According to the Court, the applicant was denied adoption due to the need 'to abide by the spirit and purpose of international conventions'. Further, in its judgment of 16 December 2014, *Chbihi Loudoudi v. Belgium* (Application no. 52265/10), the ECtHR held that the failure to grant an application for recognition of the adoption of a child over whom the applicants had an Islamic form of custody in the form of a *kafala* did not violate the right to respect for family and private life.

The above analysis leads to the conclusion that in the current legal framework, it is questionable whether the protection of the religious identity of a child subjected to alternative care in the broad sense is regulated in a consistent manner and adequate to the gravity of the problem. One would expect more in-depth legislative changes in this matter, although further harmonisation or unification of family law worldwide seems unlikely in the near future.[49] While greater international consensus on issues known as "child protection", seemed achievable in the past, which includes private law issues. The continuation of this process, however, seems questionable given recent deepening cultural differences and local traditions, including the abandonment in some countries of assumptions that have 'always' underpinned family law, such as, viewing parenthood as the sum of motherhood and fatherhood, and adoption as an institution that imitates nature.[50]

49 Mostowik, 2014, p. 30.
50 Khazova, 2005, pp. 373–391; Berrick, 2011, pp. 17–40.

Bibliography

Act of 4 February 2011 on Private International Law, Journal of Laws 2011, No. 80, Item 432, as amended.

Act of 21 April 1936 on the State's Relationship with the Muslim Religious Union, Journal of Laws 1936, No. 30, Item 240, as amended.

Act of 17 May 1989 on Guarantees of Freedom of Conscience and Religion, Journal of Laws 1989, No. 29, Item 155, as amended.

Act of 17 May 1989 on the Relationship of the State to the Catholic Church in Poland, Journal of Laws 1989, No. 29, Item 154, as amended.

Act of 9 June 2011 on Family Support and the System of Foster Care, Journal of Laws 2024, Item 177, hereinafter referred to as the "Foster Care Act".

Act of 29 July 2005 on Prevention of Domestic Violence, Journal of Laws 2024, Item 424, hereinafter referred to as "Domestic Violence Act".

Act of 7 September 1991 on the Educational System, Journal of Laws 2022, Item 2230, as amended.

Armour, R. (2004) *Islam, Chrześcijaństwo i Zachód. Burzliwe dzieje wzajemnych relacji*. Kraków: WAM.

Baecker, R. (2005) 'Islam: między fundamentalizmem a totalitaryzmem' in Baecker, R., Kitab, S. (eds.) *Islam a świat*. Toruń: Adam Marszałek, pp. 7–95.

Bagan-Kurluta, K. (2009) *Adopcja dzieci. Rozwiązania prawne w wybranych państwach*. Białystok: Temida 2.

Baratta, R. (2008) 'Short Remarks on EC Competence in Matters of Family Law' in Malatesta, A., Bariatti, S., Pocar, F. (eds.) *The External Dimension of EC Private International Law in Family and Succession Matters*. Padova: Wolters Kluwer.

Berrick, J. (2011) 'Trends and Issues in the U.S. Child Welfare System' in Gilbert, N., Parton, N., Skivenes, M. (eds.) *Child Protection Systems: International Trends and Orientations*, edn. Oxford: Oxford University Press, pp. 17–40.

Bisztyga, A. (2013) 'Zachodnia a islamska koncepcja praw jednostki', *Przegląd Prawa Konstytucyjnego*, 2013/1, pp. 77–92.

Buck, T., Gillespie, A., Ross, L., Sargent, S. (eds.) (2011) *International Child Law*. 2nd edn. London and New York: Routledge Publishing. Available at: https://doi:10.4324/9780203845981.

Cairo Declaration on Human Rights in Islam, adopted in Cairo on 5 August 1990, University of Minnesota, Human Rights Library, U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993) [English translation].

Charter of Fundamental Rights of the European Union, adopted in Lisbon on 12 December 2007, Official Journal of the European Communities, 2012/C 326/02.

Concordat between the Holy See and the Republic of Poland of July 28, 1993, Journal of Laws 1998, No. 51, Item 318.

Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997, No. 78, Item 483.

Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950 under the auspices of the Council of Europe, ETS No. 5.

Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, HCCH, concluded on 19 October 1996, Official Journal L 048.

Convention on the Rights of the Child, adopted in New York on 20 November 1989, UN Treaty Series No. 27531.

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, Official Journal of the European Union L 178/1, ["Brussels II bis"].

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, Official Journal of the European Union L 338, ["Brussels II bis"].

European Convention on the Exercise of Children's Rights, adopted in Strasbourg on 25 January 1996 under the auspices of the Council of Europe, ETS No. 160.

ECtHR, *Eriksson v. Sweden*, Application No. 11373/85, 22 June 1989.

ECtHR, Judgment *Olsson v. Sweden*, Application No. 10465/83, 24 March 1988.

European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, adopted in Luxemburg on 20 May 1980 under the auspices of the Council of Europe, ETS No. 105.

Family and Guardianship Code, Journal of Laws 2023, Item 2809.

Foster carers. Types of Foster care. Available at: https://www.gov.uk/foster-carers/types-of-foster-care, (Accessed: 5 August 2023).

Framework Convention for the Protection of National Minorities, adopted in Strasbourg on 1 February 1995 under the auspices of the Council of Europe, ETS No. 157.

Gunn, J. (2003) 'The Complexity of Religion and the Definition of «Religion» in International Law', *Harward Human Rights Journal*, 2003/16, pp. 189–215.

Harbatski, A. (2015) 'Tożsamość religijna a bezpieczeństwo konfesyjne: współczesne wyzwania (na przykładzie Republiki Białorusi)', *Pogranicze. Studia Społeczne,* 2015/15, pp. 135–150.

Human Rights Library, U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993) [English translation].

Ignatowicz, J. (2023) 'Małżeństwo' in Pietrzykowski, K. (ed.) *Kodeks rodzinny i opiekuńczy. Komentarz.* 8th edn. Warszawa: C.H.Beck.

International Covenant on Civil and Political Rights, adopted in New York on 16 December 1966, UN General Assembly resolution 2200A (XXI).

International Covenant on Economic, Social and Cultural Rights, adopted in New York on 16 December 1966, UN General Assembly resolution 2200A (XXI).

Jabłoński, M. (2005) 'Wolności i prawa jednostki w regionalnym systemie Ligi Państw Arabskich' in Banaszak, B., Bisztyga, A., Complak, M., Jabłoński, M., Wieruszewski, R., Wójtowicz, K. (eds.) *System ochrony praw człowieka*. Kraków: Wolters Kluwer.

Judgment of the Supreme Court of 4 December 1968, II CR 375/68, LexPolonica nr 300813, OSNCP 1969, nr 10, poz. 174.

Kaime, T. (2011) *The Convention on the Rights of the Child. A Cultural Legitimacy Critique*, edn. Groningen: Europa Law Publishing.

Khazova, O. (2005) 'Allocation of Parental Rights and Responsibilities after Separation and Divorce under Russian Law', *Family Law Quarterly*, 39/2, pp. 373–391.

Khazova, O. (2007) 'Family Law In the Former Soviet Union: More Differences or More Common?'in Antokolskaia, M. (ed.) *Convergence and Divergence of Family Law in Europe*. Antwerpen-Oxford: Intersentia, pp. 97–103.

Lamont, R. (2009) 'Evaluating European Values: the EU's Approach to European Private International Law', *Journal of Private International Law*, 2009/3, pp. 371–381.

Leblanc, L. (1996) 'Reservations to the Convention on the Rights of the Child: A macroscopic view of state practice', *The International Journal of Children Rights*, 1996/4, pp. 357–381.

Mostowik, P. (2014) 'Władza rodzicielska i opieka nad dzieckiem w prawie prywatnym międzynarodowym'. Kraków: Wydawnictwo JAK.

Mrozek-Dumanowska, A. (1999) *Islam a demokracja*. Warszawa: Askon.

Piwko, A. (2010) 'Muzułmańscy rodzice', Nurt SVD 2010/1, pp. 157–173.

Schulz, A. (1999) 'Zastrzeżenia, deklaracje, sprzeciwy do Konwencji o Prawach Dziecka' in Smyczyński, T. (ed.) *Konwencja o Prawach Dziecka. Analiza i wykładnia.* Poznań: Ars Boni et Aequi, pp. 111–134.

Tomkiewicz, M. (2017) 'Islamska «kafala» a prawo polskie' in Nikołajew, J., Sobczyk, P., Walczuk, K. (eds.) *Wolność sumienia i religii a bezpieczeństwo i porządek publiczny*. Siedlce: Wydawnictwo Diecezji Siedleckiej UNITAS, pp. 149–164.

Treaty of 7 February 1992 on the European Union, Journal of Laws 2004, No. 90, Item 864/30, as amended.

Universal Declaration of Human Rights, adopted in Paris on 10 December 1948, UN General Assembly resolution 217 A, pp. 71–79.

Vienna Convention on the Law of Treaties, adopted in Vienna 22 May 1969, UN Treaty Series, vol. 1155.

| CHAPTER 6 |

Children's Religious Rights in School: Religious Education, Display of Religious Symbols and Religious Clothing in Schools

Balázs SCHANDA

ABSTRACT

From the outset, religious entities have played a central role in education. Despite significant national and regional differences, a number of Catholic religious orders and Protestant schools have shaped the education system in most European countries. Introducing compulsory education (mostly in the 18th century) did not change the central role of denominations in the education system. Across Eastern Europe, the communist regime has curtailed the role of churches in education as well as the possibility of churches providing religious education in public schools. Since the collapse of the communist system, various schemes of religious education were reintroduced in public schools, and religious communities were once again considered important service providers in the education system. Symbols carrying cultural identity—often linked to religion—may have reappeared in schools; in this respect there are significant national differences. Participation in religious education at public schools generally depends on parental decision. Considering the limited presence of Islam in the eastern part of Central Europe, the issue of Islamic headscarf at schools has yet to become a subject of wider public debate. Schools have remained the most important institution of society where generations growing up learn to live together in harmony.

KEYWORDS

school, religious education, ethics, church schools, religious symbols, religious garment

Parents carry the ultimate responsibility for their children and have the natural right to determine their education.[1] Faith communities have made an indisputable claim for the right to offer their teaching to future generations with due consideration of parental decisions. Schools in medieval Europe emerged in a religious

1 E.g.: Universal Declaration of Human Rights, Art. 26.3. First Protocol to the European Convention on Human Rights, Art. 2. In a peculiar was the Convention on the Rights of the Child when recognising the right of the child to freedom of thought, conscience and religion, only acknowledging the role of parents (or 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 ».

Balázs SCHANDA (2025) 'Children's Religious Rights in School: Religious Education, Display of Religious Symbols and Religious Clothing in Schools' in Katarzyna ZOMBORY – Márta BENYUSZ (eds.) *Religion and Children's Rights.* Miskolc–Budapest: Central European Academic Publishing. pp. 137–152. https://doi.org/10.71009/2025.kzmb.racr_6

setting: cathedral chapters and monasteries were the first schools and the state has respected, endorsed and supported the prominent role of churches in education. State supervision over the school system has been a policy of absolutism when education has become a public issue, assuming a compulsory nature.[2] Religious communities have remained important actors in the education system, with significant national and historical differences; the path to a peaceful and equitable coexistence was often paved by intense political debate on the role of church and religion in education. Some countries have rather set on cooperation between church and state with regard to education, whereas others rather marginalised religious elements in the public education system. It is worth noting that before and besides the school, family and religious communities have played a determinative role in the religious upbringing of children. These realities are, by their very nature, fields of freedom rather than legal regulation. There is no other social structure comparable to the school system that shape the attitude and worldview of subsequent generations—in fact schools are a reflection of society. Parents, the state and religious communities form a delicate triangle sharing a natural interest in education. Interests are linked to rights and duties: whereas the relations between parents, as well as between parents and children are primarily not determined by legal provisions; state policies are expressed by legislation. The education system has to be shaped taking into consideration parental rights. The European Court of Human Rights contends that 'the State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded'.[3]

1. Religious Education

Religious education in the narrow sense would be denominational religious education or religious instruction, i.e. the introduction of a child into the doctrine of a religious community upon the decision of his/her parents. In this sense, it is a core element of parental right to decide the education of children and provide for that, given that one religion taught and learnt is ones' own. Teaching about religion may be considered an integral part of school curriculum irrespective of the religious affiliation of children. Religious education lies at the intersection of three institutions: family, religion and state.[4]

Specifically, religious communities would have the right to provide *religious education* in public schools and kindergartens at the request of children/students and their parents; non-public schools may fall under different regulation. A state that is neutral with regard to religion generally maintains an education system that is also neutral and equally accessible to all citizens. Neutrality, however, does not mean that the

2 Rees, 1986, pp. 54–55.
3 *Folgerø and Others v. Norway*, Application No. 15472/02, 29 June 2007.
4 Durham, 2013, pp. 1–9.

education system cannot be bound by certain values as well as cultural legacy. The Constitution of Bavaria (1946) provides for "reverence for God" as the first goal of education (Article 131 (2)), and determines, that 'State elementary schools shall be open to all children of school age. In them children shall be taught and educated according to the principles of the Christian creed'. (Article 135). The Fundamental Law of Hungary ensures the right of children to be brought up 'in accordance with the values based on the constitutional identity and Christian culture of our country' (Article XVI (1)).

In most European countries, some form of denominational religious education has survived within the public school system, whereas in communist-ruled countries, this right appears seriously constrained. With the collapse of the communist regime, new arrangements had to be determined respecting the fundamental rights of parents, pupils and religious communities, while taking into account social changes.

The access of religious communities to public schools, criteria for a religious community to provide religious education at school, training of teachers of religion, determination of the curriculum as well as funding religious education constitute sensitive issues often regulated in concordat agreements.[5]

1.1. No Religion in Schools

Some school systems exclude religion from public education—the United States of America or France serve as well-known examples, followed by countries like Slovenia and Albania.[6] In these countries, religious parents may opt for non-public schools and religious communities would provide for religious education on their own premises—like at Sunday schools. The more secular the public education system, the stronger the demand for establishing private, religious schools. This may be the reason that the percentage of pupils attending church schools is much higher in France where the public education system is secular, than is Germany where religious education is part of public education.

1.2. Opting-Out Systems

Religious education in public schools can be organised in an "opting-out" or "opting-in" model. Greece applies an opting-out model with regard to orthodox religious education, similar to Malta with Catholic religious education. In this model, the main rule is that all children attend the instruction of the dominant religion, leaving the possibility to withdraw without any specific explanation. In Thrace on the territory established by the Treaty of Lausanne (1923), Muslim children receive Islamic religious education in minority schools.[7] In most parts of Germany, registered denomination would automatically mean that pupils attend the religious education of their denomination at school. Parents—or pupils after age 14—may opt out at the beginning of every school year. In the opting-out model, usually ethics classes are offered to those not

5 Němec, 2012, pp. 203–247.
6 Staničić, 2021b, p. 144.
7 Maghioros, 2013, p. 134.

attending religion classes. When all children attend either religious or ethics classes, the attendance of religious classes may be higher. As the state sets the curriculum of ethics courses, some interest may be generated in the content of religious classes that could limit the discretion of religious communities. The attendance, grading as well as the proper decree of the religious teacher could become a matter of common interest when religion is not merely considered an optional afternoon activity.

Pupils (parents) may opt out from compulsory denominational religious education in most parts of Germany. According to the Basic Law of Germany, 'Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned'.[8] Religion is one of the subjects taught, but since the state has no religion, it is required to cooperate with religious communities to determine the content of the class.[9]

The age limit of children making their own decisions with regard to religion—including religious education—may vary. In Austria and Germany, legal regulation sets the minimum age when children can make their own decisions in religious issues, including attending religious education ("*Religionsmündigkeit*"). Individuals aged above 14 are considered "mature" and may, in most Austrian and German states, freely opt out from compulsory denominational religious education or convert to another faith. Parents may make all decisions regarding religious affairs until the child turns 10; between ages 10 and 12, the parents must take their child's opinion into account, although the child may only leave the given religion with the consent of both parents. When the child is between 12 and 14, the parents may decide to leave a religious community against the child's will, and after reaching the age of 14, the child may make independent decisions, including leaving school-based religious education.[10]

1.3. Opting-In Systems

In the "opting-in" model, religious education is an optional subject added to the normal school curriculum, and parents/pupils are required to make a positive decision to enrol in religion classes. For example in Italy, parents (or in secondary school, the students themselves) have to declare every year whether their children can take part in Catholic religious education or withdraw from it. When a determinative majority attends religion classes, it may become practically a part of the school curriculum. In this case, it is important to pay attention to the equality and inclusion of those not opting for religion classes, the teaching of ethics can be a reasonable alternative[11] or even a necessity.[12]

8 Basic Law, Art. 7 (3).

9 Mückl, 1997, p. 517.

10 Gesetz über die religiöse Kindererziehung; 15 July 1921 (RGBl. S. 939). Available at: https://www.oesterreich.gv.at/themen/leben_in_oesterreich/kirchenein___austritt_und_religionen/Seite.820012.html (Accessed: 15 December 2022).

11 E.g. CRC/C/POL/CO/5-6 (Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Poland), pt. 25. Available at: https://www.ohchr.org/en/documents/concluding-observations/crccpolco5-6-concluding-observations-combined-fifth-and-sixth.

12 *Grzelak v. Poland*, Application No. 7710/02, Judgement 15 June 2010.

Certainly, figures and proportions matter: a small minority cannot expect the majority to not express its religious views through participation in religion classes.[13] When it is only a small minority that opts for religion classes, then optional religion classes can be left for afternoon hour, and religion classes may concur with a wide range of alternative possibilities.

In "opting-in" models, it is common to set a minimum number of attendants of a course for the school to provide or host religion classes of a given faith community. If religious minorities are not concentrated in certain geographical areas, they are not likely to reach the minimum requirements. A possible solution to this problem has been arranged in Poland providing for the possibility to arrange religion (or ethics) classes in inter-school groups regardless of the number of students.[14]Additional legal requirements may foresee a proper decree of the teacher of religion classes or a certain legal status of the religious community that may also lead to only mainstream religious communities offering religion classes at public schools.

An opt-in to optional religious education is provided by mainstream denominations in nations like Italy, Poland as well as countries in Central Europe.[15] According to the Concordat between Poland and the Holy See, the curriculum for the teaching of Catholic religion as well as the textbooks used are edited by the ecclesiastical authority and communicated to competent civil authorities.[16] Similar regulations have been made in other concordat agreements besides national laws. The curricula, textbooks and other instruments need ecclesiastical approval and consultation with the ministry of education and deserves similar funding to other subjects. With regard to supervision, the church also has the right to observe classes and agree on the persons who conduct state school inspection with regard to religion classes.[17]

Determining the content of religion classes in public schools could turn into a conflict between the church and state. Where denominational education is provided at school, the respective faith communities determine the content. Whereas the neutral approach provides information on history, arts and ethics of various religious traditions, the denominational instruction 'contributes to the feeling of being at home in one's own religion, thereby allowing the transmission of values in a sustainable manner'.[18]

1.4. Teaching About Religion

Religious education has been transformed into neutral education on religious issues in Norway, Sweden, Denmark, the Netherlands and Great Britain. This is not religious education in the narrow sense as it does not aim to introduce the faith of a given

13 Stożek and Ponikowska, 2017, p. 234.
14 Stanisz, 2023, pp. 142–143.
15 Optional religious education in public schools is provided in Belgium, Croatia, Hungary, Latvia, Lithuania, Austria, Poland, Portugal, Serbia, Slovakia, Spain, Greece, Ireland and Romania.
16 Concordat Art. 12.2.
17 Agreement between Slovak Republic and the Holy See regarding Catholic upbringing and education (March 2004) Art. II.
18 Heinig, 2011, p. 176.

religious community, but provide knowledge on religious culture and traditions globally.

Public schools should not endorse any religion or ideology but must provide objective information about religions and philosophical convictions. Teachers at public schools should adopt a neutral stance; they have the right to express their opinions or beliefs, but should not indoctrinate their students. Schools should provide fundamental information on ethics.

1.5. Religious Education in Hungary

In Hungary, denominational religious education was considered compulsory at public schools until 1949. After the communists took over, religious education became optional, although elementary schools were formally obliged to ensure its potential. As a consequence of restrictive administrative practice and systematic harassment of parents, by the 1980s, only 4% of children received religious education at schools—mostly in rural areas. Stating from 1990, the obstacles for religious education were eliminated and the cooperation of schools and churches reinforced to provide for adequate space and time for religious education and, in many areas, schools once again began imparting religious education. Act IV/1990 reinforced the possibility for children/students to participate in optional religious education and instruction organised by a church legal entity in state or council educational–teaching institutions. Church legal entities could freely organise *religious education* and instruction upon requisition from parents in kindergartens and on demand of parents and students at schools and halls of residence. Religious education and instruction at kindergartens may be organised separately from kindergarten activities, also taking into account the daily routine of the kindergarten. They may be organised at schools in conformity with the order of compulsory curricular activities. It has become the exclusive task of church legal entities to define the content of religious education and instruction, to employ and supervise religious education teachers, and execute the acts of administration related to religious education and instruction with special regard to the organisation of the application for religious education and instruction, the issuance of progress reports and certificates, and supervision of lessons. The school, hall of residence or kindergarten is obliged to provide the necessary material conditions for religious education and instruction, using the tools available at the educational–teaching institution, with particular focus on the appropriate use of rooms and necessary conditions for application and operation. The kindergarten, school or hall of residence are expected to cooperate with the interested church legal entity in the course of the performance of the tasks related to the optional religious education and instruction organised by the church legal entity.

As part of an important change introduced in 2012, ethics was introduced to the curriculum of elementary schools (Grades 1–8). Children participating in religious education at schools do not participate in ethics classes; essentially, religious education has become a compulsory elective subject rather than an optional subject.[19]

19 Act XCX/2011. §35.

Religious education in public schools can only be offered by recognised churches and not by religious associations.[20] Religious instruction in public schools is delivered by ecclesiastical entities, not the school. The instruction is not part of the school curriculum, the individual imparting religion classes is not a member of the school staff, and grades are not given in school reports, only participation is registered. Churches are free to decide on the content of the religious classes as well as their supervision. Those teaching religion are church employees; however, the state provides funding for churches to pay the teachers. The school has only to provide an appropriate time for religious classes as well as teaching facilities. Churches are free to expound their beliefs during religious classes; they are not required to restrict themselves to providing neutral education, merely giving information about religion, as do the public schools. Religious education is not part of the public school's task; it is a form of introduction into the life and doctrines of a given religious community at the request of students and parents. Churches have the right to offer religious education in higher grades as well as kindergarten, but this is mostly not the case; in practice, religious education in secondary education is only provided in church-run schools.

2. Schools Run by Religious Entities

The model of religious instruction may be influenced by the role of schools maintained by religious communities in a given country. A majority of schools in Ireland are under the patronage of the Catholic church, and a few are managed by other faith communities, leaving a limited number of schools to non-denominational or multi-denominational patrons.[21] Notwithstanding the patronage-system, these are public, state-sponsored schools. Furthermore, over 60% of schools in the Netherlands are run by the Catholic church, while Protestant denomination public schools are a minority. In Belgium, the majority of schools is Catholic;[22] certainly, in an increasingly pluralistic and secular society, the identity of these schools may not be expressed in an intrusive manner. Whereas in some countries of Western Europe, churches have remained major service providers in education; countries subjected to communist domination schools were nationalised. After the collapse of the communist regime, churches reopened some of their schools, although most pupils attended public schools.

When parents or religious communities set up a school, they exercise a fundamental right. When questions arise on the freedom of religion in these schools, freedom of the school governing board, church as well as both parents and children has to be taken into consideration.[23] Schools run by religious entities can be very open and

20 Act CCVI/2011. §21.
21 Colton, 2011, p. 236.
22 Torfs, 2011, p. 63.
23 Poniatowski, 2021, p. 123.

tolerant with regard to religion, but also have the right to be exclusive. Primarily, it shall be part of religious autonomy to determine the rules to be followed at schools run by faith communities.

In Hungary, private schools are distinct from church-run schools. They can make denominational religious education compulsory, but can also exclude religious education and enrol all students to ethics classes. Parents pay tuition to private schools if the owner does not enter into a contractual arrangement with the state.[24] Parents with the constitutional right to decide on the education of their children also have the authority to set up schools that have more autonomy than public schools. "*Church schools"* can be private schools in some countries, whereas in Hungary, they are neither classified as public nor private. At the secondary education level, the proportion of church schools is over 20%. There may be some villages where the only local school or certain small towns where the only secondary school is run by a religious community. Even in these cases, a neutral public school has to be available for all families that do not wish to attend a school maintained by a particular denomination. Meanwhile, in most European countries, church-run schools complement the public education system, constituting a determinative part of the education system.

In Hungary, all schools, including church-run schools are bound by a national core curriculum, although individual schools are allowed to establish their own teaching programme. Church schools evidently advance the tradition and identity of faith communities, contrary to state schools that remain neutral with regard to religion. Religious symbols are allowed on the building as well as in the classrooms. Religious instruction may be a compulsory part of the curriculum (in this case, ethics is not a compulsory subject),[25] and scores obtained are shown in the school report. Church schools are allowed to select not only their staff, but also their pupils according to religious principles—none of this is allowed in public schools. Church-run schools, however, can be obliged to enrol a minimum number of students from the given municipality. The state budget grants equal funding for schools formally maintained by the church; the enjoyment of equal public subsidies, however, precludes the right to collect tuition fees. Most church schools function in buildings that used to be church schools prior to their nationalisation in 1948, although churches are also engaged in the construction of new schools, and in some cases, they have taken over public schools from municipalities on a contractual basis. Public schools have to be accessible to everyone without an "undue burden". Ultimately, parental decisions and expectations decide whether they send their kids admit to the school in their own schools district, as there is no obligation to accept a school assigned by authorities. Accordingly, parents are free to choose a school for their children that can also be in another settlement if they are ready to commute. The natural parental effort to provide the best possible education to their children is also expressed by a strong

24 Act XCX/2011. §31(2).
25 Act CXC/2011. §32(1) j).

demand for schools run by religious communities, as the public perception is that these schools provide a better quality and safer school environment. Obviously, religious communities would not engage in education without a pressing social demand for it. Certainly, local peculiarities have and influence as some church-run institutions expressly seek to provide service to marginalised social groups whereas others may rather draw middle-class families. Approximately 10% of children go to kindergartens run by religious communities; almost 20% of elementary schools and about 25% of secondary schools are run by religious entities.

3. The Display of Religious Symbols

Displaying religious symbols is an essential aspect of manifesting one's religion; this right can be exercised by pupils, teachers and staff of public schools with due respect to others, although it may require regulation and restraint. A public school does not carry rights; on the contrary, it is obliged to respect the rights of others and determine equitable compromises when rights clash. Exercising the right to manifest one's religion should not become offensive for others, although its definition depends on social settings; however, some religious symbols may convey a cultural identity. When the cultural content is obviously superior to religious information, even public authorities—like the school management—may display symbols that have religious character.[26]

The display of religious symbols in public schools is being increasingly debated among the public as well as in courts. The setting may differ by country, with the display of religious symbols generating debate in some places, while their removal triggering dispute in others. Both changes demand justification. In Germany, the decision of the Federal Constitutional Court in 1995 to remove crosses from Bavarian public schools[27] triggered public outrage and resulted in new legislation, giving authority to school directors to determine an equitable solution when parents request the removal of the cross for serious and understandable reasons of faith of belief, considering the wish of the majority.[28] Later legislation prescribes the display of crucifixes at the entrance of all public buildings to express Bavarian cultural identity.[29]

The *Lautsi v. Italy* case decided by the Grand Chamber of the European Court of Human Rights can be considered a landmark decision on the display of religious symbols in classrooms of public schools.[30] The final decision states that the requirement in Italian law and practice that crucifixes have to be displayed in classrooms

26 Csink, 2021, p. 98.
27 BVergG BVerfGE 93, 1.
28 Art. 7, Abs. 4 BayEUG für Grundschulen; Art. 7a Abs. 6.
29 Allgemeine Geschäftsordnung für die Behörden des Freistaates Bayern (AGO) vom 12 December 2000 (GVBl. S. 873; 2001 S. 28 BayRS 200-21-I) Last promulgation: 14 December 2021 (GVBl. S. 695).
30 *Lautsi and Others v. Italy*, Application No. 30814/06, 18 March 2011.

of public schools[31] does not violate the European Convention on Human Rights. The petitioner, an agnostic Finnish-born Italian national Ms. Soile Lautsi, requested the School Council to remove the crucifix at her son's school. When the School Council decided not to comply, Lautsi applied to the Veneto Administrative Court, which decided that the presence of crucifixes in State-school classrooms did not offend the principle of secularism. Ms. Lautsi appealed to the Supreme Administrative Court, which upheld the Veneto Court's decision reasoning that in Italy, the crucifix symbolised the religious origin of values (tolerance, mutual respect, valorisation of the person, affirmation of one's rights, consideration for one's freedom, autonomy of one's moral conscience vis-à-vis authority, human solidarity and refusal of any form of discrimination), which characterised Italian civilisation and that keeping the crucifix did not have any religious connotations.

The judgement of the Chamber of the European Court of Human Rights declared that there had been a violation of Article 9 (freedom of religion) and Article 2 of Protocol No. 1. (freedom of education) of the European Convention on Human Rights.[32] This decision triggered an uproar in Italy and beyond. The court stated that a crucifix can have a plurality of meanings, but the religious meaning was predominant. Besides the positive aspects of religious freedom, there is a "negative right"—not to have or express religion and this aspect deserved special protection if it was the State. The Chamber's judgement did not share the Italian position that regarded Catholic symbols as a contribution to pluralism.

The Italian government appealed to the Grand Chamber of the Court against the judgement, supported by a number of governments and expert opinions. In its decision on 18 March 2011, the Grand Chamber voted 15–2 to overturn the judgement. The court did not regard crucifixes in state-school classrooms as secular symbols, although it recognised its cultural relevance. [33] The crucifix undoubtedly refers to the majority religion of Italy; however, it is "an essentially passive symbol" that does not have 'an influence on pupils comparable to that of didactic speech or participation in religious activities'. Accordingly, the presence of a religious symbol did not constitute a violation of the Convention.

Two aspects are worth considering with regard to the judgement. Stating no violation by the prescription certainly does not mean that an eventual lack of a similar prescription would constitute a violation. An empty wall does not violate rights but remains empty. The other remarkable aspect is that the Italian case has dealt with a symbol placed by state authorities. The state does not have the right to express religious convictions; essentially, the decision to display the cross was not an exercise of freedom, but an expression of a cultural mission. Symbols placed by staff members, parents or children would fall under different scrutiny as they hold rights. The state has no freedom of religion, whereas individuals do. It can be added that recent Italian

31 Feliciani, 2016, pp. 111–116.
32 *Lautsi v. Italy*, Application No. 30814/06, 3 November 2009.
33 Torfs, 2016, p. 10.

jurisprudence acknowledging that the presence of the crucifix on the wall does not discriminate against anyone; however, it is up to the students in the given community (school assembly or class council) to seek reasonable accommodation of other beliefs eventually adding symbols of other religions.[34]

Considering that there is no European standard on the display of religious symbols in public schools, national legislation may vary. In a number of countries, like Austria[35], Poland[36], Romania[37] or Slovakia,[38] religious symbols in public schools are common, whereas in the Czech Republic,[39] Hungary[40] or Slovenia,[41] no religious symbols are placed in public schools. In some legal systems, there are clear legal provisions on having a cross at public schools; e.g. in Austria, there is a clear legal regulation prescribing to have a cross in all classrooms where the majority of pupils belong to a Christian denomination.[42] Scholarship acknowledges that there may be some constraint on those who reject the cross, but regards this as minimal, and the display of the cross is reconcilable with the religious neutrality of the state.[43] The display of religious symbols may be general praxis without a statutory regulation as well—like in the case of Serbia[44] and Poland where crosses returned to public institutions after the collapse of the communist regime 'as a result of grassroots initiatives that enjoyed broad social support'.[45] This way the cross in public spaces is regarded as an expression of the freedom to manifest religion—a freedom regained after the communist regime.[46] The practice of displaying crosses in classrooms triggered political tension in Croatia, although no regulation was passed.[47] At private or church-run institutions, the organisation itself decides on displaying religious symbols.

It has to be noted, that the aforementioned litigation at the German Federal Constitutional Court as well as the European Court of Human Rights referred to religious symbols displayed by the state. Religious symbols displayed by pupils had to be examined differently and that issue was not subject to the litigation. Pupils, parents, teachers and staff have to find an acceptable compromise on the decoration of classrooms. Excluding religious symbols from public space may prevent the confrontation with rejected symbols, but the price is that those having a religious affiliation are limited

34 Licastro, 2021.
35 The Agreement on Education between the Holy See and Republic of Austria (1962) foresees to have a cross in all classrooms where the majority of pupils are members of a Christian denomination.
36 Stanisz, 2016, p. 175.
37 Tănase, 2016, p. 231.
38 Vladár, 2021, p. 199.
39 Němec, 2021, p. 57.
40 Csink, 2021, p. 73.
41 Staničić, 2021a, p. 235.
42 Religionsunterrichtsgesetz § 2b.
43 Kalb, Potz and Schinkele, 2003, p. 374.
44 Đukić, 2021, p. 161. F.
45 Sobczyk, 2021, p. 129.
46 Stanisz, 2016, p. 175.
47 Savić, 2021, p. 31.

in manifesting it, whereas those being agnostic do not suffer any limitation. Using a majoritarian principle would be insensitive. Schools can become the training ground for social coexistence where different identities meet and exchange. An exchange is only possible if identities can be expressed. When originally religious images become elements of culture, even a secular environment may endorse them. For example, in Central Europe, a Christmas tree or a nativity scene at Christmas time has to be accepted by everyone.

4. Religious Clothing in School

In Central Europe, school uniforms are not common. As long as the wearing of a garment is not restricted, we can assume that wearing of it is legally protected. Dress codes at schools are often relatively general, e.g. only "extravagant" attire is prohibited.

Considering the limited social presence of Islam in Central European countries that were under communist rule prior to 1990, the issue of Muslim headscarf did not become a subject wider of public debate yet. As long as there are no limitations, both teachers and pupils can wear religious garments. General principles could limit extreme appearance when this would curtail the effectiveness of education. Probably a *burka* or a *niqab* would fall in this category. What extreme means may depend on a given social setting—e.g. eventually a metropolitan area could be different from a rural one.

The challenge of integration of children with a migratory background is a sensitive issue and there is no uniform solution. France decided to outlaw all "conspicuous" religious symbols at public institutions.[48] The Muslim headscarf falls under this ban; neither teachers nor pupils are allowed to wear a *hijab* at public schools. Muslim girls may be welcome at Catholic schools, although the number of Muslim private schools has also been increasing. In most parts of Germany, there is a ban on headscarf for teachers, but pupils are free to wear it. European Court of Human Rights jurisprudence did not regard limitations of religious garment as a violation of freedom of religion, certainly not in case of physical education,[49] or with regards to teachers.[50]

Religiously motivated behaviour should enjoy the same protection as religiously determined garments. Prayer, religious holidays, fasting and observance of dietary rules deserve protection in a pluralistic and often secular environment, where even those belonging to a majority religion may become a minority if they truly follow the doctrine and tradition of their faith. In a public school, religion may not be considered a reason for social exclusion. A spirit of respect and tolerance requires different steps under different circumstances. Generally, minorities should not feel uncomfortable,

48 Law no. 2004–228 of March 15, 2004.
49 E.g.: *Dogru v. France*, Application no. 27058/05, Judgement 4 December 2008.
50 E.g.: *Dahlab v Switzerland*, Application No. 42393/98, Judgement 15 February 2001.

neither Muslim children praying at German schools, nor agnostic children refraining from prayer at Polish schools. Meanwhile, the sensitivity of a minority (religious or secular) should not lead to the consequence that majorities refrain from exercising their rights in order to avoid offending the sensitivities of minorities. An environment where all convictions can be lived and expressed is considered healthy than one that excludes religious expression and promotes concealed beliefs. A healthy pluralism can flourish where identities are lived and gifts exchanged. Schools are the primary arena for social coexistence where this tolerant pluralism has to be taught to future generations by living it in practice.

Bibliography

Act XCX/2011. on Public Education (Hungary).

Act CCVI/2011. on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities (Hungary).

Allgemeine Geschäftsordnung für die Behörden des Freistaates Bayern (AGO) vom 12 December 2000 (GVBl. S. 873; 2001, S. 28 BayRS 200-21-I) Last promulgation: 14 December 2021 (GVBl. S. 695).

BVerfGE 93, 1 (Decision of the German Federal Constitutional Court on the affixation of a cross or crucifix in public schools of May 13, 1995).

Colton, P. (2011) 'Religion in public education in Ireland' in Robbers, G. (ed.) *Religion in public education*. Trier: European Consortium for Church and State Research, pp. 227–256.

CRC/C/POL/CO/5-6 (Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Poland), pt. 25. Available at: https://www.ohchr.org/en/documents/concluding-observations/crccpolco5-6-concluding-observations-combined-fifth-and-sixth (Accessed: 26 May 2025).

Csink, L. (2021) 'The legal regulation of religious symbols in the public sphere in Hungary', in Sobczyk, P. (ed.), *Religious symbols in the public sphere*: *Analysis on certain Central European Countries*, Budapest–Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing, pp. 73–101.

Durham, C. (2013) 'Introduction' in Davis, D., Miroshnikova, E. (eds.) *The Routledge International Handbook of Religious Education*. London – New York: Routledge.

Đukić, D. (2021) 'The legal regulation of religious symbols in the public sphere in Serbia' in Sobczyk, P. (ed.) *Religious symbols in the public sphere: Analysis on certain Central European Countries*. Budapest–Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing, pp 141–170.

ECtHR, *Dogru v. France*, Application No. 27058/05, 4 December 2008.

ECtHR, *Dahlab v Switzerland*, Application No. 42393/98, 15 February 2001.

ECtHR, *Folgerø and Others v. Norway*, Application No. 15472/02, 29 June 2007.

ECtHR, *Grzelak v. Poland*, Application No. 7710/02, 15 June 2010.

ECtHR, *Lautsi and Others v. Italy*, Application No. 30814/06, 18 March 2011.

Feliciani, G. (2016) 'The presence of the cross in public spaces: Italy' in Stanisz, P., Zawiślak, M., Ordon, M. (eds.) *Presence of the Cross in Public Spaces: Experiences of Selected European Countries,* Cambridge Scholars Publishing, pp. 111–126.

Heinig, H. (2011) 'Religion in public education – Germany', in Robbers, G. (ed.) *Religion in public education*, pp. 167–193.

Gesetz über die religiöse Kindererziehung; 15 July 1921 (RGBl. S. 939). Available at: https://www.oesterreich.gv.at/themen/leben_in_oesterreich/kirchenein___austritt_und_religionen/Seite.820012.html (Accessed: 15 December 2022).

Kalb, H., Potz, R., Schinkele, B. (2003) *Religionsrecht*. Wien: Universitätsverlag.

Koltay, A. (2012) 'Europe and the Sign of the Crucifix: On the Fundamental Questions of the Lautsi and Others v. Italy Case' in Temperman, J. (ed.) T*he Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom*. Leiden: Brill Nijhoff, pp. 355–382. Available at: http://dx.doi.org/10.2139/ssrn.2154565.

Licastro, A. (2021) 'Crocifisso "per scelta". Dall'obbligatorietà alla facoltatività dell'esposizione del crocifisso nelle aule scolastiche (in margine a Cass. civ., sez. un., ord. 9 settembre 2021, n. 24414)'. Available at: https://statoechiese.it/contributi/crocifisso-per-scelta-dallobbligatorieta-alla-facoltativita-dellesposizion.

Maghioros, N. (2013) 'Religious education in Greece', in Davis, D., Miroshnikova E. (eds.) *The Routledge International Handbook of Religious Education,* pp. 130–138.

Mückl, S. (1997) 'Staatskirchenrechtliche Regelungen zum Religionsunterricht', *Archiv des öffentlichen* Rechts, 122(4), pp. 513–556.

Němec, D. (2021) 'The legal regulation of religious symbols in the public sphere in the Czech Republic', in Sobczyk, P. (ed.) *Religious symbols in the public sphere*: *Analysis on certain Central European Countries,* Budapest–Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing, pp 39-71.

Poniatowski, M. (2021) 'Freedom of Conscience and Religion in Private Schools', *Law, Identity and Values*, 1(2), pp. 113–127. Available at: https://doi.org/10.55073/2021.2.113-127.

Rees, W. (1986) *Der Religionsunterricht und die katechetische Unterweisung in der kirchlichen und staatlichen Rechtsordnung,* Regensburg: Pustet.

Religionsunterrichtsgesetz (Bundesgesetz vom 13. Juli 1949, betreffend den Religionsunterricht in der Schule) https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009217 (Accessed: 26 May 2025).

Savić, V.- I. (2021) 'The legal regulation of religious symbols in the public sphere in Croatia' in Sobczyk, P. (ed.) *Religious symbols in the public sphere*: *Analysis on certain Central European Countries*. Budapest–Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing, pp. 11–38.

Staničić, F. (2021a) 'The legal regulation of religious symbols in the public sphere in Slovenia' in Sobczyk, P. (ed.) *Religious symbols in the public sphere*: *Analysis on certain Central European Countries*. Budapest–Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing, pp. 211–243.

Staničić, F. (2021b) 'Religious education in the public sphere in Slovenia', *Law, Identity and Values,* 1(2), pp. 143–162. Available at: https://doi.org/10.55073/2021.2.143-162.

Stanisz, P., Zawiślak, M., Ordon, M. (eds.) (2016) *Presence of the Cross in Public Spaces: Experiences of Selected European Countries*. Newcastle upon Tyne: Cambridge Scholars Publishing.

Stanisz, P. (2016) 'The presence of the cross in the public space in the context of the freedom of thought, conscience and religion: A Polish perspective' in Stanisz, P., Zawiślak, M., Ordon, M. (eds.) *Presence of the Cross in Public Spaces: Experiences of Selected European Countries.* Newcastle upon Tyne: Cambridge Scholars Publishing, pp. 154–186.

Stanisz, Piotr (2023) *Religion and Law in Poland*. 3rd edn. Wolters Kluwer.
Sobczyk, P. (2021) 'The legal regulation of religious symbols in the public sphere in Poland' in Sobczyk, P. (ed.) *Religious symbols in the public sphere, Analysis on certain Central European Countries*. Budapest–Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing, pp. 103–140.
Stożek, M., Ponikowska, M. (2017) 'Poland – Case law of the Polish Constitutional Court on matters of freedom of expression of personal convictions in public education' in Cereceda, P. M., De Groof, J. (eds.) *Religious and ideological rights in education: judicial perspectives from 32 legal systems*. Wolf Legal Publishers, pp 207–235.
Tănase, L. (2016) 'The cross in public spaces: Romanian case' in Stanisz, P., Zawiślak, M., Ordon, M. (eds.) *Presence of the Cross in Public Spaces: Experiences of Selected European Countries*. Newcastle upon Tyne: Cambridge Scholars Publishing, pp. 218–248.
Torfs, R. (2011) 'Religious instruction in public education in Belgium', in Robbers, G. (ed.) *Religion in public education*, pp. 63–71.
Torfs, R. (2016) 'The presence of the cross in public spaces from the perspective of the European Court of Human Rights', in Stanisz, P., Zawiślak, M., Ordon, M. (eds.) *Presence of the Cross in Public Spaces: Experiences of Selected European Countries*. Newcastle upon Tyne: Cambridge Scholars Publishing, pp. 1–10.
Vladár, V. (2021) 'The legal regulation of religious symbols in the public sphere in Slovakia' in Sobczyk, P. (ed.) *Religious symbols in the public sphere, Analysis on certain Central European Countries*. Budapest–Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing, pp. 171–210.

CHAPTER 7

The Religious Rights of Children Belonging to National Minorities and Indigenous Peoples

'....freedom of every person to worship God in his own way – everywhere in the world.'[1]

Katarzyna ZOMBORY

ABSTRACT

The enjoyment of the right to freedom of religion by children from cultural and religious minorities is vitally important for their harmonious development — as well as for preserving both their own cultural identity and that of their entire community. This chapter seeks to outline the international legal framework for protecting the religious rights of such children. The relevant legal standards can be found in general human rights instruments at both the universal and regional level, as well as in categorical human rights regimes — dedicated specifically to the protection of children and to the protection of national minorities and indigenous peoples. Some of the applicable provisions emphasise the child's autonomous right to freedom of religion, while others support the child's right to acquire and uphold the religious identity of his or her parents and the entire community.

KEYWORDS

children's religious rights, religious identity, indigenous peoples, national minorities

1. Introduction

The UN Convention on the Rights of the Child[2] in its Preamble underscores the importance of the traditions and cultural values of each group for the protection and harmonious development of its children. For national minorities and

1 Roosevelt, 1941 ('Four Freedoms speech').

2 Convention on the Rights of the Child, adopted in New York on 20 November 1989 by General Assembly resolution 44/25, UN Treaty Series no. 27531.

Katarzyna ZOMBORY (2025) 'The Religious Rights of Children Belonging to National Minorities and Indigenous Peoples' in Katarzyna ZOMBORY – Márta BENYUSZ (eds.) *Religion and Children's Rights.* Miskolc–Budapest: Central European Academic Publishing. pp. 153–176. https://doi.org/10.71009/2025.kzmb.racr_7

indigenous peoples, the enjoyment of certain human rights is particularly important in preserving their own individual identity and that of their entire community. Such special guarantees include the right to freedom of religion and belief, whose enjoyment is necessary for safeguarding the common spiritual consciousness of a minority group or an indigenous community.[3] The Council of Europe's Framework Convention for the Protection of National Minorities[4] (FCNM) identifies religion as one of the essential elements of the identity of persons belonging to national minorities, apart from their language, traditions, and cultural heritage.[5] Religion can be understood as spiritual beliefs, common religious traditions and their profession, all of which play a crucial role in preserving the identity and existence of a minority group.[6]

The importance of religious rights for national minorities can be well exemplified by the fact that some minorities distinguish themselves from the majority population primarily based on their religion and beliefs. The Central European region provides for some illustrative examples of such a religious self-identification, such as the Tatar ethnic minority in Poland, who have lost their native language but remained faithful to the Muslim religion in a predominantly Roman Catholic society[7] — or the Csángós in Romania, who define their identity based on the Roman Catholic faith, in opposition to the Orthodox majority.[8]

International legal frameworks for protecting the religious rights of children belonging to national minorities and indigenous peoples are multilayered. These religious rights fall into the intersection of general and categorical human rights regimes, and can be interpreted in relation to the premises underlying the creation of each of them. International standards for the protection of cultural minorities and indigenous peoples have been adopted to confirm that members of such communities are fully entitled to all humans rights, and to ensure the conditions for preservation and developing of their own distinct identity.[9] The international framework for children's rights, anchored in the Convention on the Rights of the Child, recognises children as fully-fledged subjects of rights. It obliges states to take children's rights more seriously by recognising their inherent dignity and worth.[10] While the human rights enshrined in general human rights treaties are the rights of all human beings, and as such apply to all children and members of ethnic or cultural minorities as

3 Machnyikova, 2005, p. 194.
4 Framework Convention for the Protection of National Minorities, adopted in Strasbourg, on 1 February 1995, under the auspices of the Council of Europe, ETS no. 157.
5 Art. 5 of the FCNM.
6 Machnyikova, 2005, pp. 228 and 260.
7 On Tatar minority in Poland, see: Antonowicz-Bauer, 1984; Gawecki, 1989.
8 On Csángó minority in Romania, see: Council of Europe Parliamentary Assembly, Recommendation 1521 (2001); on Csango minority culture in Romania; Luca, 2019; Borit, 2006.
9 Machnyikova, 2005, p. 194.
10 Dooek, 2019, p. 12. For more accounts on the international children's rights framework, see e.g.: Alen et *al.*, 2006; Kilkelly and Liefaard, 2019.

well,[11] the specific instruments for children and minorities can be interpreted as a supplementary protective framework.[12]

According to Zdenka Machnyikova, the level of protection of religious rights can be seen as a touchstone for the protection of cultural rights of persons belonging to national minorities.[13] The present chapter seeks to outline the international legal framework for the protection of the religious rights of minority and indigenous children, considering the special role it plays both in protecting the cultural identity of such communities, and for the holistic and harmonious development of the child. The first part of the paper explains the notion of national minority and indigenous people, and is followed by an analysis of the provisions of the Convention on the Rights of the Child designed to uphold the child's religious identity — and to some extent of other relevant normative standards in general and categorical human rights regimes. In the last part of the paper, the author presents one selected aspect related to the protection of religious rights of minority and indigenous children, in connection with the right to religiously and culturally adequate food.

2. A Child Belonging to a National Minority or Indigenous People

A universally accepted definition of a "child" can be found in Article 1 of the Convention on the Rights of the Child, according to which *a child* means every human being below the age of eighteen years. By contrast, there is no internationally agreed legal definition of a national minority or indigenous people.

It is generally accepted that the existence of *a national minority* is a question of fact, and that any definition should be based on both objective factor — such as the existence of a shared ethnicity, language or religion — and subjective factors, meaning self-identification of a minority group and its members.[14] A commonly cited academic definition was worded by Francesco Capotorti, Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of

11 States Parties shall respect and ensure that all individuals enjoy the rights recognised without distinction of any kind. See e.g. Art. 2, para. 1 ICCPR, Art. 3 ICESCR, Art. 14 of the ECHR.

12 See: Human Rights Committee, General Comment No. 23 (50) (art. 27), 26 April 1994, CCPR/C/21/Rev.1/Add.5, para. 1. As Brems points out, the distinctiveness of categorical human rights regimes for children, cultural minorities and indigenous peoples should be put into perspective: all are considered as vulnerable groups and all face the challenge of balancing protection with emancipation or independence, see: Brems, Desmet and Vandenhole., 2017, p. 6.

13 Machnyikova, 2005, p. 218.

14 United Nations High Commissioner for Human Rights, 2010a, p. 2. Such approach was already represented by the Permanent Court of International Justice in its Advisory Opinion of 31 July 1930, case of the Greco-Bulgarian "Communities" / Question des "Communautés" Gréco-Bulgares, Publications de la Cour permanente de justice internationale, Recueil des avis consultatifs, série B, no. 17, Leiden 1930, p. 21. For more elaborated accounts on the protection of national minorities, see e.g.: Weller, 2005; Weller, 2007; Zombory, 2023b.

Minorities.[15] Within the United Nations (UN) human rights system, the term "minority" refers to national or ethnic, religious and linguistic minorities, as in the 1966 International Covenant on Civil and Political Rights (ICCPR)[16] or the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.[17] Unlike the UN documents, the regional European instruments on minority rights refer to "national minorities" rather than to "ethnic, religious or linguistic minorities". The most comprehensive European document dedicated to the protection of persons belonging to national minorities (the FCNM) does not lay down a proper legal definition. The FCNM's drafters opted for a pragmatic solution instead, which provides the states parties with a discretion as to the official recognition of a given ethnic group as national minority. In their assessment, states should consider the essential components of the identity of national minorities, such as their religion, language, traditions and cultural heritage, by which the group in question can be distinguished from the rest of society.[18] This approach is also represented by the European Court of Human Rights (ECtHR), according to which the practice of recognising a group as national minority should be left largely to the state concerned, as it depends on particular domestic circumstances.[19]

Several Central European states have adopted national regulations which determine which ethnic groups living on their territory are officially recognised as national minorities.[20] For example, in Hungary Act No. 179 of 2011 on the Rights of National Minorities officially recognises and lists thirteen national minorities;[21] in Poland, the Act of 6 January 2005 on national and ethnic minorities and on the regional languages recognises nine national and four ethnic minorities;[22] while in Croatia there

15 According to Capotorti, "minority" is a group numerically inferior to the rest of the population of a state, in a non-dominant position, and whose members being nationals of the state, possess ethnic, religious or linguistic characteristics differing from the rest of the population and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language, see: Capotorti, 1979, para. 568.

16 International Covenant on Civil and Political Rights, adopted in New York on 16 December 1966, UN Treaty Series No. 14668.

17 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted on 18 December 1992 by General Assembly resolution No. 47/135.

18 See Art. 5 FCNM. This does not imply, however, that all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities, see: Explanatory Report to the Framework Convention for the Protection of National Minorities, Strasbourg, 1 February 1995, European Treaty Series No. 157, para. 43.

19 See ECtHR, *Gorzelik and Others v. Poland*, 17 February 2004, Application no. 44158/98.

20 On the protection of national minorities in Central European countries, see: Korhecz, 2022.

21 See Appendix 1 to the Act No. 179 of 2011 on the Rights of National Minorities, which states that the following qualify as national minorities: Bulgarian, Greek, Croatian, Polish, German, Armenian, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovene and Ukrainian.

22 Act of 6 January 2005 on national and ethnic minorities and on the regional languages, Journal of Laws [Dz. U.] of 2005, No. 17, item 141. According to Art. 2 para. 2, the following minorities are recognised as national minorities: Byelorussians; Czechs; Lithuanians; Germans; Armenians; Russians; Slovaks; Ukrainians; Jews, while according to Art. 2 para. 4 the following minorities are recognised as ethnic minorities: the Karaim; the Lemko; the Roma; the Tatar.

are as many as twenty two national minorities officially recognised by virtue of the Constitution.[23]

Similarly to the definition of national minorities, the notion of indigenous peoples is far from unambiguous. As in the case of minorities, a combination of objective and subjective criteria is used to identify indigenous peoples, instead of defining them.[24] The principle of self-identification is a key element in the process of identifying indigenous communities and their members, and has been confirmed by the International Labour Organization's (ILO) 1989 Indigenous and Tribal Peoples Convention[25] and in the 2007 UN Declaration on the Rights of Indigenous Peoples.[26] Indigenous peoples in Europe include most notably the Saami people, living in Sweden, Norway, Finland and Russia. Apart from Saami, many other indigenous communities can be found on the territory of the Russian Federation, the number of which is estimated at forty-six, out of which forty are officially recognised.[27]

This paper examines the religious freedoms of children under 18 belonging to ethnic, religious or linguistic minorities (hereinafter jointly referred to as: 'national minorities'), or to indigenous peoples — whether they enjoy such official recognition or not. According to the UN Human Rights Committee, the existence of an ethnic, religious or linguistic minority in a given state party does not depend upon a decision by that state.[28] By the same token, the Committee on the Rights of the Child has adopted the approach that there is no requirement for states parties to

23 The Constitution of the Republic of Croatia, consolidated text of 6 July 2010. According to Part I. Historical Foundations, members of national minorities in the Republic of Croatia are: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Rusyns, Bosniaks, Slovenians, Montenegrins, Macedonians, Russians, Bulgarians, Poles, Roma, Romanians, Turks, Vlachs, Albanians.

24 Espejo-Yaksic, 2019, pp. 589–592. A working definition of indigenous peoples was proposed in 1972 by UN Special Rapporteur Martínez Cobo, according to whom "indigenous populations" are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part (...), see: Martínez Cobo, 1972, para. 34. For elaborated accounts on the protection of indigenous peoples, see e.g.: Hanson and Weller, 2018; Marinkás, 2018; Raisz, 2008; Raisz, 2010.

25 The Indigenous and Tribal Peoples Convention (ILO Convention No. 169), adopted in Geneva on 27 June 1989, UN Treaty Series vol. 1650, no. 28383, see Art. 1 para. 2.

26 Declaration on the Rights of Indigenous Peoples, UN General Assembly resolution of 13 September 2007, Arts. A/RES/61/295, see Arts. 9 and 33.

27 Cultural Survival, 2023, p. 1. Indigenous communities in Russia include, e.g. reindeer herder Nenets, the nomadic Enets, Buryats, Altaians, or Yakuts. Indigenous peoples in Russia are one of the most impoverished demographic groups, and indigenous children are particularly affected, in terms of their social and economic development and life expectancy, which are far below the national average. See also: Council of Europe Parliamentary Assembly, Resolution 1171 (1998) on Endangered uralic minority cultures, 25 September 1998.

28 Human Rights Committee, General Comment No. 23: Art. 27 (Rights of Minorities), para. 5.2.

officially recognise indigenous peoples or minorities in order for them to exercise their rights.[29]

3. Legal Framework Applicable to the Religious Rights of Children Belonging to National Minorities or Indigenous Peoples

3.1. The 1989 UN Convention on the Rights of the Child (CRC)

In its preamble, the CRC stresses the importance of cultural values for the harmonious development of the child, a premise which unfolds into several substantial provisions of the CRC to protect the child's identity in different contexts. The overarching provision is Article 2, which requires that the rights set forth in the CRC be guaranteed to each child without discrimination of any kind, irrespective of the child's or his or her parent's race, [...] language, religion, [...] national, ethnic or social origin [...] or other status.

Article 8 of the CRC guarantees each child the general right to preserve his or her identity, and obliges the states to respect the child's identity without unlawful interference. Article 8 lists only some elements of the child's identity — notably name, nationality and family relations. The Committee on the Rights of the Child underscores that the child's identity should be construed in a much broader sense, which includes, *inter ali*a, national origin, religion and beliefs, as well as cultural identity.[30] The state persecution or proscription of the practice of a religion, or the state's failure to give adopted, fostered or institutionally placed children the opportunity to enjoy their religious heritage might amount to an unlawful interference in the child's religious identity.[31] Article 8 para. 2 of the CRC imposes on states-parties the obligation to provide appropriate assistance and protection in re-establishing of the child's identity, where the child has been deprived of some or all its elements. Such measures might entail, among others, ensuring that children in state care are encouraged to practice their religion and culture of origin.[32]

The preservation of the religious identity of a child placed in alternative care is explicitly upheld in Article 20 para. 3 of the CRC. It requires that state authorities pay due regard to the child's ethnic, religious, cultural and linguistic background when considering solutions for protecting a child deprived of his or her family environment, or a child in whose own best interests cannot be allowed to remain in that environment.[33]

29 Children's Rights Committee, General Comment No. 11 (2009): Indigenous children and their rights under the Convention on the Rights of the Child, para. 19.

30 Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, para. 55.

31 Hodgkin and Newell, 2007, p. 115.

32 Ibid., p. 117.

33 Several issues arising around the protection of a child's religious identity in alternative care can be well illustrated by the ECtHR's decision in *Abdi Ibrahim v. Norway*, concerning a placement of Muslim (refugee) child from Somalia in a Christian foster family in Norway, and

The provisions of utmost relevance for the protection of children's religious rights are included in Article 14 of the CRC, while the rights of the children belonging to religious minorities are laid down in Article 30 of the CRC. Article 14 of the CRC guarantees every child the right to freedom of thought, conscience and religion, with parental direction consistent with the child's evolving capacities. The child's right to freedom of religion encompasses theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. It embraces any religion or belief, including newly established religions, or beliefs of religious minorities, and is not limited to traditional religions or to religions and beliefs with institutional characteristics.[34] The right of the child to freedom of religion is protected unconditionally, unlike the child's right to manifest their religion or beliefs, which can be subjected to restrictions, albeit very limited, that are outlined in Article 14 para. 3 of the CRC. The freedom to manifest religion or belief can translate into worship, observance or practice, encompassing a broad range of acts, such as: participating in ritual and ceremonial acts, and practices integral to such acts; the use of ritual formulae and object; the display of symbols; the observance of holidays, days of rest, and dietary regulations; the wearing of distinctive clothing or head coverings; participation in rituals associated with certain stages of life; and the use of a particular language customarily spoken by a group.[35] Article 14 of the CRC implies both the states' negative obligation not to interfere with children's religious freedom, and their positive obligation to adopt legislation and take measures to protect this right.[36] In particular, the CRC 1996 Guidelines for Periodic Reports required that the states indicate in their periodic

the subsequent adoption of the child by the Christian foster family. The ECtHR has examined the complaint against the backdrop of the alleged violation by the Norwegian welfare services of the Somalian biological mother's (the applicant) rights under Art. 8 (right to respect for his private and family life) and Art. 9 (right to freedom of thought, belief and religion) of the ECHR, as well as Art. 2 of Protocol No. 1 (right to education). The applicant alleged that the fact of depriving her of parental responsibility in respect of her son, who had been placed in foster care with a family with a different religious and cultural background (the foster family went to church and ate pork), and of allowing the child's adoption by that family (the family intended to baptise the adopted child and change his name), had entailed violations of her ECHR rights. The ECtHR had found a violation of Art. 8 ECHR, and noted that the applicant's rights under Art. 8 EHCR, as interpreted in the light of Art. 9, could not be complied with only by ultimately finding a foster home which corresponded to her cultural and religious background: the domestic authorities were bound by an obligation of means, not one of result; however, the arrangements made by the Norwegian authorities had failed to take due account of the applicant's interest in allowing her child to retain at least some ties to his cultural and religious origins. The ECtHR refrained from ordering a reopening of the adoption proceedings requested by the applicant under Art. 46 ECHR, considering that it could raise issues in connection with the child's and his new parents' family life and the child's best interest, see: ECtHR, *Abdi Ibrahim v. Norway*, judgement of 10 December 2021 (Grand Chamber), Application no. 15379/16, paras. 161, 182–183.

34 Human Rights Committee, General Comment No. 22 on Art. 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, generally accepted to be equally relevant for the interpretation of Art. 14 of the CRC, para. 2. See also: Brems, 2006, p. 20, Hodgkin and Newell, 2007, p. 186.

35 Ibid., para. 4.

36 Brems, 2006, pp. 10–11.

country reports the measures adopted to ensure the child's freedom to manifest his or her religion or beliefs, including with regard to minorities or indigenous groups.[37]

Article 14 of the CRC emphasises the child's individual freedom of religion, and as such goes against the idea of a child automatically following his or her parents' religion. In turn, Article 30 of the CRC aims to support children's right to acquire the religious identity of their parents and community.[38] Modelled on Article 27 of the ICCPR, Article 30 of the CRC states that 'In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.' Although children from national minorities and indigenous peoples enjoy the same CRC rights as all other children, the continuing discrimination against minority and indigenous populations justifies securing their rights in a separate provision.[39] The specific reference in the CRC is equal to the recognition that they require special measures in order to fully enjoy their rights.[40] The rights guaranteed in Article 30 of the CRC have both individual and collective dimension, and can be perceived as a recognition of the collective traditions and identity of the given cultural and religious community.[41]

Article 30 of the CRC requires from the states positive measures in order to protect the minority's or indigenous group's cultural identity, language or religion, both in terms of actively fulfilling the right, and to protect against interferences by third persons.[42] The protective obligations stemming from Article 30 of the CRC encompass the duty of states parties to identify the ethnic, religious or linguistic minorities and indigenous groups existing within their jurisdiction.[43] The limits of the enjoyment of rights protected under Article 30 are delineated by the existing human rights framework; consequently, religious identity or cultural practices of the given community cannot justify practices that are prejudicial to the child's dignity, health or development. Harmful cultural or religious practices, such as female genital mutilation or early marriages, do not enjoy protection under minority rights or religious freedoms.[44]

37 Committee on the Rights of the Child, General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties under Art. 44, para. 1 (b) of the Convention (Revised), 20 November 1996, CRC/C/58, para. 57.
38 Hodgkin and Newell, 2007, pp. 188 and 463.
39 Ibid., p. 455.
40 Committee on the Rights of the Child, General Comment No. 11, para. 5.
41 Ibid., para. 16.
42 Ibid., para.17; Hodgkin and Newell, 2007, p. 456.
43 Committee on the Rights of the Child, General Guidelines Regarding the Form and Contents of Periodic Reports, para. 166.
44 Committee on the Rights of the Child, General Comment No. 11, para. 22. See also: Interim report of the UN Special Rapporteur on freedom of religion or belief, focusing on focuses on the rights of the child and his or her parents in the area of freedom of religion or belief, 5 August 2015, A/70/286, paras. 67–73.

In its monitoring activity, the Committee on the Rights of the Child has highlighted several specific issues in connection with the religious freedoms of children belonging to national minorities or indigenous peoples. According to the Committee, the prohibition of wearing a headscarf by girls in schools in certain countries might raise concerns under Article 14 of the CRC.[45] Similarly, the compulsory school curriculum including the history of the state's dominant church might lead to the infringement of the rights of children belonging to religious minorities.[46] The requirement that a student's secondary school graduation certificate indicate, where that is the case, that the student does not practice the dominant religion is equal to placing administrative and social pressures on children from religious minorities, which, in addition to religious freedoms, might also hinder their right to non-discrimination and to privacy.[47] The state intervention in religious principles and procedures, leading to the restriction in studying and practising the religion by children from Tibetan religious minorities, has prompted the Committee to express its concerns in the light of Article 30 of the CRC, and to urge China to seek a constructive solution.[48]

3.2. The 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The core general international human rights instruments adopted at the universal level, the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights[49] (ICESCR)

45 See e.g. Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Art. 44 of the Convention. Concluding observations of the Committee on the Rights of the Child: Tunisia, 13 June 2002, CRC/C/15/Add.181, paras. 29–30.

46 Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Art. 44 of the Convention. Concluding observations: Armenia, 26 February 2004, CRC/C/15/Add. 225, paras. 31–32.

47 See e.g. Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Art. 44 of the Convention. Concluding observations of the Committee on the Rights of the Child: Greece, 2 April 2002, CRC/C/15/Add.170, paras. 44–45.

48 Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Art. 44 of the Convention. Concluding observations of the Committee on the Rights of the Child: China, 7 June 1996, CRC/C/15/Add. 56, paras. 20, 41. Despite continuous calls for protection, the Committee on the Rights of the Child still finds violations of rights of and discrimination against Tibetan and Uighur children and children of Falun Gong practitioners in mainland China, including their right to freedom of religion, language and culture. There are reports indicating that children from those communities seeking to exercise their right to freedom of religion and conscience are arrested, detained and subject to ill-treatment and torture; the state has imposed restrictions which limit Tibetan children's ability and freedom to study and practice their religion, such as the measures imposed on Tibetan monasteries and nunneries placing them under close control and surveillance, see: Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of China, adopted by the Committee at its sixty-fourth session (16 September – 4 October 2013), 29 October 2013, CRC/C/CHN/CO/3-4, paras. 25, 41–42.

49 International Covenant on Economic, Social and Cultural Rights, adopted in New York on 16 December 1966, UN Treaty Series No. 14531.

contain provisions relevant for both protecting religious freedoms, and specifically for safeguarding the religious identity of national minorities and indigenous peoples.

Article 18 para. 1 of the ICCPR secures everyone's right to freedom of thought, conscience and religion, which includes the freedom to have or to adopt a religion or belief of an individual's own choice, and the freedom — either individually or in community with others and in public or private — to manifest one's religion or belief in worship, observance, practice and teaching. Article 18 para. 4 supports the transgenerational transmission of religious identity from parents to children, by obliging the state to respect the parents' liberty to ensure the religious education of their children in conformity with their own convictions.

The cultural rights of persons belonging to ethnic, religious or linguistic minorities are explicitly recognised in Article 27 of the ICCPR, which requires that persons belonging to such minorities are not denied the right, in community with other members of their group, to enjoy their own culture, and to profess and practise their own religion. The protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of minorities.[50] The normative content of Article 27 of the ICCPR was further elaborated in the provisions of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which, unlike the ICCPR, is a non-binding human rights instrument. It reaffirms that states should protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities on their territories, and encourage conditions for the promotion of that identity through appropriate legislative and other measures.[51] The declarations recognise the states' obligation to create favourable conditions to enable persons belonging to minorities to express their characteristics, and to develop their culture, religion, traditions and customs.[52] It confirms that persons belonging to these minorities have the right to participate effectively in cultural and religious life, which applies to the same extent to adults and children.[53]

Article 15 para. 1(a) of the ICESCR lays down the right of everyone, adults and children alike, to participate in cultural life. The terms "cultural" and "culture" in connection with the provisions of Article 15 para. 1(a) of the ICESCR is understood broadly, and encompasses, *inter alia,* ways of life, religion and belief systems, rites and ceremonies, food, customs and traditions through which individuals and communities express themselves.[54] The UN Committee on Economic, Social and Cultural

50 Human Rights Committee, General Comment No. 23, para. 9.
51 Art. 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
52 Art. 4 para. 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
53 Art. 2 para. 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
54 Committee on Economic, Social and Cultural Rights, General comment no. 21, Right of everyone to take part in cultural life (Art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), para. 13.

Rights recognises that children play a fundamental role as the bearers and transmitters of cultural values from generation to generation, therefore their participation in the cultural and religious life of the community is of paramount importance for the preservation of collective identity. Consequently, states parties should take all steps necessary to stimulate and develop children's full potential in the area of cultural life.[55] This includes the state's obligation to provide culturally appropriate education, which enables children to develop their personality and cultural identity, and to learn and understand cultural values and practices of the communities to which they belong, as well as those of other communities. According to the committee, the educational programmes should respect the cultural specificities of national or ethnic, linguistic and religious minorities as well as indigenous peoples, and should be included in general school curricula for all children, not only for minorities and indigenous peoples.[56]

For children belonging to indigenous peoples who live traditional lifestyles, one of the vital preconditions for the enjoyment of their religious and cultural rights is the access to ancestral land and natural resources. In indigenous communities, ancestral land often serves as a basis for religious practices or the expression of their cultural identity.[57] When the enjoyment of culture and the profession of religion are so closely linked to sacred sites and the natural environment, preserving this environment and ensuring access to land is necessary for the realisation of the child's right to 'enjoy his or her own culture, to profess and practice his or her own religion', as guaranteed in Article 30 of the CRC and Article 27 of the ICCPR.[58] Not surprisingly, according to a recent decision of the Human Rights Committee, the failure of the state to combat the effects of climate change and protect indigenous communities' collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions, and to maintain ancestral graveyards and spiritual connection with the deceased, amounts to a violation of the states' obligation to protect the right to enjoy minority culture.[59] The right of indigenous peoples to maintain their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used territories and natural resources, and to uphold their responsibilities to future generations, was explicitly laid out in the 2007 UN

55 Ibid., para. 26.
56 Ibid., para. 27.
57 Committee on Economic, Social and Cultural Rights, General Comment No. 26 on Land and Economic, Social and Cultural Rights, adopted by the CESCR at its seventy-second session (26 September – 14 October 2022), E/C.12/GC/26, para. 10.
58 See also UNICEF, 2003, pp. 3–4; Espejo-Yaksic, 2019, pp. 595–596; Marinkás, 2016, pp. 24–25.
59 CCPR, *Billy and others v. Australia*, decision of 21 July 2022, communication no. 3624/2019, para. 16. The complaint was filed by eight Australian nationals, being indigenous Torres Islanders, and six of their children. The authors, *inter alia,* claimed the violations of children's rights under Art. 24 para. 1 of the ICCPR, nonetheless, the Human Rights Committee, having found a violation of Arts. 17 and 27 of the ICCPR, did not examine the claims under Art. 24 para. 1 of the ICCPR. For more on the importance of burial places for the protection of cultural identity, see e.g.: Wedeł-Domaradzka, 2022; Walasek, 2019.

Declaration on the Rights of Indigenous Peoples, and secured by its several provisions.[60] The Committee on Children's Rights has recently urged states to closely consider the impact of environmental harm on traditional land and culture and the quality of the natural environment, while ensuring the rights to life, survival and development of indigenous children, as well as children belonging to non-indigenous minority groups whose rights, way of life and cultural identity are closely related to nature.[61]

3.3. European Instruments for the Protection of Minority and Indigenous Children's Religious Rights

On the European level, the main human rights instrument, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms[62] ('The European Convention on Human Rights', or 'ECHR'), adopted under the auspices of the Council of Europe ('CoE'), does not contain provisions dedicated to the protection of special categories of vulnerable groups, such as national minorities or children. It nevertheless secures in Article 9 everyone's right to the freedom of thought, conscience and religion,[63] which in its religious dimension is 'one of the most vital elements that go to make up the identity of believers and their conception of life.'[64] The freedom of thought, conscience, and religion, and the freedom to change religion or belief, cannot be subjected to restrictions or limitations, unlike the freedom to manifest one's religion or beliefs. The latter can be limited, albeit only under strict conditions stipulated in the limitation clause in Article 9 para. 2 of the ECHR.

Protocol No. 1 to the ECHR in Article 2 ('Right to education') provides parents with the right to choose such education and teaching for their children which is in

60 See e.g. Arts. 10, 25, 26, 29, 32 of the Declaration on the Rights of Indigenous Peoples, see also Art. 13 of the 1989 ILO Indigenous and Tribal Peoples Convention.

61 Committee on Children's Rights, General comment No. 26 (2023) on children's rights and the environment with a special focus on climate change, 22 August 2023, CRC/C/GC/26, para. 58.

62 *Convention for the Protection of Human Rights and Fundamental Freedoms* (European Convention on Human Rights, ECHR), adopted under the auspices of Council of Europe in Rome on 4 November 1950, ETS No. 005. Although this paper addresses only the European human rights system, it is important to note that in other regional human rights systems have also elaborated standards on the protection of religious rights, see e.g. Art. 8 of the *African Charter on Human and Peoples' Rights*, adopted on 27 June 1981 under the auspices of the Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5 (the Banjul Charter); Art. 12 of the *American Convention on Human Rights*, adopted in San José on 22 November 1969 under the auspices of the Organization of American States, UN Treaty Series No. 17955, vol. 1144.

63 Art. 9 para. 1 of the ECHR states that 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance'.

64 See e.g. ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, judgement of 13 December 2001, application no. 45701/99, para. 114. For an interpretative account on Art. 9 of the ECHR, see: Schabas, 2015, pp. 412–443.

conformity with their own religious and philosophical convictions.[65] The provisions of Article 2 of the Protocol No. 1 are a *lex specialis* in relation to Article 9 of the ECHR.[66] Although it can be seen as an optimal legal basis for protecting the religious identity of parents and children belonging to religious minorities, the ECtHR's practice demonstrates that in the educational context the majority religion enjoys considerable deference.[67] For example, according to the ECtHR the Norwegian school curriculum — which gave a larger share to knowledge of the Christian religion than to that of other religions — cannot be seen in itself as a departure from the principles of pluralism and objectivity.[68] In view of the place occupied by Christianity in the national history and tradition of the state, this should be regarded as falling within the respondent state's margin of appreciation in planning the school curriculum.[69] Similarly, the ECtHR did not find a violation of Article 2 of the Protocol 1 in connection with the state practice in Turkish schools, where Islam was given prominence through the presence of 'religious culture and ethics' classes in the curriculum, because although the state was secular in nature, Islam was the religion of the majority.[70]

To better address the rights of national minorities, explicitly non-existent under the ECHR, the 1995 Framework Convention for the Protection of National Minorities (FCNM) was adopted under the auspices of the CoE. This comprehensive legal instrument, designed specifically to protect the rights of persons belonging to national minorities in its Article 5, lists religious identity among the four essential elements of the identity of a national minority, which the states parties are under duty to preserve. Article 7 of the FCNM lays down the obligation of the states parties to ensure respect for the right of every person belonging to a national minority to freedom of thought, conscience and religion. In addition, Article 8 of the FCNM recognises that every person belonging to a national minority has the right to manifest his or her religion or belief. The FCNM does not make a specific reference to protecting the rights of children belonging to minorities.

The implementation of the FCNM in states parties is monitored and evaluated by the Advisory Committee, an independent expert committee advising the CoE's

65 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, Paris, 20.III.1952, ETS no. 009. Art. 2 of the Protocol No. 1. states that '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'.

66 *Abdi Ibrahim v. Norway*, para. 139.

67 Schabas, 2015, p. 1003.

68 ECtHR, *Folgerø and Others v. Norway*, Judgement of 29 June 2007, appl. no. 15472/02, para. 89.

69 The same Norwegian state practice relating to the school curriculum was nevertheless challenged by the Committee of the Rights of the Child as not fully compatible with Art. 14 of the Convention on the Rights of the Child, see: Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Art. 44 of the Convention. Concluding observations: Norway, 21 September 2005, CRC/C/15/Add.263, para. 20.

70 ECtHR, *Hasan and Eylem Zengin v. Turkey*, Judgement of 9 October 2007, appl. no. 1448/04, paras. 51–52.

Committee of Ministers. Within its monitoring activity, the Advisory Committee puts a great emphasis on boosting intercultural understanding and respect. Good practices in this regard include pedagogical activities and educational programs run for the entire community, regardless of religious or national affiliation.[71] The Advisory Committee urges states parties to review on a regular basis the curricula and textbooks of subjects such as history, religion and literature in order to ensure that the diversity of cultures and identities is reflected, and that tolerance and intercultural communication are promoted.[72]

Within the EU, the respect for human rights, including the rights of persons belonging to minorities, is one of the fundamental values, enshrined in Article 2 of the Treaty on the European Union, while Article 3 para. 3 states that the EU respects its rich cultural diversity.[73] The EU's dedication to protecting religious diversity is reflected in several provisions of the primary EU law. The Charter of Fundamental Rights of the EU in Article 22 reaffirms that the EU promotes cultural, religious and linguistic diversity. The religious diversity is not limited to traditional European religions.[74]Article 10 of the Charter recognises everyone's right to freedom of thought, conscience and religion, which 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. Similarly to the religious diversity, freedom of religion is to be understood broadly and not confined to traditionally recognised religions and beliefs.[75] According to the European Court of Justice, freedom of religion is one of the foundations of a democratic society and a basic human right.[76] Article 24 of the Charter addresses the rights of the child. Although it does not explicitly mention the freedom of religion, it is axiomatic that children benefit from the protection of all other Charter rights,[77] including Article 10, guaranteeing the freedom of religion, and Article 11, securing the freedom of expression. The latter covers all types of expression, and as such might also be understood in connection with expressing religious beliefs.[78]

71 Advisory Committee on the FCNM, Fourth Opinion on Poland, adopted on 6 November 2019, ACFC/OP/IV(2019)003, para. 78, Advisory Committee on the FCNM, Fifth Opinion on Czechia, adopted on 31 May 2021, ACFC/OP/V(2021)3, paras. 7, 80.

72 Advisory Committee on the FCNM, Fourth Opinion on Poland, adopted on 6 November 2019, ACFC/OP/IV(2019)003, para. 127; Advisory Committee on the FCNM, Fifth Opinion on Romania, adopted on 3 April 2023, ACFC/OP/V(2022)5, para. 168, Advisory Committee on the FCNM, Fifth Opinion on Czechia, adopted on 31 May 2021, ACFC/OP/V(2021)3, para. 29.

73 Treaty on European Union of 13 December 2007 – consolidated version, Official Journal of the European Union C/202 of 7 June 2016.

74 Lock, 2019c, p. 2169.

75 Lock, 2019a, p. 2129.

76 ECJ, *Bundesrepublik Deutschland v Y and Z*, Judgment of 5 September 2012, joined cases C-71/11 and C-99/11, para. 57.

77 Lock, 2019d, p. 2174.

78 Lock, 2019b, p. 2135.

4. The Right to Culturally Adequate Food as a Religious Right of Minority and Indigenous Children

The importance of children's religious rights can be seen through the prism of various domains, belonging either to the public sphere or falling within the scope of private and family life, which are inherent to children's everyday life. They include, for example, wearing traditional pieces of clothing in public schools in accordance with religious requirements — such as a headscarf or hijab — or attending religious education in schools. Less commonly discussed in the context of religious rights, but equally relevant, is the right to culturally adequate food, as well as the issue of children's dietary customs or choices.

As the Human Rights Committee notes, the observance and practice of religion or belief, protected under Article 18 of the ICCPR, may include not only ceremonial acts but also such customs as dietary regulations.[79] Aside from religious guarantees stemming from such provisions as Article 18 of the ICCPR, Article 9 of the ECHR or Article 14 of the CRC, the protection of religiously appropriate alimentation is linked to the right to food, recognised in Article 11 para. 1 of the ICESCR. The normative content of the latter highlights that food cannot be understood in a narrow sense as a minimum intake of calories, proteins and other specific nutrients, but should be understood as the right to *adequate* food. Several factors need to be taken into account while determining whether particular foods or diets can be considered appropriate. The meaning of "adequacy" is largely determined, *inter alia*, by prevailing social and cultural, as well as climatic, ecological and other conditions.[80] According to the Committee on Economic, Social and Cultural Rights, the core content of the right to adequate food implies 'the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and *acceptable within a given culture*.'[81] The importance of availability of adequate food for children has also been highlighted in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which requires that in every detention facility every juvenile receive food that is suitably prepared and [...] satisfies the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements.[82]

The respect of dietary customs, as a prerequisite to a religiously and culturally adequate food, is an inherent element of safeguarding cultural identity of adults and children belonging to indigenous peoples or national minorities. Some authors go as far as to assert that national minorities' have right to their own "culinary identity".[83]

79 Human Rights Committee, General Comment No. 22, para. 4.
80 Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food (Art. 11), 12 May 1999, E/C.12/1999/5, para. 6.
81 Ibid., paras. 7–8.
82 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly resolution No. 45/113, 14 December 1990, para. 37.
83 See e.g.: Banaszak, 2014.

Certain food-related regulations, such as those related to the shechita and halal slaughter, are intrinsically related to spiritual beliefs in a given religion (in case of ritual slaughter, to Jewish and Islamic religions).[84] The jurisprudence of the international tribunals (ECtHR,[85] the European Court of Justice[86]) connected to the shechita and halal slaughter, which revolve around the issue of the ban on ritual slaughter without prior stunning, highlights the challenges in balancing the right to religious freedom, minority rights and animal protection concerns (public interest). The debate on the religious adequacy of food is highly relevant also in the Central European context, as demonstrated by the 2012 and 2014 decisions of the Polish Constitutional Tribunal,[87] connected to the restrictions on ritual slaughter and the interpretation of the provisions of the Act of 21 August 1997 on Animal Protection.[88] In Poland, ritual slaughter is observed by members of the Tatar ethnic minority, as well as by the members of Jewish national minority, who, together with other recognised national and ethnic minorities in Poland, enjoy the constitutionally guaranteed freedom to maintain customs and traditions, and to develop their own culture.[89] The ritual slaughter of animals without stunning is permitted for religious purposes in several Central European countries, including Croatia, Czechia, Hungary and Romania, under the derogation to the relevant EU regulation.[90]

The availability of culturally acceptable food, strictly related to the free access to natural resources and traditional territories, is the essence of preserving cultural and religious identity of children belonging to indigenous peoples. As the UN High Commissioner for Human Rights has noted, indigenous peoples have their own concepts of what constitutes adequate food, which concepts depart from conventional economic criteria. Food and its procurement and consumption are often an important part of their culture, as well as of social, economic and political organisation, and are grounded in their sociocultural traditions and their special relationship to ancestral land and resources.[91] Since long ago, the Human Rights Committee has associated

84 For a brilliant account on the spiritual, ethical and legal aspects surrounding the halal and shechita ritual slaughter, see: Marinkás, 2021.

85 See e.g. ECtHR, *Cha'are Shalom Ve Tsedek v. France*, Judgement of 27 June 2000, application no. 27417/95.

86 See e.g. ECJ, *Centraal Israëlitisch Consistorie van België and Others*, Judgement of 17 December 2020, C-336/19.

87 Constitutional Tribunal of the Republic of Poland, Judgement of 27 November 2012, case no. U 4/12; Constitutional Tribunal of the Republic of Poland, Judgement of 10 December 2014, case no. K 52/13. More on the decisions of the Polish Constitutional Tribunal on ritual slaughter, see: Kuczma, 2016; Skóra, 2019; Marinkás, 2021, pp. 73–75.

88 Act of 21 August 1997 on Animal Protection [Ustawa z dnia 21 sierpnia 1997 r. o ochronie zwierząt], Journal of Laws [Dz.U.] of 1997, No. 111, item 724.

89 Constitution of the Republic of Poland of 2 April 1997, Journal of Laws [Dz.U.] of 1997, No. 78, item 483, Art. 35 para. 1.

90 Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, Official Journal of the European Union, 18.11.2009, L 303/1. Data on domestic legislation concerning ritual slaughter after: Vinci, Pasikowska-Schnass and Rojek, 2023, pp. 27–30.

91 United Nations High Commissioner for Human Rights, 2010b, pp. 12–13.

the preservation of cultural identity with the traditional way of life connected to the territory and use of natural resources.[92] Similarly, the Inter-American Court of Human Rights (IACtHR), which over the years has become the principal guardian of indigenous rights, considers that food should be understood as one of the cultural characteristics of a given social group, and as such it enjoys protection under the right to cultural identity.[93]

The dietary customs and convictions of vegan and vegetarian children, albeit not strictly connected to the religious rights of minority and indigenous children, might also give rise to issues related to the protection of a child's right to freedom of thought, conscience and religion. It was already the European Commission on Human Rights that accepted that veganism enjoys protection under Article 9 para. 1 of the ECHR.[94] The protection of children's ethical beliefs underlying their vegan or vegetarian dietary choices can be anchored in the principle of non-discrimination (Article 2 of the CRC) and the right to freedom of thought, conscience and religion (Article 14 of the CRC), and can also be perceived in relation to the child's right to be protected from all forms of physical and psychological violence and from exposure to violence, such as violence inflicted on animals (Article 19 of the CRC).[95]

5. Conclusions

The protection of religious rights of children whose cultural and religious background is different from the majority society is vitally important for both their harmonious development, and for the preservation of their own cultural identity and that of their entire community. Religion is one of the essential elements that make up the identity of national minorities and indigenous peoples, aside from their language, traditions, and cultural heritage. Therefore, the enjoyment of the right to freedom of religion for such groups is crucial to safeguarding their common spiritual and cultural consciousness.

The relevant legal standards applicable for protecting the religious rights of children from national minorities or indigenous peoples can be found in general human

92 Human Rights Committee, General comment No. 23, para. 3.2. See also: Human Rights Committee, *Ominayak (Lubicon Lake Band) v. Canada*, decision of 26 Mar 1990, communication no. 167/1984; Human Rights Committee, *Ivan Kitok v. Sweden*, decision of 27 July 1988, communication no. 197/1985; Human Rights Committee, *Billy and others v. Australia*, para. 8.10.

93 IACtHR, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400, para. 274. The facts of the case provided the IACtHR with an opportunity to reflect on the relationship between the cultural rights and the right to a healthy environment, and equally on the interplay among the rights to adequate food, water, and cultural identity. On the significance of the judgement in for the protection of cultural identity, see: Zombory, 2023a.

94 European Commission of Human Rights, *W. v. The United Kingdom*, decision on admissibility of 10 February 1993, application no. 18187/91.

95 Committee on the Rights of the Child, General comment No. 26, para. 35.

rights instruments at the universal and European level (ICCPR, ICESCR, ECHR, Charter of the Fundamental Rights of the EU), as well as in categorical human rights regimes, dedicated specifically to the protection of children (CRC), and to the protection of national minorities and indigenous peoples (Article 27 of the ICCPR, Article 30 of the CRC, FCNM). Some of these standards emphasise the child's autonomous right to freedom of religion, as opposed to the child automatically following his or her parents' religion (Article 14 of the CRC), while some of them support the child's right to acquire and uphold the religious identity of his or her parents (e.g. Article 30 of the CRC).

The practical implementation of children's religious rights can be observed in various contexts and in various domains, most notably in connection with wearing traditional pieces of clothing (e.g. headscarf) in public schools or attending religious education. It is equally relevant in respect to the child's right to religiously and culturally adequate food, in the context of ritual slaughter (certain national minorities) or the access to natural resources (indigenous peoples).

Bibliography

Act of 6 January 2005 on national and ethnic minorities and on the regional languages, Journal of Laws [Dz. U.] of 2005, No. 17, item 141.

Act of 21 August 1997 on Animal Protection [Ustawa z dnia 21 sierpnia 1997 r. o ochronie zwierząt], Journal of Laws [Dz.U.] of 1997, No. 111, item 724.

Advisory Committee on the FCNM, Fifth Opinion on Czechia, adopted on 31 May 2021, ACFC/OP/V(2021)3.

Advisory Committee on the FCNM, Fourth Opinion on Poland, adopted on 6 November 2019, ACFC/OP/IV(2019)003.

Advisory Committee on the FCNM, Fifth Opinion on Romania, adopted on 3 April 2023, ACFC/OP/V(2022)5.

African Charter on Human and Peoples' Rights, adopted on 27 June 1981 under the auspices of the Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5 (the Banjul Charter).

American Convention on Human Rights, adopted in San José on 22 November 1969 under the auspices of the Organization of American States, UN Treaty Series No. 17955.

Antonowicz-Bauer, L. (1984) 'The Tatars in Poland', *Institute of Muslim Minority Affairs Journal*, 5(2), pp. 345–359. Available at: https://doi.org/10.1080/02666958408715905.

Appendix 1 to the Act No. 179 of 2011 on the Rights of National Minorities.

Banaszak, B. (2014) 'Prawo mniejszości narodowych do kultywowania własnej tożsamości kulinarnej', *Gdańskie Studia Prawnicze*, 2014/31, pp. 19–26.

Borit, C. (2006) *The identity conflict of the Csango minority from Romania* [Online]. Available at: https://munin.uit.no/handle/10037/20109 (Accessed: 21 April 2024).

Brems, E. (2006) 'Article. 14 The Right to Freedom of Thought, Conscience and Religion' in Alen, A., Vande Lanotte, J., Verhellen, E., Ang, F., Berghmans, F. and Verheyde, M. (eds.) *A Commentary on the United Nations Convention on the Rights of the Child.* Leiden: Martinus Nijhoff Publishers.

Brems, E, Desmet, E., and Vandehole, W. (2017) 'Children's rights law and human rights law: analysing present and possible future interactions' in Brems, E., Desmet, E., and Vandehole, W, *Children's rights law in the global human rights landscape: isolation, inspiration, integration?* New York: Routledge.

Capotorti, F. (1979) *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities,* UN Doc. E/CN.4/Sub.2/384/Rev.1 [Online]. Available at: https://digitallibrary.un.org/record/10387?v=pdf.

CCPR, *Billy and others v. Australia*, decision of 21 July 2022, communication no. 3624/2019.

Children's Rights Committee, General Comment No. 11 (2009): Indigenous children and their rights under the Convention on the Rights of the Child.

Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food (Art. 11), 12 May 1999, E/C.12/1999/5.

Committee on Economic, Social and Cultural Rights, General comment no. 21, Right of everyone to take part in cultural life (Art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights).
Committee on Economic, Social and Cultural Rights, General Comment No. 26 on Land and Economic, Social and Cultural Rights, adopted by the CESCR at its seventy-second session (26 September – 14 October 2022), E/C.12/GC/26.
Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding observations: Armenia, 26 February 2004, CRC/C/15/Add. 225.
Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding observations of the Committee on the Rights of the Child: China, 7 June 1996, CRC/C/15/Add. 56.
Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding observations of the Committee on the Rights of the Child: Greece, 2 April 2002, CRC/C/15/Add.170.
Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding observations: Norway, 21 September 2005, CRC/C/15/Add.263.
Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding observations of the Committee on the Rights of the Child: Tunisia, 13 June 2002, CRC/C/15/Add.181.
Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14.
Committee on Children's Rights, General comment No. 26 (2023) on children's rights and the environment with a special focus on climate change, 22 August 2023, CRC/C/GC/26.
Committee on the Rights of the Child, General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention (Revised), 20 November 1996, CRC/C/58.
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), adopted under the auspices of Council of Europe in Rome on 4 November 1950, ETS No. 005.
Constitution of the Republic of Croatia, consolidated text of 6 July 2010.
Constitution of the Republic of Poland of 2 April 1997, Journal of Laws [Dz.U.] of 1997, No. 78, item 483.
Constitutional Tribunal of the Republic of Poland, Judgement of 27 November 2012, case no. U 4/12.
Constitutional Tribunal of the Republic of Poland, Judgement of 10 December 2014, case no. K 52/13.
Convention on the Rights of the Child, adopted in New York on 20 November 1989 by General Assembly resolution 44/25, UN Treaty Series no. 27531.

Council of Europe Parliamentary Assembly, Recommendation 1521 (2001); on Csango minority culture in Romania.

Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, Official Journal of the European Union, 18.11.2009, L 303/1.

Council of Europe Parliamentary Assembly, Resolution 1171 (1998) on Endangered uralic minority cultures, 25 September 1998.

Cultural Survival (2023) *Observations on the State of Indigenous Rights in the Russian Federation, prepared for the 44th Session of the Universal Periodic Review of the Human Rights Council* [Online]. Available at: https://www.culturalsurvival.org/sites/default/files/Russia_UPR_2023_Final_2.pdf (Accessed: 21 April 2024).

Declaration on the Rights of Indigenous Peoples, UN General Assembly resolution of 13 September 2007, Articles A/RES/61/295.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted on 18 December 1992 by General Assembly resolution No. 47/135.

Dooek, J.E. (2019) 'The Human Rights of Children: An Introduction' in Kilkelly, U., Liefaard T. (eds.) *International Human Rights of Children*. Singapore: Springer, pp. 3–29. Available at: https://doi.org/10.1007/978-981-10-4184-6_21.

ECJ, *Bundesrepublik Deutschland v Y and Z*, Judgment of 5 September 2012, joined cases C-71/11 and C-99/11.

ECJ, *Centraal Israëlitisch Consistorie van België and Others*, Judgement of 17 December 2020, C-336/19.

ECtHR, *Abdi Ibrahim v. Norway*, judgement of 10 December 2021 (Grand Chamber), Application no. 15379/16.

ECtHR, *Cha'are Shalom Ve Tsedek v. France*, Judgement of 27 June 2000, application no. 27417/95.

ECtHR, *Folgerø and Others v. Norway*, Judgement of 29 June 2007, appl. no. 15472/02.

ECtHR, *Gorzelik and Others v. Poland*, 17 February 2004, Application no. 44158/98.

ECtHR, *Hasan and Eylem Zengin v. Turkey*, Judgement of 9 October 2007, appl. no. 1448/04.

ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, judgement of 13 December 2001, application no. 45701/99.

Espejo-Yaksic, N. (2019) 'International Laws on the Rights of Indigenous Children' in Kilkelly, U., Liefaard T. (eds.) *International Human Rights of Children*. Singapore: Springer, pp. 587–616. Available at: https://doi.org/10.1007/978-981-10-4184-6_21.

European Commission of Human Rights, *W. v. The United Kingdom*, decision on admissibility of 10 February 1993, application no. 18187/91.

Explanatory Report to the Framework Convention for the Protection of National Minorities, Strasbourg, 1 February 1995, European Treaty Series No. 157.

Framework Convention for the Protection of National Minorities, adopted in Strasbourg, on 1 February 1995, under the auspices of the Council of Europe, ETS no. 157.

Gawecki, M. (1989) 'Ethno-cultural status of the Polish Tatars', *Central Asian Survey*, 8(3), pp. 53–60. Available at: https://doi.org/10.1080/02634938908400673.

Greco-Bulgarian "Communities" / Question des "Communautés" Gréco-Bulgares, Publications de la Cour permanente de justice internationale, Recueil des avis consultatifs, série B, no. 17, Leiden 1930.

Hanson, J., Weller, M. (2018) *The UN Declaration on the Rights of Indigenous Peoples. A Commentary*. Oxford: Oxford University Press.

Hodgkin, R., Newell, P. (2007) *Implementation Handbook for the Convention for the Convention on the Rights of the Child*. 3 edn. Geneva: UNICEF Regional Office for Europe.

Human Rights Committee, General Comment No. 22 on Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4.

Human Rights Committee, General Comment No. 23 (50) (art. 27), 26 April 1994, CCPR/C/21/Rev.1/Add.5.

Human Rights Committee, *Ivan Kitok v. Sweden*, decision of 27 July 1988, communication no. 197/1985.

Human Rights Committee, *Ominayak (Lubicon Lake Band) v. Canada*, decision of 26 Mar 1990, communication no. 167/1984.

IACtHR, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400.

Indigenous and Tribal Peoples Convention (ILO Convention No. 169), adopted in Geneva on 27 June 1989, UN Treaty Series vol. 1650, no. 28383.

Interim report of the UN Special Rapporteur on freedom of religion or belief, focusing on focuses on the rights of the child and his or her parents in the area of freedom of religion or belief, 5 August 2015, A/70/286.

International Covenant on Civil and Political Rights, adopted in New York on 16 December 1966, UN Treaty Series No. 14668.

International Covenant on Economic, Social and Cultural Rights, adopted in New York on 16 December 1966, UN Treaty Series No. 14531.

Korhecz, T. (2022) 'National Minorities – Constitutional Status, Rights and Protection' in Csink, L., Trócsányi, L. (eds.) *Comparative Constitutionalism in Central Europe: Analysis on Certain Central and Eastern European Countries*. 1st edn. Budapest–Miskolc: Central European Academic Publishing, pp. 401–421.

Kuczma, P. (2016) 'Ubój rytualny jako prawo mniejszości narodowych w Polsce', *Przegląd Prawa Konstytucyjnego*, 2016/5, pp. 181–201. Available: https://doi.org/10.15804/ppk.2016.05.11.

Lock, T. (2019a) 'Article 10 CFR, Freedom of thought, conscience and religion' in Kellerbauer, M., Klamert, M., Tomkin, J. (eds.) *The EU Treaties and the Charter of Fundamental Rights. A Commentary*. 1st edn. Oxford: Oxford University Press, pp. 2129–2131.

Lock, T. (2019b) 'Article 11. CFR. Freedom of expression and information' in Kellerbauer, M., Klamert, M., Tomkin, J. (eds.) *The EU Treaties and the Charter of Fundamental Rights. A Commentary*. 1st edn. Oxford: Oxford University Press, pp. 2132–2136.

Lock, T. (2019c) 'Article 22 CFR. Cultural, religious and linguistic diversity' in Kellerbauer, M., Klamert, M., Tomkin, J. (eds.) *The EU Treaties and the Charter of Fundamental Rights. A Commentary*.1st edn. Oxford: Oxford University Press, pp. 2168–2169.

Lock, T. (2019d) 'Article 24 CFR. The rights of the child' in Kellerbauer, M., Klamert, M., Tomkin, J. (eds.) *The EU Treaties and the Charter of Fundamental Rights. A Commentary*, 1st edn. Oxford: Oxford University Press, pp. 2173–2175.

Luca, A.M. (2019) *Romania's Csangos Hear First Hungarian Mass in Decades* [Online]. Available at: https://balkaninsight.com/2019/02/01/hungarian-speaking-csanga-hold-first-mass-in-mother-tongue-in-eastern-romania-01-28-2019 (Accessed: 21 April 2024).

Machnyikova, Z. (2005) 'Article 7' in Weller, M. (ed) *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities*. Oxford: Oxford University Press.

Marinkás, Gy. (2016) 'Cultural Rights as a Tool of Protecting the Rights of Indigenous Peoples' in Szabó, M., Varga, R., Láncos, P.L. (eds.) *Hungarian Yearbook of International Law and European Law 2015*. The Hague: Eleven International Publishing, pp. 15–38.

Marinkás, Gy. (2018) *Az őslakos népek védelmének aktuális jogi kihívásai*. Miskolc: Miskolci Egyetem Állam- és Jogtudományi Kar.

Marinkás, Gy. (2021) 'Some Remarks on the *"Shechita Case"* of the ECJ', *Law, Identity and Values*, 1(2), pp. 53–90. Available at: https://doi.org/10.55073/2021.2.53-90.

Martínez Cobo, J.R. (1972) *Study of the problem of discrimination against indigenous populations*, 29 June 1972, E/CN.4/Sub.2/L.566. [Online]. Available at: https://digitallibrary.un.org/record/768953?v=pdf.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, Paris, 20.III.1952, ETS no. 009.

Raisz, A. (2008) 'Indigenous Communities before the Inter-American Court of Human Rights – New Century, New Era?', *Miskolc Journal of International Law*, 5(2), pp. 35–51.

Raisz, A. (2010) 'Az emberi jogok amerikaközi védelme', *Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica*, 2010/28, pp. 281–295.

Roosevelt, F.D. (1941) *Four Freedoms speech*, delivered on 6 January 1941 (the 1941 State of the Union address) [Online]. Available at: https://www.americanrhetoric.com/speeches/fdrthefourfreedoms.htm (Accessed: 21 April 2024).

Schabas, W.A. (2015) *The European Convention on Human Rights. A Commentary*, 1 edn. Oxford: Oxford University Press.

Skóra, A. (2019) 'Religious slaughter of animals in light of the EU and in the Polish law', *Studia Prawnoustrojowe*, 2019/43, pp. 283–296.

Treaty on European Union of 13 December 2007 – consolidated version, Official Journal of the European Union C/202 of 7 June 2016.

United Nations High Commissioner for Human Rights (2010a) *Minority Rights: International Standards and Guidance for Implementation*. [Online]. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/MinorityRights_en.pdf (Accessed: 21 April 2024).

UNICEF (2003) *Ensuring the Rights of Indigenous Children.* Innocenti Digest No. 11. Florence: UNICEF Innocenti Research Center.

United Nations High Commissioner for Human Rights (2010b) *The Right to Adequate Food. Fact Sheet No. 34* [Online]. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf (Accessed: 21 April 2024).

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly resolution No. 45/113, 14 December 1990.

Vinci, C., Pasikowska-Schnass, M. and Rojek, B. (2023) *Religious slaughter. Reconciling animal welfare with freedom of religion or belief* [Online]. Available at: https://www.europarl.europa.eu/RegData/etudes/IDAN/2023/751418/EPRS_IDA(2023)751418_EN.pdf (Accessed: 21 April 2024).

Walasek, H. (2019) 'Cultural heritage and memory after ethnic cleansing in post-conflict Bosnia-Herzegovina', *International Review of the Red Cross*, 101(1), pp. 273–294. Available at: https://doi.org/10.1017/S1816383119000237.

Wedeł-Domaradzka, A. (2022) 'On the Need To Protect Cemeteries and Memorials in Europe: The Perspective of the Convention on the Protection of the World Cultural and Natural Heritage and Hungarian and Polish Regulations', *Central European Journal of Comparative Law*, 3(2), 201-216. Available at: https://doi.org/10.47078/2022.2.201-216.

Weller, M. (2005) *The Rights of Minorities in Europe. A Commentary on the European Framework Convention for the Protection of National Minorities*. Oxford: Oxford University Press.

Weller, M. (2007) *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*. Oxford: Oxford University Press.

Zombory, K. (2023a) 'The Right to Cultural Identity in the Case Law of the Inter-American Court of Human Rights: A New Global Standard for the Protection of Indigenous Rights and Future Generations?', *Journal of Agricultural and Environmental Law*, 18 (34), pp. 171–191. Available at: https://doi.org/10.21029/JAEL.2023.34.171.

Zombory, K. (2023b) *Prawnomiędzynarodowa ochrona praw kulturalnych mniejszości narodowych: wybrane zagadnienia*. Warszawa: Instytut Wymiaru Sprawiedliwości.

Part III
Child Safeguarding Policies in Certain Christian Churches

| CHAPTER 8 |

Child Safeguarding Policies in the Roman Catholic Church

Michele RIONDINO – Hans ZOLLNER

ABSTRACT

The Roman Catholic Church's approach to child safeguarding reveals a complex and diverse landscape across the globe. While universal requirements and structural conditions exist, regional concepts, policies, and cultures vary significantly. This paper examines the Church's response to clerical child abuse, highlighting key developments such as Pope John Paul II's condemnation of abuse and subsequent directives from Pope Benedict XVI and Holy See offices. It also discusses the reforms initiated by Pope Francis, including measures to hold bishops accountable and the abolition of pontifical secrecy in abuse cases. Despite these efforts, the Church faces challenges in implementation and varying levels of commitment across different regions. The paper further explores case studies from 15 countries, illustrating the diversity in responses and the ongoing struggle to ensure child protection within the Church.

KEYWORDS

child Protection, child safeguarding, Catholic Church, sexual abuse, policies and procedures, institutional response, children's rights

1. Facing a Multi-Layered Picture

An initial glance at the distinct situations in the World Church already reveals a multi-layered picture. Looking at the regional concepts, policies and cultures that have (or have not) been introduced to better protect children and vulnerable adults in the Catholic Church, one faces a certain variation and diversity. At the same time, there are universal requirements defined by the Pope and the Roman Curia, as well as overlapping structural conditions and risk factors that provide some common framework.

One of Pope John Paul II's first speeches on the issue of sexual abuse was addressed to the U.S. cardinals who had gathered in Rome in 2002, to whom he said 'The abuse of the young is a grave symptom of a crisis affecting not only the Church but society as

Michele RIONDINO – Hans ZOLLNER (2025) 'Child Safeguarding Policies in the Roman Catholic Church' in Katarzyna ZOMBORY – Márta BENYUSZ (eds.) *Religion and Children's Rights.* Miskolc–Budapest: Central European Academic Publishing. pp. 179–199. https://doi.org/10.71009/2025.kzmb.racr_8

a whole.' [1] After these strong words, John Paul II emphasised that there is no place in the Church for those who harm minors. 'People need to know that there is no place in the priesthood and religious life for those who would harm the young.'[2]

Another Pontifical document concerning sexual abuse within the Church was published by Pope Benedict XVI in his *Pastoral Letter to the Church in Ireland* in 2010, where he highlighted the fact that there has been a failure of leadership and responsibility – emphasising the loss of trust in the Church's commitment to fulfilling its duty to protect minors.

In May 2011, the *Congregation for the Doctrine of the Faith* (CDF) asked all Bishops' Conferences worldwide to prepare guidelines that define clear and coordinated procedures in dealing with clerical child abuse.[3] Due in one year, a number of Episcopal Conferences did not respond before the deadline passed.[4] By 2023 – eleven years after the documents should have been issued – it appeared that all Bishops' Conferences had finally published guidelines – some of which were reviewed by the Vatican and differed greatly in form and depth.[5] What is of still greater concern is that many believe that, with the publication of the guidelines, the most important effort in safeguarding has already been accomplished. Even if more and more people understand that safeguarding needs sustainability, and allocation of personnel and resources — as well as structural, pastoral, and spiritual reform — the creation of a safer Church remains a long-term goal that meets with much systemic resistance.

With the 2016 Motu Proprio "As a loving mother", Pope Francis made it easier for himself and the competent bodies of the Roman Curia to discipline and remove bishops and religious superiors who had neglected their governing responsibilities, even when their negligence was not criminal:[6] 'In the case of the abuse of minors and vulnerable adults it is enough that the lack of diligence be grave.'[7] In his act, the Pope also reaffirmed some juridical and moral principles and updated the Church legislation.[8] Three years later, he furthermore summoned all presidents of the national Bishops' Conference to Rome for a meeting on Child Protection in the Church.[9] Structured along the three key duties of responsibility, accountability and transparency, it helped to raise and spread a deeper understanding of the scandals' global nature — and pushed more reluctant bishops to take appropriate action. Following up on that event, Pope Francis adopted moreover the Motu Proprio 'You are the light

1 Address of John Paul II to the Cardinals of the United States, 23.04.2002. Available at: www.vatican.va/content/john-paul-ii/en/speeches/2002/april/documents/hf_jp-ii_spe_20020423_usa-cardinals.html.
2 Ibid.
3 Cf. Levada, 2010.
4 Cf. Lombardi, 2019a.
5 Cf. Lombardi, 2019b.
6 Cf. Altieri, 2019.
7 Pope Francis. Apostolic letter issued as Motu Proprio 'As a loving mother', Rome, 2016.
8 Arroba Conde and Riondino, 2019, pp. 181–182.
9 For further details, see: Renken, 2019, pp. 627–658.

of the world'[10] ('*Vos estis Lux Mundi*') in June 2019, which sharpened and amended the general norms. One of the main purposes of this legal instrument was to promote better coordination between the particular churches and the Holy See regarding the measures to be adopted to pursue sexual crimes committed by clerics.[11] These demanded, *inter alia*, from each diocese to set up an efficient and easily accessible reporting system within the following 12 months, according to article no. 2 of the act. Moreover, they defined a process for examining allegations against bishops within the regional Church context, and made it possible for lay experts to become involved in the Church investigations. In December 2019, the Pope finally abolished pontifical secrecy in cases of sexual abuse. That incidents had been treated with such a special degree of confidentiality had made the disclosure of information to national courts and state prosecutions much more difficult. Furthermore, the *Rescript* set out that the abolition of pontifical secrecy should also apply in cases where sexual abuse was committed in combination with other criminal conduct.[12]

After the reform of Book VI of the 1983 Code of Canon Law (CIC), promulgated on 23 May 2021 and entered into force on 8 December 2021, Pope Francis updated the Church legislation with some new delicts and crimes, such as the new canon 1398. The updated norm deals with the offence of sexual abuse of minors and with child pornography, grooming, and the acquisition, retention and exhibition of pornographic pictures of minors or of persons who have habitually an imperfect use of reason.[13]

Now, the crimes of sexual abuse are located under the new Title VI of the CIC: 'Offences against Human Life, Dignity and Liberty'. The intention of this new arrangement is to stress that the crime committed is against the human dignity of a person, and not as in the previous legislation when those types of crimes were under the title: 'Delicts against special obligations' to stress that the crimes violated the promise of a cleric's chastity.

Another crucial update is related to lay persons. The new canon 1398 specifies in §2 that any lay persons 'who enjoy a dignity or perform an office or function in the Church' who commit sexual abuse or exploitation of a minor (or against a person who habitually has an imperfect use of reason, or one to whom the law recognises equal protection) must be punished according to Church Law. The expressions 'persons who habitually have an imperfect use of reason' and 'one to whom the law recognises equal protection' cover also "vulnerable persons", a technical expression previously adopted by Pope Francis in *Vos Estis Lux Mundi*. It is not clear, however, why in the new legislation was not possible to include the expression "vulnerable persons". This expression has been present for decades in some international documents, such as the Preamble of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (OPSPP), adopted by the UN General Assembly on 25 May 2000

10 Pope Francis, 2019.
11 Cf. Campos Martinez, 2019, pp. 829–850.
12 Cf. Riondino, 2020, pp. 1042–1043.
13 Cf. Renken, 2022, pp. 107–115.

and entered into force on 18 January 2002. The well-being of minors and vulnerable persons is also present in other international treaties, such as the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), adopted by the Council of Europe on 25 October 2007.[14]

Finally, the new canon 1371 of the CIC also introduces an important update. The purpose was to incorporate the provisions of articles 1 and 3 of *Vos Estis Lux Mundi*, concerning the delict of failure to report a crime, specifically sexual abuse. This update focuses on the legal obligation of some persons in the Church to be "mandated reporters" of crimes/delicts. Even if the CIC does not identify any mandated reporters, Francis identifies in *Vos Estis Lux Mundi* some mandated reporters such as a cleric or a member of an institute of consecrated life or of a society of apostolic life.[15]

Chronologically, one of the most recent developments in the Church's reform on sexual abuse is the publication of the Vademecum 'On Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics'[16] published in 2022, which outlines specific procedures related to sexual offense against minors, as established by the 2021 normative reform of Book VI of the Code of Canon Law[17] by Pope Francis. In the Vademecum, it is clarified from the introduction what constitutes a sexual offense, who the victims and potential perpetrators are, the possible procedures to follow, the role of the Dicastery, and the sanction to be applied to sexual crimes.

2. Reasons for the Divergence

Alongside and despite such shared commonalities, there is still a heterogeneity and disparity in how the local Catholic Churches have responded to the abuse crisis. In somewhat simplified terms, one can explain these differences and dissimilar paces with at least three major factors:

1. The degree to which sexual abuse in the Church context, as well as its concealment, has been revealed, acknowledged, investigated and prosecuted varies widely between countries and regions. In some, this process has long been ongoing; in others it is still pending. Often it was necessary that victims and survivors raised their voices with the help of the media before the Church took any action. Beyond that, a devastating narrative has still survived in some parts of the world: shared and spread by many local

14 Cf. Riondino, 2020, pp. 1005–1011.
15 Cf. Renken, 2022, pp. 15–106.
16 Cf. Dicastery for the Doctrine of the Faith. Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics, Ver. 2.0, 05.06.2022. Available at: www.vatican.va.
17 In addition with: G. Núñez, La protección del menor de edad ante los abusos sexuales: su salvaguarda obtiene carta de naturaleza, Ius Canonicum 61 (2021), pp. 821–862.

bishops and priests, the child sexual abuse that happened within the domain of the Church was primarily deemed a "Western (Anglo-Saxon and Central/Western European) problem". In combination with lacking pressure and visibility in the public sphere and/or with reference to pretended as well as de facto cultural peculiarities, this has frequently led to *re-active behaviour* at best.

2. How profoundly the abuse crisis is addressed depends also on the attention, prioritisation and *commitment of individuals*. In that sense, differences cannot only be observed at the level of Bishops' Conferences and Provinces of Religious Congregations, but also between and in vicinal dioceses and parishes.
3. Last but not least, the practice in the local Churches is always influenced by the *external conditions and the overall environment which defines the Church relations to and interaction with the State*. In the United Kingdom, the United States and Australia, serious inquiries and investigations took place,[18] which has not yet happened in many other countries. In addition, the local Catholic Churches have to deal and act in compliance with different legal standards and statutory regulations. In El Salvador, Malaysia, India and Uganda the reporting of child sexual abuse is mandatory, at least for specific professions.[19] According to Cuban law it is, on the contrary, only the victim and his/her closest relatives who are allowed to report such an offence.[20]

3. Fifteen Examples From Around the World

Seeing this diversity in the behaviour and policies of local Catholic Churches, it is simply not possible to compile a comprehensive synopsis. A cursory and selective overview of 15 examples can nonetheless convey first impressions of what has happened in various regional settings, and where the sexual abuse of minors has only been addressed and tackled rudimentarily.

The choice of these countries is based on various factors: first and foremost, due to the severe situations observed in certain nations, which are therefore considered more urgent than others; public and institutional interventions that have significantly impacted the ecclesial community; the public response to crimes committed within the Church; model to follow – in some of these countries there are extra ecclesial models that could contribute to the Church's integral legal reflection.

18 Cf. Riondino, 2020, pp. 1032–1034.
19 Cf. Observations described in the 'Out of the Shadows Index' compiled by the Economist Intelligence Unit. Data accessible via outoftheshadows.eiu.com/.
20 Cf. Ley No. 62 Codigo Penal, Gaceta Oficial de la Repúblia de Cuba, 1987, Art. 309(1). Available at: www.wipo.int/edocs/lexdocs/laws/es/cu/cu004es.pdf.

3.1. Austria

In June 2010 the Austrian Bishops' Conference adopted a regulatory framework for combatting sexual abuse in the Church ranks. Entitled *'The truth will set you free'* (Die Wahrheit wird Euch frei machen), the document was revised in 2016. In the spring of 2010 the Archbishop of Vienna, Cardinal Schönborn, furthermore asked the former chairman of the Steiermark state government, Waltraud Klasnic, to act as an independent advocate for those who had suffered abuse, by gathering the accusations against the Catholic Church in Austria. She formed a commission that was to run until 2020, and consisted of renowned experts with a background in law, psychiatry, psychology, and pedagogy. Its members worked in an honorary capacity. Together they developed a set of rules, according to which victims can obtain assistance, distinguishing four different categories of pecuniary support: 5k, 15k, 25k or more than 25k EUR. In contrast to basic principles of an official legal proceeding, in this context victims solely have to go through a quick plausibility assessment. Limitation periods are not taken into account and, when in doubt, the judgement should be in favour of the accusing party (and not of the accused institution).

On these grounds, the Commission came to around 2,250 positive decisions by the end of 2019. Around a third of these were related to sexual abuse. All other cases had to do with forms of physical and mental violence. In total, more than 92% of all requests were accepted. The Catholic Church in Austria followed all of the Commission's rulings, including the granting of therapeutic measures.

Defining itself as a civil society organisation that helps quickly and without unnecessary bureaucracy, the Commission has always underlined that, irrespectively of money and support given in consequence of its procedures, each victim has the liberty to bring his/her case to court (additionally). Over the years, the Commission has become a role model and blueprint for other Austrian and even non-Austrian institutions, who want to support victims of abuse in a similar way. The approach that this Commission has applied for the Catholic Church, as well as the wider acceptance it has gained in Austrian society, have undoubtedly helped pave the way for an official act of state named 'Gesture of responsibility' (*Geste der Verantwortung*) that took place in November 2016. Requested by victim associations, it was an important sign by which both the state and the Church acknowledged a long-overlooked injustice and harm, to which many institutionalised children had been exposed.

3.2. Switzerland

It was in June 2010 that Swiss Bishops first publicly acknowledged that their Church had been complicit in sexual assault. This admission was made, however, on behalf of the entire institution and not as an expression of individual wrongdoing or personal guilt.[21] Six years later, the complicity and co-responsibility were affirmed during a mass in the Valère Basilica in Sion: 'In our times, a great guilt has become apparent in the Church and in our dioceses and communities: a guilt of individuals, a guilt which

21 Cf. KIPA. Schweizer Bischöfe bekennen «grosse Schuld» der Kirche, Einsiedeln, 2010.

was also facilitated by specific structures as well as behavioural and thought patterns. This guilt has multiple layers: the assault, the indifferent silence, the failure to help victims. We feel responsible on various levels and thank the victims that they have opened our eyes.'[22]

Since 2002, there have been common guidelines on how to deal with "sexual assault in the pastoral work". These have been tightened, amended and updated in 2010, 2014 and 2019. Adopted by the Swiss Bishops' Conference as well as the Union of the Major Superiors of Swiss Religious, they now bear the title 'Sexual assaults in the Church context'. This latest version does not only comprise tangible, practical regulations but also includes some wider reflections that touch upon "all forms of power abuse",[23] raise questions about responsibility and accountability, and introduce a wide range of safeguarding essentials.

The Swiss Episcopal Conference had commissioned, as a "pilot project" from a team of historians from the University of Zurich in spring 2022, a report into abuse that was published in September 2023. The researchers lamented – as in many other reports that rely mainly on archival material – that they found only scattered and inconsistent documentation and that very few institutions collaborated actively. A remarkable discovery regarding the Swiss situation was that abuse and its cover-up happened in comparable numbers in a country with a very particular Church-State relationship – the "dual system" – in which lay committees and lay persons exercise power when it comes to hiring priests for parishes, and to financial independence and quite considerable influence. Moreover, many case studies show clearly that clericalism is a phenomenon that is not a privilege of ordained clergy but can also be seen in laity, when it comes to abusing power, roles, and prestige. It is also remarkable that in "liberal" parishes, dioceses, and bishops, the same mechanisms as in "conservative" ones seem to have obstructed decisive action against abuse and perpetrators.

3.3. France

In France the Bishops' Conference compiled a first brochure "to fight paedophilia" in 2001. The third and most updated version of this booklet is from 2017. Already in 2012, the Bishops had agreed on national guidelines for the handling of cases in which minors had been sexually abused by clerics. Incorporating some amendments and updates, their latest official edition was published in 2018.[24] In 2016, the Church in France established a permanent unit for combating child abuse (*Cellule permanente de lutte contre la pédophilie*). One of its tasks is the promotion and improvement of the Church's safeguarding training and efforts.

22 Cf. Schweizer Bischofskonferenz. Gebets- und Bussfeier für die Opfer sexueller Übergriffe im kirchlichen Umfeld, Sitten 05.06.2016. Available at: www.bischoefe.ch/dokumente/dossiers/sexuelle-uebergriffe-im-kirchlichen-umfeld/gebets-und-bussfeier-medienmitteilung.
23 Schweizer Bischofskonferenz und Vereinigung der Höhern Ordensobern der Schweiz. Sexuelle Übergriffe im kirchlichen Umfeld, 4. Auflage, Fribourg 2019, 3. (Translated by the author).
24 Conférence des évêques de France. Directives pour le traitement des cas d'abus sexuel commis par des clercs à l'égard de mineurs, Paris 9.10.2018.

Over the last years, one can observe how the misbehaviour of the Church has found its ways into popular culture and drawn wider attention in the French public. One example for that phenomenon is the drama 'By the Grace of God' (*Grâce à Dieu*), which was shown in French cinemas in February 2019. From the perspectives of abuse survivors, the film denounces how the French Church covered up and showed lacking interest in addressing its scandalous history. In this regard, the movie also refers to the Cardinal of Lyon, Barbarin, who was charged with shielding abusive priests and convicted by a French court a few months after the film was released. An appeals court, however, cleared him of all accusations in January 2020.

Focusing on the very last years, one can recognise that Church leadership in France has become more open and willing to collaborate with non-Church actors. In 2019 it initiated the creation of an 'Independent Commission on Sexual Abuse in the Church' (*Commission indépendante sur les abus sexuels dans l'Église; CIASE*).[25] Under the chairmanship of the former vice-president of the Council of State, Jean-Marc Sauvé, as well as with the participation of many other external scholars and experts, the Commission was to investigate the abuse of children and other vulnerable persons that had been committed in French (Arch-)dioceses and congregations since 1950. In addition to this focus on individual deeds, it scrutinises how these cases were dealt with by Church institutions. Finally, it was to analyse and assess the Safeguarding and Protection actions and measures that had been taken in the last two decades.[26] Financed by the French Episcopal Conference and the Union of French Religious,[27] the Commission, inter alia, conducted a *Tour de France* to contact victims and survivors as well as present its work. Looking more closely at the diocesan level, the latest developments in the capital are worth mentioning: the Archdiocese of Paris has entered into a contract ad experimentum with local law enforcement authorities.[28] According to this agreement, the Church will disclose all reports about suspected sexual offences directly to the Paris prosecution office, so that the victim does not have to file a complaint.[29] During the French Episcopal Conference's 2019 Autumn Assembly in Lourdes, the Bishops additionally discussed a uniform redress scheme – without mentioning any specific amounts.[30] The CIASE report, when published in October 2021, created a huge outcry in the general public, mainly because of an estimate of more than 330,000 victims over 70 years, based on the statistical methods used in epidemiological research.[31] Similarly devastating, but more for the Catholic population, were the revelations about the widespread and inherent abusive system in the Communautes de St. Jean in its deeply disturbing combination of spiritual

25 For more information see: www.ciase.fr.
26 Cf. Pontier and Magron, 2018.
27 Cf. Houdaille, 2019.
28 Cf. Hoyeau, 2019.
29 Vatican News. Frankreich: Kirche und Justiz arbeiten gemeinsam gegen Missbrauch, 2019.
30 Cf. Deutsche Welle. France: Catholic Church to compensate abuse victims, 2019.
31 Available at: https://www.ciase.fr/medias/Ciase-Summary-of-the-Final-Report-5-october-2021.pdf

and sexual abuse. Since then a number of prominent cases of abuse allegations have surfaced, including against cardinals and some other bishops.[32]

3.4. Belgium

In 1997 the Belgian Bishops installed two contact points for persons who had experienced sexual abuse in the domain of the Catholic Church in Belgium. Given the country's plurilingualism, one of these was created for French-speaking Belgian citizens, the other for Dutch speakers. In 2000 a commission was set up to look deeper into the child sexual abuse that had taken place in the Belgian Catholic context. Its members were appointed by the Church leadership and – separated along language lines – operated in two chambers. Named after its president, this *Halsberghe* Commission came to an end in 2009 after internal quarrels, as well as conflicts with the Bishops' Conference. A new commission was formed in 2010. After its launch, this body existed only for a rather short time and was relatively quickly dissolved after the Belgian judiciary commanded searches and interrogations to investigate alleged cover-ups.

Starting with a new team that was allowed to work more independently and mainly assembled lawyers, clinical psychologists, criminologists as well as bishops, the Belgian Church developed significant guiding documents in the following years: such as 'A hidden suffering' *(Une souffrance cachée)*[33] and 'From taboo to prevention' (*Du tabou à la prévention*).[34] These contributions opened up new ways in dealing with and addressing abuse in the Church and raised the overall awareness for good safeguarding. This last text was already officially published by the Inter-diocesan Commission for the Protection of Children and Youth, which was established in 2012 to coordinate and harmonise the work and efforts of the various contact points and centres.

Realising a suggestion made by the Belgian Parliament, an arbitrary body was established. It was to allow victims and survivors to share their experiences in a more neutral setting and out of direct reach of the Church hierarchy. This seemed especially important when those affected also appeared in front of the body to seek redress after the legal limitation periods were over. The members of the body were largely specialists and experts from various disciplines, who were appointed by both the state and the Church. The latter created a foundation named *Dignity*, which could act on its behalf and pay compensation according to the decisions of the arbitrary body. As described in an in-depth, 400-page report on the Belgian Church's responses

32 Cf. CIASE (Independent Commission on Sexual Abuse in the Catholic Church). Summary of the Final Report, 05.10.2021. Available at: www.ciase.fr.

33 Les Évêques et les Supérieurs majeurs de Belgique. Une souffrance cachée: Pour une approche globale des abus sexuels dans l'église, 01.2012. Available at : www.cathobel.be/wp-content/uploads/2016/02/12-02-15-Souffrance-cachee-correction.pdf.

34 La Commission Interdiocésaine pour la Protection des Enfants et des Jeunes. Du Tabou à la Prévention. Code de conduite en vue de la prévention d'abus sexuels et de comportements transgressifs dans les relations pastorales avec les enfants et les jeunes, 02.06.2014. Available at : https://www.cathobel.be/wp-content/uploads/2016/02/Brochure-Du-Tabou-a-la-Prevention-F.pdf.

to the abuse crisis printed in spring 2019,[35] the amount that the arbitrary body and the foundation transferred to victims was around 4.6m EUR between 2012 and 2017.[36] This total sum consists of individual lump sum payments, ranging from 5k to 25k EUR, dependent on the form and severity of abuse suffered. However, a TV mini-series titled 'Godvergeten' (Godforsaken), with many victims' voices airing just before Christmas 2023, has led to an outburst of public fury fuelled by the reminder that the former bishop of Bruges, Roger Vanghuwele – accused of having abused two of his nephews – has not yet been dismissed from the clerical state.

3.5. Poland

Quite on the contrary, the abuse of children and vulnerable adults in the Polish Catholic Church remained unvoiced for a long time. Often brushed aside as a problem of Catholics in the West, it was only recently that Poland and the Polish Church were confronted with and shaken up by abuse scandals that had happened within their own confines.

In 2009 the Polish Episcopal Conference developed a first framework for the protection of minors in the Church.[37] In 2014 the Bishops adopted prevention and intervention guidelines, which were amended three years later.[38] It was also in 2014 that a Child Protection Centre was set up under the auspices of Fr. Adam Żak SJ. Affiliated with the Ignatianum University in Krakow, it has provided training and aimed at improving safeguarding measures. In a position paper published in November 2018, the Polish bishops eventually 'apologized [publicly] to God, the victims of exploitation, their families and the Church community for all the harm done to children and young people and their loved ones'[39] by "some priests". It was a few more months before the Polish Episcopate explicitly confessed and regretted their own misbehaviour in May 2019: 'We admit that we have not done everything possible in our role as shepherds of the Church to prevent such suffering.'[40] As a sequence of a longer pastoral letter, which was read out loudly in all parishes, these words were articulated in reaction to a YouTube documentary, which was uploaded some days before: Largely financed by crowdfunding, the video 'Tell No One' (Tylko nie mów nikomu)[41] got over 20 million views in a rather short period. The movie accompanies Polish survivors of clerical abuse when these confronted their abusers' decades after the offences happened. In addition, it shows journalists as well as victims who search for answers and help from the Church, but most of the time still fall on deaf ears and rejection.

35 Les Évêques et les Supérieurs majeurs de Belgique. Abus sexuels de mineurs dans une relation pastorale dans l'Église de Belgique: Vers une politique cohérente, 1995–2017, 12.02.2019.
36 Cf. Schneider, 2019.
37 Cf. Polish Bishops' Conference, 2019.
38 Polish Bishops' Conference, 2014.
39 Cf. Przeciszewski, 2019.
40 Ständiger Rat der Polnischen Bischofskonferenz, quoted according to: Katholisches Medienzentrum. Polnischer Kardinal Gulbinowicz weist Missbrauchsvorwurf zurück, 26.05.2019. Available at: www.kath.ch/newsd/polnischer-kardinal-gulbinowicz-weist-missbrauchsvorwurf-zurueck/.
41 The video is available via www.youtube.com/watch?v=BrUvQ3W3nV4 (mit englischen Untertiteln).

3.6. England and Wales

Analysing the UK, one can find that the local Catholic Bishops' Conference of England and Wales commissioned various investigations into the clerical abuse of minors (and its handling) over the last two decades. These, inter alia, resulted in the *2001* Report of Lord Nolan as well as findings and recommendations that Baroness Cumberlege presented in 2007. In line with the latter, a *National Catholic Safeguarding Commission* was formed in July 2008 to give a clearer strategic direction, to implement safeguarding policies as well as to monitor the standards abided in the Catholic Church context. Complementing this body, a *Catholic Safeguarding Advisory Service* had already been launched in 2007. It had the primary task to drive and support improvements in the safeguarding practice of the local Churches.[42] In addition to these two institutions, a *Survivors Advisory Panel* was created more recently to include the voices and perceptions of those who had suffered abuse.

Beyond this structure, at least three regional features deserve special attention: 1) There is the *Independent Inquiry into Child Sexual Abuse* (IICSA). Announced by then-Home Secretary Theresa May in 2014, it has examined whether and how religious and non-religious institutions in England and Wales fulfilled their obligation to safeguard and protect children. The Inquiry also investigated and unveiled abuses and cover-ups that occurred within the walls of the Benedictine *Abbey of Ampleforth* and its affiliated schools. In addition, it looked into wrongdoings in the Archdiocese of Birmingham. As its former Archbishop, the current president of the English and Welsh Bishops' Conference, Cardinal Nichols, was questioned by the IICSA himself, admitting personal failure in the handling of abuse cases and allegations in 2019.[43] 2) Worth mentioning is a four-day safeguarding training that almost all English and Welsh Bishops participated in. Led by professor of psychiatry Baroness Sheila Hollins, as well as several survivors of sexual abuse, it took place in the Spanish city of Valladolid in May 2019.[44] 3) Finally, an interesting research project has started at the University of Durham. Under the name *'Boundary Breaking',* several scholars study 'the claim that aspects of Catholic culture and understanding may have contributed to the creation of an environment in which abuse, and its subsequent mishandling, was and is possible.'[45]

3.7. Italy and Vatican City

One can also observe considerable changes in the Catholic Churches of South-Western Europe. In Italy, a national *Child Protection Service* (Servizio Nazionale Tutela Minori) was launched in November 2018. As an organisation that works nationwide, it assists the Italian Episcopal Conference as well as various regional and inter-diocesan centres who have been active in the field. In June 2019 the Bishops'

42 For more information see: www.csas.uk.net.
43 Cf. Bowcott, 2019.
44 Cf. Gledhill et al., 2019.
45 For more information see: www.dur.ac.uk/boundarybreaking.

Conference amended its general guidelines for the safeguarding of minors and vulnerable persons.[46] In contrast to the previous edition from 2014, this revised version does not only deal with canon law, but applies a wider concept of protection. In that regard, it appears promising that the text also articulates a clear willingness to act more transparently and to collaborate more strongly with the local civil authorities.

Pope Francis adopted additionally some new and refined norms as well as tightened safeguarding guidelines to be applied in the Vatican *City State* in 2019.[47] On 1 June 2019, the Motu Proprio *Vos estis lux mundi* became effective – confirmed in 2023 – which contains further instructions under canon law in addition to an unconditional reporting obligation.

3.8. United States of America

Looking across the Atlantic, many have heard about the abuse scandals that hit the Catholic Church in the United States. Thanks to the movie 'Spotlight' (2015), the shocking 2002 disclosures of the Boston Globe newspaper become well-known.[48] These disclosures revealed manifold crimes and cover-ups committed by Catholic clerics in the Archdiocese of Boston. It was in the very same year that the United States Conference of Catholic Bishops issued the *Dallas Charter* for the Protection of Children and Young People.[49] It was revised in 2005, 2011 and 2018.

In addition, the U.S. Episcopal Conference created a Secretariat of Child and Youth Protection and set up a National Review Board. Also, with the help of external auditors, annual reports were compiled, which give an overview of how and to which degree the regulatory frameworks and general Child Protection guidelines are implemented. Particularly at the diocesan level, many Church institutions have cooperated with non-Church organisations to improve, adjust and enhance their safeguarding concepts. For that purpose, the *Praesidium* company has defined a '*Safety Equation*'.[50] This identifies eight organisational processes that are vital for creating a safe(r) institutional environment: 1) the development and setting of clear and consistent policies; 2) a comprehensive screening and selection of staff; 3) frequent, useful and context-sensitive training; 4) effective supervision and monitoring; 5) the establishment of internal feedback systems; 6) participation of the "consumers"; 7) a swift and determined response when hearing of concerns and allegations; 8) good administrative practice and leadership involvement.

46 Conferenza Episcopale Italiana e Conferenza Italiana Superiori Maggiori. Linee guida per la tutela dei minori e delle persone vulnerabili, Rome 24.06.2019.

47 Francis, 2019.

48 Cf. The Boston Globe. "Spotlight" journalists didn't foresee impact of church abuse, 20.11.2015. Available at: www.bostonglobe.com.

49 For more information see: www.usccb.org/issues-and-action/child-and-youth-protection/charter.cfm.

50 Cf. Praesidium. Safety Equation®. Available at: website.praesidiuminc.com/wp/about-praesidium/ child-abuse-risk-assessment/.

Recently, it was primarily investigations of the Pennsylvania Grand Jury that caused further dismay and shock. In a report from 2018, the jury revealed numerous cases of clerical child abuse and pointed out how dioceses on the East Coast failed systematically in addressing and ending these crimes over decades.[51] Similar investigations are under way in other U.S. federal states.

In 2019 the highly influential former Archbishop of Washington, Theodore McCarrick, was dismissed from the clerical state due to his several abuse of minors. Through this act, he became the most senior Catholic figure to be expelled from priesthood in modern times.

In parallel to all these developments, court rulings and settlements have forced the U.S. Catholic Church to pay a huge amount of compensation — being often much higher than the pay-outs made in Europe. In September 2018 the diocese of Brooklyn and four sexual abuse victims agreed upon a deal, according to which each of the victims received around 5.9m EUR.[52] Facing similar obligations and claims, other U.S. dioceses and congregations have since had to file for bankruptcy.

3.9. Canada

The Catholic Church in Canada was already confronted with abuse revelations that reached a broader international audience about 40 years ago. In the mid-1980s, it became public that children of the religious Newfoundland CFC Mont Cashel orphanage had been sexually abused.

Based on investigation results of these cases, as well as findings from earlier government studies,[53] the Canadian Conference of Bishops issued a report on the topic in 1992, entitled '*From Pain to Hope*'.[54] Developed by both Church dignitaries as well as laity, it came to the conclusion that 'the fear of scandal often conditions our instinctive reactions of inadvertently protecting the perpetrators and a certain image of the Church or the institution we represent, rather than the children, who are powerless to defend themselves.'[55]

A decade and a half later, in 2007, the Canadian Episcopal Conference published a helpful orientation to assist Catholic dioceses in updating their protocols for the prevention of sexual abuse. In the latest version from 2018, it is addressed to all who are active in pastoral work.[56] In a first step drafted by survivors and lay people, its text was then amended by the Bishops' conference. It consists of much more than some broader guidelines, and built up on experiences from the past as well as naming important next steps ahead. 'One of the great merits of the Canadian document is that

51 Office of Attorney General of the Commonwealth of Pennsylvana, 2018.
52 Cf. Otterman, 2018, p. 1.
53 Cf. Government of Canada, 1984.
54 Canadian Conference of Catholic Bishops, 1992.
55 Ibid., 22.
56 Canadian Conference of Catholic Bishops. Protecting Minors from Sexual Abuse: A Call to the Catholic Faithful in Canada for Healing, Reconciliation, and Transformation, Ottawa 2018. Available at: www.cccb.ca/site/images/stories/pdf/Protecting_Minors_2018.pdf.

it does not limit itself to repeating in general terms "the new lessons" that had already been learned but it formulates recommendations as well as precise and detailed action item.'[57] That is also one of the reasons why it is often treated as an inspiring safeguarding blueprint and model for other Conferences.

3.10. Australia

It is worthwhile to take a close look at the local Catholic Church in Australia. Concentrating solely on the last years, the *Royal Commission into Institutional Responses to Child Sexual Abuse* is of particular relevance. Formed by the national government in 2013, it inspected how the Church and other institutions have handled abuse allegations and cases over the last decades. In reaction, the Australian Catholic Bishops established a *'Truth, Justice and Healing Council',*[58] which coordinated their exchange with the Royal Commission as well as elaborated on first ideas for improvement. After the Commission completed its work, the Council activities were terminated in 2018. The Australian Church leadership accepted almost all of the recommendations made by the Royal Commission and promised to implement them. Only with regard to the seal of confession did disagreement prevail, which now increasingly causes tensions with new state legislations.[59]

Beyond that, an organisation with the name *Catholic Professional Standards Ltd.*[60] was founded to foster and sustain a broader culture of safety and care for minors and vulnerable adults in the Church, as well as to audit compliance with basic standards and assist in safeguarding training. It operates (to a large degree) independently from the Church hierarchy. In addition to that body, an *Implementation Advisory Group* that consists of lay people and renowned specialists of various subjects should help translate Child Protection into practice.[61] The latest version of the *National Catholic Safeguarding Standards* was finally published in May 2019.[62] Complementary to these, an Implementation Guide[63] as well as an auditing framework were issued and updated over the last years.

3.11. India[64]

In most other countries, the status quo on safeguarding and implementation of children's rights differs greatly, depending on the specific region, nation and local Church context in focus. All in all, one can say that – at least until now – fewer cases of child sexual abuse have been made public. This lack of disclosure might primarily

57 Lombard, 2019a.
58 For more information see: www.tjhcouncil.org.au.
59 Australian Associated Press, 2019.
60 For more information see: www.cpsltd.org.au.
61 Australian Catholic Bishops Conference and Catholic Religious Australia, 2018.
62 Catholic Professional Standards Ltd. National Catholic Safeguarding Standards, 2019.
63 Catholic Professional Standards Ltd. National Catholic Safeguarding Standards – Implementation Guide, Standards 1–10, 2019.
64 For more details: Russell et al., 2024.

be caused by more deeply embedded cultural taboos as well as insufficient state and Church infrastructures, which make it more difficult to raise voices, report, investigate and prosecute.

Speaking about the Catholic Church(es) in India, some noteworthy progress has been made in Kerala. The Church in the province has recently primarily raised international attention due to religious sisters who had accused their local Bishop of severe and repeated rape. In 2019 – and after the suspension of this Bishop – the regional Episcopal Council adopted comparably wide-ranging child protection standards to be observed by all Church employees. These were to help implement a zero-tolerance policy. In its guidelines, sexual exploitation and abuse are clearly condemned as a serious crime. They require to report these kinds of offences in accordance with civil law. Moreover, the document clearly describes wrongdoings and potential risk factors in work with children and young people that can hinder the creation of safe places.

3.12. Zimbabve[65] and the DRC

On the African continent, many national Bishops' Conferences recently developed and adopted more extensive safeguarding guidelines for the first time. The policy promulgated by the Zimbabwean Episcopal Conference explicitly and appreciatively mentions the UN Convention on the Rights of Children.[66]

In the Sub-Sahara region, the local Catholic Church is particularly involved in the education sector and in teaching minors. It appears therefore more than consistent that the respective Church leadership has drawn special attention to Child Protection in the school context. For this purpose, the bishops of the war-torn Democratic Republic of Congo have started to develop and host specific safeguarding trainings for those coordinating the Catholic school systems – as well as the Church-related health care and Caritas work. In the future, these courses should become available in all 47 dioceses of the country, to raise awareness of the topic in different social and pastoral settings as well as to contribute to the removal of dangerous taboos.[67] In this regard, it was also an important step forward that the *Association of Member Episcopal Conferences in Eastern Africa* (AMACEA) published helpful universal safeguarding standards and guidelines in May 2019. These include, among others, a simple self-assessment tool.[68]

65 For more details: Cf. Zimbabwe Catholic Bishops' Conference (ZCBC) – 03.2024. Available at: www.zcbc.co.zw.

66 Cf. e.g. Zimbabwe Catholic Bishop's Conference. Child Protection Policy, 2017, 7. Available at: www.bulawayoarchdiocese.org/library/official-documents/routedownload/zcbc-child-protection-policy.

67 Cf. Conférence Episcopale Nationale du Congo. Diocèse de Kongolo: La CENCO sensibilise les agents pastoraux sur la protection des enfants et des personnes vulnérables, 09.10.2019. Available at: cenco.org/diocese-de-kongolo-la-cenco-sensibilise-les-agents-pastoraux-sur-la-protection-des-enfants-et-des-personnes-vulnerables/.

68 Cf. P. Adinda. KENYA: AMECEA Launches Child Safeguarding Standards and Guidelines, in: Zenit, 31.05.2019. Available at: zenit.org/articles/kenya-amecea-launches-child-safeguarding-standards-and-guidelines/.

3.13. Chile[69]

In the Catholic Church of Latin America, there are also quite dissimilar realities when it comes to the disclosure and awareness of child sexual abuse. In some regions, the problem was not addressed and revealed neither in public nor in Church discourses. In other settings, it has nonetheless played an essential role. This holds especially true for the Catholic Church in Chile. During his trip to the country in early 2018, Pope Francis initially protected local bishops that were accused of severe and abusive offences. This attitude created enormous frustration among Catholic Chileans and victims. As a delegate of the Pope, the Archbishop of Malta, Charles J. Scicluna, furthermore kneeled down during a mass in Chile and addressed those in the pews by saying: 'Pope Francis has asked me to apologise to each of the faithful in the Osorno diocese and to all inhabitants of this region for having hurt and offended them deeply.'[70] Archbishop Scicluna delivered a 3000-page report to Pope Francis, with the testimonies of dozens of victims of sexual abuse. After some conversations with the Pope and a time of deliberation, 33 Chilean Bishops offered to resign. However, only about six such resignations were accepted.

4. The Bigger Picture and a Necessary Distinction

To get a high-definition picture of how the abuse of minors has been handled in the global Catholic Church, one would now have to add many more tesserae to the larger (e.g. the recent reports into the situation in Portugal, Spain and Switzerland)[71] and smaller pieces and regional impressions already unveiled.[72] Even if one were able to gather insights from all Catholic dioceses, this would not mean that the overall picture is complete. The Catholic lay movements and all the different religious orders, congregations and apostolic societies — which have their own respective policies, standards, practices and cultures — would need to be dealt with. This goes far beyond the intention of this article.

Having said that, the depicted plurality comes with a sensitive need for distinction and discernment. On the one hand, there are differences that appear legitimate as they allow one to speak and act in a context-specific manner. On the other hand, there are peculiarities and a perilous particularism which are simply a product of lacking understanding and indifference for one of the most challenging subjects the Church

69 For more details: Comisión de la Universidad Católica de Chile para el análisis de la crisis de la Iglesia en Chile, 'Comprendiendo la crisis de la Iglesia en Chile' (Avilable at: https://teologia.uc.cl/wp-content/uploads/2022/09/documento-de-analisis-comprendiendo-la-crisis-de-la-iglesia-en-chile.pdf)

70 Scicluna, quoted according to: Mardones, 2018.

71 For more details: Cf. Defensor del Pueblo, 2023. Available at: www.defensordelpueblo.es. and Cf. Independent Commission, 2023. Available at: www.bishop-accountability.org.

72 An overview of further regional guidelines and activities is available at: www.pbc2019.org/protection-of-minors/worldwide-activities.

is facing. The first type of diversity must be taken into proper account and addressed professionally. The latter must simply be tackled: intercultural sensitivity must never become a cheap excuse for poor child protection. It can however be an advantage as long as it allows safeguarding in a plural and tailor-made way.

All in all, one conclusion is that the situation in the Roman Catholic Church is similar everywhere, regardless of culture, history or the relationship between church and state. The numbers of victims and perpetrators are more or less in the same order of magnitude. We have learnt that around four to five percent of clergy everywhere were perpetrators, from the 1950s to the early 2020s. However, much remains hidden. In science the German word "Dunkelfeld" ("dark field") indicates that, in all probability, the numbers are much higher. Behind each "case" there is a human being whose life is damaged and sometimes destroyed. The processes that lead to abuse and concealment seem to be similar everywhere. Changes to law and to Church law are vital, but they are not enough. Implementation of children's rights and safeguarding against abuse needs a systemic effort that leads to a change of mentality[73] that translates also into theology,[74] spirituality, and liturgy. Every human reality is ambivalent. In every system (institution, organisation), the risks of abuse must be reduced, but it will not be possible to eliminate them completely. Both the hierarchical model of the Catholic Church and the more democratic model of Protestants have their own specific risk factors. Preventing and combating abuse concerns both bishops and laity, including all parishioners, and is not just a matter for specialists. The rules must be clearer, but then there needs to be objective control and evaluation – and here the Catholic Church is lacking. This needs to change, otherwise the trust in the message of the Church will further diminish. The charitable, educational, and spiritual work of the Church in favour of children, their rights and their development – and nowadays the enormous efforts in safeguarding education – needs to backed up by normative measures and their faithful implementation.

73 Zollner, 2022, pp. 601–620.
74 Fleming et al., 2023.

Bibliography

Adinda, P. (2019) 'KENYA: AMECEA Launches Child Safeguarding Standards and Guidelinesp' in *Zenit,* 31.05.2019. Available at: zenit.org/articles/kenya-amecea-launches-child-safeguarding-standards-and-guidelines/.

Altieri, C. (2019) 'Analysis: How the Pope's reform will change abuse reporting' in *Catholic Herald*. Available at: catholicherald.co.uk/news/2019/05/09/analysis-how-the-popes-reform-will-change-abuse-reporting/.

Arroba Conde, M. J., Riondino, M. (2019) 'Introduction to Canon Law', *Mondadori Education*, Milan, pp. 181–182.

Australian Associated Press, Catholic church opposes expansion of child sexual abuse reporting in WA, in The Guardian, 23.05.2019. Available at: https://www.theguardian.com/australia-news/2019/may/23/catholic-church-opposes-expansion-of-child-sexual-abuse-reporting-in-wa.

Australian Catholic Bishops Conference and Catholic Religious Australia, New advisory body to monitor Catholic reforms in response to child sexual abuse tragedy, 03.05.2018. Available at: catholic.org.au/new-advisory-body-monitor-catholic-reforms-response-child-sexual-abuse-tragedy/.

Bowcott, O. (2019) '"I failed": archbishop agrees he shut out victim, hears inquiry' in *The Guardian* 06.11.2019. Available at: www.theguardian.com/uk-news/2019/nov/06/i-failed-archbishop-agrees-he-shut-out-victim-hears-inquiry.

Campos Martinéz, F.J. (2019) 'Comentario a la Carta Apostólica en forma de Motu Proprio Sumo Pontífice Francisco Vos Estis Lux Mundi' in *REDC 76*, pp. 829–850.

Canadian Conference of Catholic Bishops, Protecting Minors from Sexual Abuse: A Call to the Catholic Faithful in Canada for Healing, Reconciliation, and Transformation, Ottawa 2018. Available at: www.cccb.ca/site/images/stories/pdf/Protecting_Minors_2018.pdf.

Canadian Conference of Catholic Bishops. From Pain to Hope: Report from Ad Hoc Committee on Child Sexual Abuse, 06.1992. Available at: www.cccb.ca/site/Files/From_Pain_To_Hope.pdf.

Catholic Professional Standards Ltd. National Catholic Safeguarding Standards, Melbourne 2019.

Catholic Professional Standards Ltd. National Catholic Safeguarding Standards – Implementation Guide, Standards 1–10, Melbourne, 2019.

Conferenza Episcopale Italiana e Conferenza Italiana Superiori Maggiori, Linee guida per la tutela dei minori e delle persone vulnerabili, Rome, 24 June 2019.

Conférence des évêques de France. Directives pour le traitement des cas d'abus sexuel commis pades clercs à l'égard de mineurs, Paris, 09 November 2018.

Conférence Episcopale Nationale du Congo, Diocèse de Kongolo: La CENCO sensibilise les agents pastoraux sur la protection des enfants et des personnes vulnérables, 09.10.2019. Available at: cenco.org/diocese-de-kongolo-la-cenco-sensibilise-les-agents-pastoraux-sur-la-protection-des-enfants-et-des-personnes-vulnerables/.

Deutsche Welle, France: Catholic Church to compensate abuse victims, 09.11.2019. Available at: www.dw.com/en/france-catholic-church-to-compensate-abuse-victims/a-51184169.

Essays in honour of His Grace Mgr Charles J. Scicluna on the tenth anniversary of his episcopal ordination, Malta, pp. 601–620.

Fleming, D.L., Keenan, J.F., Zollner, H. (eds.) (2023) 'Doing Theology and Theological Ethics in the Face of the Abuse Crisis', *Journal of Moral Theology 3* (CTWEC Book Series, No. 3), Pickwick Publications (Eugene, OR).

Gledhill et al. (2019) 'Bishops welcome new norms on sexual abuse' in *The Tablet*. Available at: www.thetablet.co.uk/news/11676/bishops-welcome-new-norms-on-sexual-abuse. www.dur.ac.uk/boundarybreaking.

Government of Canada, Sexual offences against Children, I: Report of the Committee on Sexual Offences Against Children and Youths, Ottawa, 1984.

Hoyeau, C. (2019) 'Abus sexuels, un protocole historique signé entre le parquet et le diocèse de Paris' in *LaCroix*. Available at: www.la-croix.com/Religion/Catholicisme/France/Abus-sexuels-protocole-historique-signe-entre-parquet-diocese-Paris-2019-09-05-1201045528.

Houdaille, C. (2019) 'Le financement de la commission Sauvé en bonne voie' in *LaCroix*. Available at: www.la-croix.com/Religion/Le-financement-commission-Sauve-bonne-voie-2019-06-29-1201032210.

La Commission Interdiocésaine pour la Protection des Enfants et des Jeunes, Du Tabou à la Prévention. Code de conduite en vue de la prévention d'abus sexuels et de comportements transgressifs dans les relations pastorales avec les enfants et les jeunes, 02.06.2014. Available at: https://www.cathobel.be/wp-content/uploads/2016/02/Brochure-Du-Tabou-a-la-Prevention-F.pdf.

Levada, W. (2011) 'Letter on the occasion of the presentation of the Circular Letter to Episcopal Conferences regarding Guidelines for dealing with cases of Sexual Abuses of Minors perpetrated by Clerics', Vatican.

Les Évêques et les Supérieurs majeurs de Belgique, Une souffrance cachée: Pour une approche globale des abus sexuels dans l'église, January 2012. Available at: www.cathobel.be/wp-content/uploads/2016/02/12-02-15-Souffrance-cachee-correction.pdf.

Les Évêques et les Supérieurs majeurs de Belgique, Abus sexuels de mineurs dans une relation pastorale dans l'Église de Belgique: Vers une politique cohérente, 1995–2017, 12 February 2019.

Ley No. 62 Codigo Penal, Gaceta Oficial de la República de Guba, 1987. Available at: www.wipo.int/edocs/lexdocs/laws/es/cu/cu004es.pdf.

Lombardi, F. (2019) 'Preparing the Meeting of Bishops on the Protection of Minors' in *CivCatt (English)*. Available at: www.laciviltacattolica.com/preparing-the-meeting-of-bishops-on-the-protection-of-minors/.

Lombardi, F. (2019) 'Child Protection: From awareness to engagement' in *CivCatt (English)*. Available at: www.laciviltacattolica.com/child-protection-from-awareness-to-engagement.

Mardones, C. (2018) 'Charles Scicluna pide perdón de rodillas en nombre del Papa' in *La Tercera*, 17 June 2018. Available at: www.latercera.com/nacional/noticia/charles-scicluna-pideperdon-rodillas-nombre-del-papa/210120. *(translated by the author)* www.pbc2019.org/protection-of-minors/worldwide-activities.

Office of Attorney General of the Commonwealth of Pennsylvana, Report I of the 40th Statewide Investigating Grand Jury, Redacted, 2018. Available at: www.attorneygeneral.gov/wp-content/uploads/2018/08/A-Report-of-the-Fortieth-Statewide-Investigating-Grand-Jury_Cleland-Redactions-8-12-08_Redacted.pdf.

Otterman, S. (2018) 'Landmark $27.5 Million Deal For Brooklyn Diocese Victims', *New York Times*,19 September 2018.

Polish Bishops' Conference, Activities of the Church in Poland in terms of prevention and protection of children and youth 2005–2019, 21.02.2019. Available at: episkopat.pl/en/activities-of-the-church-in-poland-in-terms-of-prevention-and-protection-of-children-and-youth-2005-2019/.

Polish Bishops' Conference, Guidelines for the preliminary canonical investigation in the case of accusations against a cleric for the transgression of the Decalogue's sixth commandment with a minor under age eighteen, Warschau, October, 2014. Available at: episkopat.pl/wp-ontent/uploads/2017/07/Guidelines_Abuse_ENGLISH.docx

Pontier, G., Magron, V., *Lettre de Mission a Monsieur Jean-Marc Sauvé*, Paris, 20 November 2018. Available at: www.ciase.fr/wordpress/wp-content/uploads/2019/02/Lettre-de-Mission-CEF-CORREF.pdf.

Pope Francis (2016) *Apostolic letter issued as Motu Proprio "As a loving mother"* [Online]. Available at: https://www.vatican.va/content/francesco/en/apost_letters/documents/papa-francesco_lettera-ap_20160604_come-una-madre-amorevole.html.

Pope Francis (2019*) Apostolic letter issued as Motu Proprio "You are the light of the world"* [Online]. Available at: https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

Pope Francis (2019) *Linee guida per la protezione dei minori e delle persone vulnerabili* [Online]. Available at: www.usccb.org/issues-and-action/child-and-youth-protection/charter.cfm.

Praesidium, Safety Equation. Available at: website.praesidiuminc.com/wp/about-praesidium/ child-abuse-risk-assessment/.

Przeciszewski, M. (2019) *Zero Tolerance for the Crimes of Sexual Abuse of Minors by Clergy* [Online]. Available at: episkopat.pl/en/the-polish-bishops-conference-zero-tolerance-for-the-crimes-of-sexual-abuse-of-minors-by-clergy/.

Renken, J. A. (2019) 'Vos estis lux mundi The Evolution of the Church's Response to Sexual Abuse and its Cover-up after the Vatican Summit' in *Studia Canonica*, 53, pp. 627–658.

Riondino, M. (2020) 'Protection of Children's Rights in the International Community and in the Catholic Church: A Comparative Analysis' in *REDC 77*, pp. 1042–1043.

Renken, J.A. (2022) 'The Delicts of Sexual Abuse in the Revised Book VI' in *Studia Canonica*, 56, pp. 107–115.

Schneider, O. (2019) 'Foundation paid out 4.5 million euros to victims of sexual abuse in Church' in *The Brussels Times*. Available at: www.brusselstimes.com/all-news/belgium-all-news/53697/foundation-paid-out-4-5-million-euros-to-victims-of-sexual-abuse-in-church/.

Schweizer Bischofskonferenz. Gebets – und Bussfeier für die Opfer sexueller Übergriffe im kirchlichen Umfeld, Sitten 05 June 2016. Available at: www.bischoefe.ch/dokumente/dossiers/sexuelle-uebergriffe-im-kirchlichen-umfeld/gebets-und-bussfeier-medienmitteilung.

Ständiger Rat der Polnischen Bischofskonferenz, quoted according to: Katholisches Medienzentrum. Polnischer Kardinal Gulbinowicz weist Missbrauchsvorwurf zurück, 26 May 2019. Available at: www.kath.ch/newsd/polnischer-kardinal-gulbinowicz-weist-missbrauchsvorwurf-zurueck/.

Schweizer Bischofskonferenz und Vereinigung der Höhern Ordensobern der Schweiz. Sexuelle Übergriffe im kirchlichen Umfeld, 4. Auflage, Fribourg, 2019, 3. *(Translated by the author)*

Vatican News, Frankreich: Kirche und Justiz arbeiten gemeinsam gegen Missbrauch, 07 September 2019. Available at: www.vaticannews.va/de/welt/news/2019-09/frankreich-kirche-justiz-missbrauch-sexualstraftat-paris.html.

Zimbabwe Catholic Bishop's Conference, Child Protection Policy, 2017, 7. Available at: www.bulawayoarchdiocese.org/library/official-documents/routedownload/zcbc-child-protection-policy.

Zollner, H. (2022) 'Faithful and True? The History of Mentalities and the Catholic Church's Response to the Sexual Abuse Crises' in Attard, S.M., Berry, J.A. (eds.) *Fidelis et Verax.*

| CHAPTER 9 |

Child Safeguarding Policies in the Serbian Orthodox Church

Rastko JOVIĆ

ABSTRACT

In the face of recent shifts in perspective, this paper explores the general stance of Orthodox Christianity towards human rights. Although Orthodox theology has been perceived as unsupportive of human rights, recent theologians have shown more positive engagement, signalling a shift in the Church's stance. This text tries to distil the theological importance given to children in the life of the early Church, while considering the canonical tradition of the Orthodox Church — which is attempting to align itself with the Convention on the Rights of the Child. The paper also discusses critical documents reflecting the Church's perspective on human rights, acknowledging convergence with Church teachings, and addressing areas for improvement. Documents issued by some Orthodox churches – dealing with issues of human rights and the rights of children – explicitly stressed the significance of safeguarding children's rights while simultaneously stressing the rights and dignity of the family. The dialectic expressed within these documents safeguards the balance between children's rights and family dignity. The paper also emphasises the relevance of the family as the foundation of society, where members are willing to make sacrifices for one another, crucial for political and ethical intersections. The destruction of the family could lead to the separation of people from any form of collective identity, exposing society to forces that could ultimately empty individuals of their selves, leaving children with no more authentic identity that can be protected.

KEYWORDS

children, Human Rights, Orthodox Church, family, theology, baptism

1. Introduction

Over the past two decades, a pervasive argument has suggested an incompatibility between Eastern Orthodox Christianity and universal human rights norms. This notion has been reiterated so often that many widely embrace it as factual. The United Nations Convention on the Rights of the Child signifies a milestone in the ongoing advancement of human rights: towards the end of 1989 it was ratified by the UN General Assembly, marking a historic moment where children were granted distinct rights for the first time: survival, development, protection, and participation. While

Rastko JOVIĆ (2025) 'Child Safeguarding Policies in the Serbian Orthodox Church' in Katarzyna ZOMBORY – Márta BENYUSZ (eds.) *Religion and Children's Rights.* Miskolc–Budapest: Central European Academic Publishing. pp. 201–224. https://doi.org/10.71009/2025.kzmb.racr_9

there is a prevailing notion that Orthodox Christianity does not support human rights — an assertion that does not hold true, especially considering numerous theologians in the past two decades who have expressed more positive views on the matter — it is evident that Orthodox theology engages with human rights by offering a more profound critique rather than outright rejection. This paper aims to present a theological affirmation concerning the Convention on the Rights of the Child. Simultaneously, it will highlight significant documents indicating the evolving stance of the Orthodox Church, which has been shifting toward acceptance of human rights despite encountering new challenges. This transition is notably evident in the preparations for the Holy Council at Crete in 2016, where both preparatory and final documents endorsed the idea of compatibility between Orthodox theology and human rights.

2. Ambivalence and Theology

Considering the widely accepted idea that human rights are deeply intertwined with the concepts of modernity and the Enlightenment, it is easier to understand the unease of the Orthodox towards this question. For various reasons the Orthodox world has not fully integrated into modernity's evolution. It missed pivotal periods like the Renaissance, the Reformation and Counter-Reformation, religious conflicts, the Enlightenment, the French and industrial revolutions, the rise of individual rights, and the establishment of secular nation-states. What modernity recognises as fundamental seems somewhat distant from Orthodoxy, leading to challenges in interacting with the contemporary (post-)modern world.[1] The idea that Eastern Orthodox Christianity is incompatible with the norms of universal human rights has been argued so frequently in the past two decades that it has become accepted by many as a fact.[2] Orthodox churches living in a global culture have, in principle, embraced democracy and human rights. They are struggling, however, to cope with the implications of living in a democratic and free society.[3] Orthodox theologians and hierarchs have expressed diverse and, in many instances, contradictory views about this matter.[4] For many Orthodox theologians, the primary struggle has revolved around the perceived conflict and a somewhat resistant stance between the significance of Liturgy and the Church's eschatological focus, juxtaposed against modern concepts like human rights and individualism. In theological discourse, Orthodox theologians have often hesitated to interconnect the practical aspects of Church life and society with the eschatological vision of the Kingdom of God represented in the Liturgy. However, emphasising this inseparable connection reveals that due to the essence of Orthodox Liturgy and its eschatological orientation, the Church cannot justify social

1 Kalaitzidis, 2018, pp. 273–274.
2 Marsh and Payne, 2012, p. 201.
3 Clapsis, 2016, p. 113.
4 Papanikolaou, 2012, pp. 88–98.

indifference or passivity in the face of injustice, violence, and oppression.[5] In other words, human rights should not be isolated from humanity's inherent connection to God. Embracing human rights should stem from the belief in humanity's divine origins (*Imago Dei*), its ongoing reliance on God, and its ultimate realisation in God's Kingdom. Humanity's inherent dignity and unity find their foundation in acknowledging God's encompassing love within all aspects of life, the 'One God and Father of us all, who is above all and through all and in all' (Eph. 4:6).[6]

Many Orthodox theologians naturally positioned themselves against the "individual rights" prevalent in the individualistic, secularised West, advocating instead for the "communal rights" in the Orthodox communitarian East. From this standpoint, subjectivity and individualism were seen as significant barriers to Orthodox acceptance of human rights and the convergence of Orthodoxy with modernity and the Enlightenment tradition.[7] Nevertheless, our aim is not merely to complicate this intricate relationship between modernity and Orthodoxy. Instead, we aspire to demonstrate that the Orthodox tradition embodies the intrinsic value of human beings. This concept has long been linked to children's welfare, even in its early stages. By delving into the ontological concepts embedded in our tradition, we intend to illustrate the interconnectedness between the dignity of children and the imperative to safeguard it, rooted in the eschatological anticipation of a transformed world. Already in the Orthodox teaching of the Trinity, we recognise the distinct uniqueness of the Father, the Son, and the Holy Spirit, simultaneously affirming 'their perichoresis, mutual co-inherence and the fullness of their divinity. All human beings – despite their apparent cultural, national, racial and religious differences – are endowed with an inherent dignity reflecting their qualitative relationship with God being created in His image.'[8] After the Councils in the early Church, which fought against Christological heresies, it was brought to the European mind the understanding that personhood was vested with divine potency.[9] This became apparent, especially in the case of the Divine personhood of Christ that has been incarnated. In its early stages, Christianity aimed to introduce a radically new community where every individual, including children, was acknowledged and valued. By delving into these early historical instances, we can better understand the message Early Christianity sought to convey. Fr. Georges Florovsky characteristically remarks concerning the early Church,

> 'Christianity from the beginning existed as a corporate reality, as a community. To be Christian meant just to belong to the community. Nobody could be Christian by himself, as an isolated individual, but only together with 'the brethren', in a "togetherness" with them. Unus Christianus nullus Christianus [one Christian – no Christian]. Personal conviction or even a rule of life still

5 Clapsis, 2016, p. 125.
6 Ibid.
7 Kalaitzidis, 2018, p. 283.
8 Clapsis, 2016, p. 126.
9 Kalaitzidis, 2018, p. 287.

> do not make one a Christian. Christian existence presumes and implies an incorporation, a membership in the community. This must be qualified at once: in the Apostolic community.'[10]

2.1. Household and Early Christianity

The early Christian community convened within household settings, firmly embedded within the familial context. Understanding the dynamics prevalent within these households and the interplay with the Church's dynamics becomes crucial. Simultaneously, Christianity navigated through many familial relationships, each distinct in its cultural underpinnings: the Jewish household differed markedly from its Greek and Roman counterparts. Amid these varied social landscapes, the Christian community endeavoured to craft a unique interpretation of the Gospel's novelty. This exploration also unveils the positioning of children within these spaces and traces the evolution of their roles over time. Traditionally the family is aligned with the household, and the household in turn is aligned with the father or head of the house. Notably, the household unit comprised not just members of a shared bloodline but also encompassed slaves and other residents. Generally, women, enslaved people, and children formed a collective group, their identities intertwined with that of the father figure. In its early stages, Christianity sought to emphasise each person's individuality within the Christian Church, advocating for establishing unique identities and positions beyond just that of the father figure.

In a Jewish cultural and religious setting, we can notice different roles for men and women. In Deuteronomy 31:10–12 we read,

> 'Then Moses commanded them, "At the end of every seven years, at the appointed time in the year of remission of debt, during the Feast of Tabernacles, when all Israel comes before the LORD your God at the place He will choose, you are to read this law in the hearing of all Israel. Assemble the people—men, women, children, and the foreigners within your gates—so that they may listen and learn to fear the LORD your God and to follow carefully all the words of this law."'

Josephus, in his *Antiquities*, drawing from Deuteronomy 31:12, emphasises the mandate for the Law to be read to the complete Jewish assembly every seven years, stressing the necessity for explicit inclusion of women, children, and slaves: 'And let neither woman nor child be excluded from this audience, nor the slaves.'[11] Josephus presumed that women and minors typically did not participate in public Torah readings within synagogues or the temple. Hence, their specific mention in this context during the reading of the Law every seven years was deemed essential.[12]

10 Ibid., p. 284.
11 Hezser, 2003, p. 383.
12 Winter, 2001, p. 288.

The Jewish family structure was characterised as patriarchal, known as the "Bet Av," translating to the "house of the father."[13] In the Old Testament, forming a family equated to establishing a household (Deuteronomy 25: 9–10). The family held both religious and social significance (Exodus 12: 3; 1 Sam 20: 6; Job 1: 5). The father functioned as the household's head and primary authority (Num 26: 54–55; Gen 50: 16; Jer 35: 6–10; Prov. 6: 20). However, there was an expectation for him to display love and compassion, and to bestow blessings upon his family (Gen 25: 28; 37: 4; 44: 20; Ps 103: 13; Gen 27). Children were regarded as a special blessing from God, and if a woman could not bear children, it was customary for the man to take a concubine or a woman of equal status.[14] The primary focus revolved around the support and prosperity of the household. Even individual members within the household held less significance compared to its overarching prosperity.

Within the Greek household, we notice a similar pattern concerning the borders that differentiated its members. That was especially evident for women. On the one hand, there was a wave of emancipation from Rome and a struggle to preserve old Greek values. The main characteristic of this struggle was the question of the position of women in the house. 'While women were experiencing increasing actual power and independence within marriage and without, they were still expected to behave as the relatively powerless wives of classical Athens, practically as if they were their husband's slaves.'[15] The position of women was full of ambivalence. Their reproductive capacity put them in the centre of the household, yet they were marginalised in both a social and political sense.

Within the Roman social framework, the family operated under the authority of the *paterfamilias,* wielding the power known as *patria potestas* over family members.[16] His authority was absolute, granting him the power of life and death over those within his household.[17] However, as the first century A.D. unfolded, the dominance of the paterfamilias began to wane.[18] The term "familia" derives from "famulus", meaning "servant", indicating a sense of ownership or control.[19] Moreover, the most common word for child in both Greek and Latin, *παῖς*/puer, could also denote "slave".[20] During the early Christian Era, the Roman family wielded considerable influence on society, serving as both an ideal and a metaphor.[21] It functioned as a strictly hierarchical system where a man's *potestas* curtailed the freedom of both men and women under his authority.[22]

13 Skolnik and Berenbaum, 2007, p. 1166.
14 Ibid., p. 1169.
15 Verner, 1981, p. 97.
16 Lassen, 1997, p. 104.
17 Ibid., p. 105.
18 Verner, 1981, p. 119.
19 Boswell, 1995, p. 40.
20 Ibid.
21 Lassen, 1997, p. 112.
22 Ibid.

However, during the first century A.D. the Roman household exhibited a surprising level of inclusivity, challenging prior conceptions of family dynamics. The hierarchical model of the household persisted, emphasising the importance of a well-ordered house for societal advancement and prestige. It has become apparent that the metaphorical houses referenced by the early Church did not symbolise equality but instead stood for "houses of inclusion".[23]

Why emphasise the distinct traits of Greek and Jewish households? We have aimed to illustrate the differences perpetuated by the Church within its assemblies: while household members were segregated in their daily tasks for the household's prosperity, communal prayer summoned them together for an eschatological prosperity surpassing the household's boundaries. The stark segregation evident in private homes becomes noteworthy at this juncture. The inclusive nature of Christian gatherings might have been a source of scandal in the Greco-Roman world. Minucius Felix, in his depiction of Christians, observes: 'On a special day they gather in a feast with all their children, sisters, mothers – all sexes and all ages' (Octavius 9.5–6).[24] It is significant to note that Minucius Felix specifically highlights children, elevating their importance.

2.2. Children and the Early Church

We aimed to elucidate the hierarchical structure within ancient households, particularly acknowledging the societal invisibility of children. In the Gospels, we observe a distinct role assigned to children by Christ (Matthew 19:13–15; Mark 10:13–16; Luke 18:15–17). Additionally, in the narrative of the feeding of the five thousand (Matthew 14:13–21; Mark 6:30–44; Luke 9:10–17; John 6:1–15), a child offers his small lunch of fish and bread (John 6:9), which Jesus miraculously multiplies to feed the multitude. Moreover, during Jesus' triumphant entry into Jerusalem (Matthew 21:14–16), children praise Jesus within the temple, causing consternation among religious leaders.

> 'The blind and the lame came to him at the temple, and he healed them. But when the chief priests and the teachers of the law saw the wonderful things he did and the children shouting in the temple courts, "Hosanna to the Son of David," they were indignant. "Do you hear what these children are saying?" they asked him. "Yes," replied Jesus, "have you never read," "From the lips of children and infants you, Lord, have called forth your praise?" Matthew 21:14–16'

Children played a significant role in the salvation of humanity and in Christ's proclamation. 'And he said: "Truly I tell you, unless you change and become like little children, you will never enter the kingdom of heaven"' (Matthew 18:3). While previously overlooked within the family and household dynamics, Christianity now

23 Elliott, 2003, p. 195.
24 Wilken, 2003, p. 19.

places a deliberate focus on their unique identity, emphasising its crucial role in the salvation of humanity. This underscores the eschatological value attributed to the virtues exemplified by children (Matthew 18:3). Children have transitioned from having undifferentiated identities to possessing distinct values within the new family structure – the Church. The emergence of their identity holds particular significance, a birth brought forth by Christianity. Later in his missionary journeys, the Apostle Paul mirrored Christ's miraculous deeds, including instances where Jesus resurrected children (Matthew 9:18, 23–26; Mark 5:22–24, 35–43; Luke 8:41–42, 49–56; Luke 7:11–17).

> 'Paul spoke to the people and, because he intended to leave the next day, kept on talking until midnight. There were many lamps in the upstairs room where we were meeting. Seated in a window was a young man named Eutychus, who was sinking into a deep sleep as Paul talked on and on. When he was sound asleep, he fell to the ground from the third story and was picked up dead. Paul went down, threw himself on the young man and put his arms around him. "Don't be alarmed," he said. "He's alive!" Then he went upstairs again and broke bread and ate. After talking until daylight, he left. The people took the young man home alive and were greatly comforted (Acts 20:7–12).'

In subsequent New Testament accounts, such as the Epistle of Ephesians, children are depicted as having a direct relationship with Christ, emphasising their significance. Previous letters also caution against the misuse of paternal authority regarding children.[25] In the Pastoral Epistles within the New Testament, we must not overlook that they have specific roles which again emphasise their identity. For example, when they reach adulthood, they should take care of their parents or grandparents (1 Timothy 5:4). Leaders of the Church are urged to have faithful children (Titus 1:6), which shows the Church's concern for the general stability of the society in which the head of the household determines the religion of the whole of the household.[26]

Paul's use of family imagery[27] aimed to transcend the rigid hierarchical model within his churches. By establishing Christ as *Kyrios* and himself as the apostle, Paul redefined authority, shifting the locus of power away from the traditional paterfamilias concept. In Paul's community, God became the ultimate paterfamilias, with authority channelled through an external source — Paul — while the community became an extended family.[28] This portrayal positioned the Church as a new familial structure where every member, irrespective of societal standing, played a visible role. It emphasised the community as a family of brothers, sisters, children, and enslaved people, collectively integral to the whole.

25 Lincoln and Wedderburn, 2010, p. 141.
26 MacDonald, 2004, p. 212.
27 Family images in Corinthians: 1 Cor 3, 1–3; 1Cor 4, 14–21; 2 Cor 6, 11–13; 2 Cor 12, 14–15.
28 Joubert, 1995, p. 212.

For Paul, it was important to embrace the potentiality of the household structures that could evolve into a Church – into a new community that abandons old mentalities. The Church perceived itself as a family – transcending biological constraints. The Church, an image of the Kingdom of God, assumed responsibility for this new family, safeguarding its eternal salvation. This contrasted with nuclear families, which might overlook children's place and life within the Church. Thus, Paul emphasised the concept of fictive kinship to emphasise the interconnectedness and responsibility within this new familial paradigm.

2.3. Inherent Potency of the Human Being

During the initial phases of Christianity, we briefly observed the transformation of children from unseen and less valued entities into distinct and meaningful individuals. Christianity, in a way, nurtured their individuality, which biological birth within Greek, Roman, or Jewish households did not inherently provide. The Church's early emphasis on this idea persisted through the intentional focus on baptism. Baptism was intended to validate children uniquely, bestowing upon them an eternal identity. It served as a witness to parents, the entire household, and society that these young individuals held eternal worth in the eyes of God.

Baptism held a pivotal role for individuals seeking inclusion in the Christian community. This sacrament not only influenced the perspective of the newly baptised individual but also shaped the collective worldview of the entire Church community. It was more than a theological ritual; it served as a communal and pedagogical experience. Through baptism, a significant message was conveyed to the Christian gatherings: that children possess eternal and distinctive value, regardless of their lifespan, whether brief or long-lived, affirming their intrinsic worth.

Since very early on, the Church has been baptising children. While unverifiable, we can find many testimonies that prove that the higher mortality rate of newborn children pushed the Church to perform the baptism early on.[29] The question at stake was the issue of eternal salvation and the seal that proves the potency of each human being baptised in Christ, being incorporated into Divine Personality. Also, in the New Testament, we have testimonies that the Apostle Paul baptised the whole household in several instances.[30] In the Scriptures, several families are mentioned in connection with baptism: thus, we find information that the Apostle Peter baptised Cornelius (Acts 10); then that Lydia and "her household" received baptism (Acts 16:15); the jailer and "all his household" (Acts 16:33); the synagogue leader Crispus and his household (Acts 18:8); as well as the household of Stephanas (1 Corinthians 1:16). It would be hard to imagine that there was no child[31] in any of these households;[32] however, it would also be groundless to assert that there were infants there categorically.[33] That

29 Kulman, 2011, pp. 23–48.
30 Jović, 2018, pp. 477–484.
31 Kulman, 2011, p. 47.
32 Mutavdžić, 2016, pp. 313–340.
33 Afanasjev, 2008, pp. 135–171.

can be the point at stake which proves children's participation[34] in this event of the new eschatological reality.[35] Baptism was not perceived as violent, but was primarily regarded as a voluntary embrace of the Spirit, implying an intended acceptance of faith throughout life.[36] On one hand, the Church aimed to preserve its mission and concern for eschatological salvation. On the other hand, it had the obligation to fulfil the condition of freedom[37] so that no one would be baptised by coercion.[38] Gregory of Nazianzus thus suggests that children should be baptised at the age of three so they would be aware.[39]

At the inaugural apostolic council in 49 A.D. baptism replaced circumcision, with the latter ultimately abandoned. With circumcision no longer a mandatory visible marker of belonging to God's people, pagans found it more accessible to integrate religiously and socially into Christianity.

> 'Entering the Church through Baptism and anointment advanced the essential sanctification of the subjectivity. A human being stands alone in front of the cosmos, born in Christ. A newly baptised person no longer loves their family for the reason of biological dependence, but because they become aware of the Christian imperative to "consciously" and "critically" love and value them. In other words, a human person can say, "I don't like my family for the reason of biology, because that's how I have to do – unconsciously. Suddenly, I love because I am conscious of my identity, my role, and my being in the context of salvation – I am becoming aware of my subjectivity."'[40]

3. Canonical Tradition of the Orthodox Church

Baptism served to reaffirm the individual personhood of the child, imbuing it with eschatological value. In essence, baptising the child was linked to reinforcing this genuinely new identity. The event held immense importance for Christian parents, serving as a way to highlight to the larger community how their Christian faith transformed the perspectives within their household and the surrounding culture. Therefore, baptism was not merely a religious ritual: it represented the birth of a new worldview and an alternative cultural perspective.[41] The Church established canons that upheld and reinforced this concept to sustain the idea of an eternal family

34 Afanasjev, 2008, pp. 135–154.
35 Jović, 2021, pp. 165–172.
36 Afanasjev, 2008, p. 134.
37 Jović, 2018, pp. 55–98.
38 Afanasjev, 2008, p. 139.
39 Ibid., p. 137.
40 Jović, 2021, p. 171.
41 Jović, 2015, pp. 67–82.

introduced to newborns. Canon 110 from the Council of Carthage (4th/5th century) already implied that small children must be baptised.[42] According to Canon 37 of John the Faster, parents whose child dies without baptism are subject to a three-year separation from the Church.[43] Saint Nikifor the Confessor, in Canon 38, mentions that in case of a child's life-threatening danger, they should be baptised as soon as possible.[44] Thus, the 84th canon of the Council in Trullo and the 72nd canon of the Council of Carthage[45] specify that children for whom there is a doubt whether they have been baptised, should be baptised, since the Church has not performed the public reception of these children. The public nature of baptism guaranteed the public display of the new values that Christianity has proclaimed. For these reasons, the Canon from Trullo 59 strictly forbids baptism in private homes, 'Let no Baptism be performed for anyone that is in an oratory within a house at the time; but let those who are going to be deemed worthy of the undefiled illumination come to the Orthodox Catholic Churches and there enjoy this gift.'[46] The sixth canon of the Council of Neo-Caesarea holds particular significance in this context. It states,

> 'As concerning a woman who is pregnant, we decree that she ought to be illuminated whenever she so wishes. For in this case there is no intercommunion of the woman with the child, owing to the fact that every person possesses a will of his own which is shown in connection with his confession of faith.'[47]

In the explanatory part of this canon, the Rudder says,

> '...the present canon decrees that a pregnant woman who is a catechumen may be baptised whenever she wishes, since she does not impart the illumination and baptism to the embryo in her womb, but, on the contrary, she alone is baptised. For in confessing that one is joining forces with Christ and renouncing the Devil, in baptism, and, speaking in general, whenever one gets baptised, he needs to show his own will, either through himself directly, as in the case of persons being baptised at an age when they are capable of rational speech, such as is that of this pregnant mother-to-be, or by means of a sponsor, as in the case of persons being baptised in their infancy, but an embryo in the belly cannot show this will either through itself, not yet having developed a will of its own, nor through a sponsor, since it has not yet been born nor is it capable of being baptised.'[48]

42 Jevtić, 2005, pp. 376 and 377.
43 Ibid., p. 569.
44 Ibid., p. 577.
45 Ibid., p. 353.
46 Nicodemus the Hagiorite and Agapius the Monk 2005, p. 738.
47 Ibid., p. 1048.
48 Nicodemus the Hagiorite and Agapius the Monk, 2005, p. 1049.

The present canon tries to safeguard the will of the mother and the baby in her womb, considering them to represent two different personalities. In both cases, faith is expressed in respecting the will of both. So, the mother alone cannot baptise the child in her womb, but this needs to be done in a way that the will of the baby is protected by some means. In this case, the interpreter of the canon explains that the sponsor is the one to testify instead of the child while it grows up. 'In this way, it is indicated that the newborn, even before birth, was perceived and accepted by the Church as a special and unique person, just like his mother, who is allowed to receive baptism during pregnancy freely.'[49]

In the same line goes the canon of Basil the Great, which prohibits abortion: in other words, his second canon expresses the ontological care for humanity in which the unborn child deserves the sanctity of life. The canon says, 'For here there is involved the question of providing justice for the infant to be born, but also for the woman who has plotted against her own self. For in most cases, the women die in the course of such operations.'[50] Though crafted over seventeen centuries ago, these canons embody an anthropological and legal perspective that would later mature within legal frameworks, becoming a hallmark of contemporary societies 'in which the unborn child is considered the bearer of legal subjectivity and a certain form of ecclesial identity.'[51]

Additionally, the Church embraced canons like the 35th canon of the Council of Carthage, safeguarding the position of children within the family structure. These canons affirmed the parental guardianship and spiritual responsibility toward children. Similarly, the 15th and 16th canons of the Synod of Gangra emphasised the reciprocal obligations between parents and children. They highlighted the family's role as a fundamental, natural environment — an ideal and nurturing spiritual context for the proper development of children, encompassing their biological, psychological, and spiritual aspects. Moreover, the Church condemned the exposure of children to physical and psychological harm, denouncing such acts of elder wrongdoing against children in canons 32 through 39 of St. John the Faster (Nesteutes).[52] As the *Rules and Procedure for Ecclesiastical Courts* of the Serbian Orthodox Church outlines, a priest's refusal to perform baptism[53] might lead to punitive measures (§30).[54] Before the baptism takes place, it is essential to note that within the Orthodox tradition, the very occurrence of a child's conception is Liturgically celebrated. For example,

> 'In the typikon of Hagia Sophia in the tenth century, the feast of the conception of the Baptist is still called "New Year," and marked the beginning

49 Devrnja, 2022, p. 116.
50 Nicodemus the Hagiorite and Agapius the Monk, 2005, p. 1454.
51 Devrnja, 2022, p. 116.
52 Ibid., pp. 116–117.
53 Zbornik Pravila, Uredaba i Naredaba Arhijerejskog Sabora Pravoslavne Srpske Crkve u Kraljevini Srbiji (Od 1839–1900 Godine), 1900, p. 37.
54 Ibid., p. 205.

> of the course reading of the gospel of Luke, although the beginning of the civil year had been shifted to the beginning of September in the fifth century.'[55]

Therefore, the logic beneath all the mentioned canons and regulations within the Serbian Orthodox Church highlights baptism as a pivotal moment that confirms the inherent power bestowed upon a child since conception. Through this sacrament, the baptised child becomes a member of a new family — the Church community. This provision aimed to ensure this alternative beginning, offering a new familial connection should unfortunate circumstances arise within the biological family.

3.1. Freedom and Baptism

We have tried to stress that baptism not only gave rise to a new and distinct identity for children but also brought them into the new family kinship, which safeguarded the eternal destiny of newborn members. The Church perceived itself as a family, a control mechanism when the nuclear family unit failed in its role. In his renowned *Letter 98*, Augustine of Hippo affirms the baptism of children, illustrating how the Church becomes a new family for those welcomed into its embrace. At the same time, this letter draws an image showing the cultural and moral novelty brought by Christianity in treating children.

> '...whereas you see that many are not presented by parents, but also by any strangers whatever, as sometimes the infant children of slaves are presented by their masters. Sometimes also, when their parents are deceased, little orphans are baptised, being presented by those who had it in their power to manifest their compassion in this way. Again, sometimes foundlings which heartless parents have exposed in order to their being cared for by any passer-by, are picked up by holy virgins, and are presented for baptism by these persons, who neither have nor desire to have children of their own: and in this you behold precisely what was done in the case mentioned in the Gospel of the man wounded by thieves, and left half dead on the way, regarding whom the Lord asked who was neighbour to him, and received for answer: He that showed mercy on him... Nevertheless, persons of more advanced fears, whether they be parents bringing their children, or others bringing any little ones, who attempt to place those who have been baptised under obligation to profane worship of heathen gods, are guilty of spiritual homicide. True, they do not actually kill the children's souls, but they go as far towards killing them as is in their power. The warning, Do not kill your little ones, may be with all propriety addressed to them; for the apostle says, Quench not the Spirit (1 Thessalonians 5:19), not that He can be quenched,

55 Talley, 1986, p. 96.

> but that those who so act as if they wished to have Him quenched are deservedly spoken of as quenchers of the Spirit... The presentation of the little ones to receive the spiritual grace is the act not so much of those by whose hands they are borne up (although it is theirs also in part, if they themselves are good believers) as of the whole society of saints and believers. For it is proper to regard the infants as presented by all who take pleasure in their baptism, and through whose holy and perfectly-united love they are assisted in receiving the communion of the Holy Spirit. Therefore this is done by the whole mother Church, which is in the saints, because the whole Church is the parent of all the saints, and the whole Church is the parent of each one of them.'[56]

During the socialist era, the Church succeeded in baptising children from predominantly communist families through grandmothers, grandfathers, godmothers, godfathers, uncles, aunts, and others from extended families. For example, Mikhail Gorbachev, the last ruler of the USSR, was baptised by his grandfather.[57] Therefore, with the decline in the nuclear family's accountability toward children and their fundamental destiny, there emerged a need for cooperation between the Church and the extended family to safeguard the child's eschatological life and destiny. This extended family structure mirrors the characteristics of ancient households illustrated here. This notion's continuity became evident during the era of socialism. During the socialist era, as religious guidance for children encountered limitations, the Church sought to display its concern—both eschatological and soteriological—for the well-being of individuals. This concern materialised through baptism, becoming the only contribution the Church could provide—a glimpse of future life—when it could not offer any other form of care to families and children aside from the foundational essence of the rite of baptism rooted in eschatology.

Baptism has aimed to display the Church's concern to accentuate the uniqueness and irreplaceability of each human being. When reduced merely to a tradition, baptism faces a threat to its core significance. Baptism's role signifies a potential alignment between children's rights and Orthodox theology. The importance of baptism has laid theoretical ground that safeguards children's unique role and eternal value. The Church could not perceive the baptism as coercion upon children since entering it is only viable through faith, and remaining within it relies solely on faith. In other words, baptism serves as a commitment to a Christian life rather than an absolute event that rigidly shapes someone's fate, which would be an intrusion into someone's freedom. The issue for the Orthodox Church here is to responsibly put this theoretical framework into practice.

56 Hippo, 1887, p. 749.
57 Gorbachev, 1996, p. 20.

4. Convention on the Rights of the Child

In discussing this, we might attempt to better understand the Church's possible approach and connection to the *Convention on the Rights of the Child*. What is the essence of the Church's message, the Gospel? It is the promise of eternal life, and the commitment to family duty and service: the Church is a family of believers. Although some display pessimism concerning the possibility of dialogue between the Orthodox Church and human rights in general, we need to mention three critical documents that laid a more optimistic and promising view. An essential document is from the Holy and Great Council of the Orthodox Church held at Crete in 2016. Within the document, *The Mission of the Orthodox Church in Today's World*, the Orthodox Church expressed an important message:

> 'The Church, in the Spirit of respecting human rights and equal treatment of all, values the application of these principles in the light of her teaching on the sacraments, the family, the role of both genders in the Church, and the overall principles of Church tradition. The Church has the right to proclaim and witness to her teaching in the public sphere.'[58]

In 2008, the Russian Orthodox Church (ROC) issued its own document concerning the issue of human rights, 'The Russian Orthodox Church's Basic Teaching on Human Dignity Freedom and Rights.'[59] Among commentators on human rights and the Orthodox Church, this document remains a significant target for criticism. Given its lack of status as an Orthodox conciliar document, its constructive critique and gradual enhancement could contribute meaningfully to discussions on Orthodox theology and human rights.[60] Within the document, a notable conclusion emerges, emphasising the areas where human rights align with the Church's teachings while highlighting where improvements are necessary for the ROC's acceptance. It is evident that the ROC emphasises both freedom of religion and the expression of faith alongside the safeguarding of the traditional family structure:

> 'Today just as before, we are called to show concern, not only in word but also in deed, for the protection of human rights and dignity. At the same time, we are aware that human rights are often violated in the modern world and human dignity is trampled down not only by the state authorities but also transnational structures, economic actors, pseudo-religious groups, terrorist and other criminal communities. More and more often, human

58 'The Mission of the Orthodox Church in Today's World', 2016.
59 'Osnovy ucheniya Russkoy pravoslavnoy tserkvi o dostoinstve svobode i pravakh cheloveka (2008)'.
60 Grdzelidze, 2018, p. 312.

> rights and dignity have to be defended against the destructive aggression of the media. The following areas are singled out for our human rights efforts today: Defending human rights to the free confession of faith, prayer and worship (?), preservation of religious and cultural traditions, observance of religious principles in both private life and public action; Supporting the family in its traditional understanding as well as fatherhood, motherhood and childhood...'[61]

The same document expresses concern for the family and its understanding in the modern world:

> 'The modern law should view the family as the lawful union of man and woman in which natural conditions for raising children are created. Law is also called to respect the family as an integral organism and to protect it against destruction provoked by moral decay. In safeguarding the rights of the child, the legal system should not deny his parents a special role in his education, which is inseparable from their worldview and religious experience.'[62]

In 2020, the Greek Orthodox Archdiocese publicly presented the document 'For the Life of the World: Toward a Social Ethos of the Orthodox Church.' This document particularly highlights a more optimistic embrace of the concept of human rights:

> 'Orthodox Christians should support the language of human rights, not because it is a language fully adequate to all that God intends for his creatures, but because it preserves a sense of the inviolable uniqueness of every person, and of the priority of human goods over national interests, while providing a legal and ethical grammar upon which all parties can, as a rule, arrive at certain basic agreements. It is a language intended to heal divisions in those political communities in which persons of widely differing beliefs must coexist. It allows for a general practice and ethos of honoring each person's infinite and inherent dignity (a dignity, of course, that the Church sees as the effect of God's image in all human beings) ... More than that, it must thank God for the riches of all the world's many cultures, and for the gracious gift of their peaceful coexistence in modern societies.'[63]

Within the document itself, a significant section is devoted to the protection and well-being of children.

61 'Osnovy ucheniya Russkoy pravoslavnoy tserkvi o dostoinstve svobode i pravakh cheloveka (2008)'.
62 Ibid.
63 'For the Life of the World: Toward a Social Ethos of the Orthodox Church', 2020.

> 'The innocence of children is, therefore, a thing of extraordinary holiness, a sign of the life of the Kingdom graciously present in our very midst and must be the object of the Church's ceaseless concern and diligence. The protection and care of children is the most basic and most essential index of any society's dedication to the good.'[64]

Do the stances of the Orthodox Church prompt consideration about its ability to align its goals and duties with the *Convention on the Rights of the Child*? In Article 5 of the Convention, we can readily identify significant aspects that correlate with what we have discussed about the Church's approach to children: 'States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.'[65] From all that we mentioned up to now, it is evident that the Church identified itself as an extended family that cares for the child's upbringing. The Church as a family has been affirmed in the document For the Life of the World:

> 'Ideally, of course, both parents will be present all through the rearing of their children; but sometimes, as a result of death, divorce, or other misfortunes, the task falls to one parent alone. In these circumstances, the Church has a special responsibility, as the family of Christ's body, to lend its solace and support—material, emotional, and spiritual. Moreover, the Church should extend the sacramental gift of baptism to all children, irrespective of the manner in which they were conceived or adopted.'[66]

Based on Orthodox teachings, the Church is bound to its role and duty toward its members. From this standpoint, the Church cannot casually disregard any law or document prohibiting its involvement in children's education and upbringing. This does not imply coercion. Even in the early stages of its existence, respecting free will, the Church instituted sponsors for baptising young children and introduced guardians. However, the Church also emphasised eschatological salvation as its primary goal. Eschatological salvation does not disregard our historical existence; instead, it affirms the significance of earthly life. The 6th article of the Convention confirms, 'States Parties recognise that every child has the inherent right to life.'[67] In its comprehension, the Church recognises life not solely in worldly terms but also acknowledges the inherent potential for eternal life, a universal pledge for every individual derived

64 Ibid.
65 'Convention on the Rights of the Child', 2023.
66 'For the Life of the World: Toward a Social Ethos of the Orthodox Church', 2020.
67 'Convention on the Rights of the Child', 2023.

from our Imago Dei. Within this teaching, the Orthodox Church acknowledges the unparalleled value of each human being both existentially and ontologically, thereby fostering the Church's sensitivity and unquestionable responsibility in such domains.

It would seem that the Convention, especially in Article 14, testifies that the state parties 'shall respect the right of the child to freedom of thought, conscience and religion.'[68] The child's entitlement to religious freedom presents a chance for the Church to participate in educational realms, which had been prohibited for the Church in former communist countries for numerous years. Take, for instance, the prohibition against Religious Education (RE) in Yugoslavia in 1952, which obstructed the Church's capacity to provide improved care for children and their entitlement to gain a deeper understanding of their religion.[69] After being banned, RE was reestablished in Serbian state schools in 2001, allowing traditional communities to have their own confessional teaching. The Serbian Orthodox Church, even though it is the majority religious denomination, insisted during the dialogue with the government that all other denominations should have their own RE, respecting diversity and multiculturalism in Serbia.[70] Advocating for RE in public schools corresponds with the principles outlined in Article 14. Maintaining RE to offer valuable insights into religious teachings and worldviews is crucial, safeguarding children facing diverse and potentially harmful influences.

Although the *Convention* outlines the normative structure governing the roles of parents, the state, international institutions, and non-governmental organisations in children's upbringing in a well-balanced manner, there is a call to update this framework, especially regarding children's involvement in the media and ensuring their safety in the virtual realm of the internet.[71] Ecumenical Patriarch Bartholomew stated in his 2016 Proclamation of Christmas:

> 'A child's soul is altered by the influential consumption of electronic media, especially television and the internet, and by the radical transformation of communication. Unbridled economics transforms them, from a young age, into consumers, while the pursuit of pleasure rapidly causes their innocence to vanish.'[72]

There is also an obligation to prevent the exposure of children to gender ideology and trans-humanistic medical procedures.

> 'In itself, this is nothing new in the human condition, but ours is an age in which sexuality has become yet another area of life colonised by the logic of

68 Ibid.
69 Jović, 2011, pp. 78–89.
70 Jović, 2017, pp. 11–20.
71 Devrnja 2022, p. 114.
72 'For the Life of the World: Toward a Social Ethos of the Orthodox Church', 2020.

> consumerism and the dynamics of the market. Sexuality has today, in fact, become as much a consumer strategy or consumer product—tantalising in its fluidity and pervasiveness—as an innate dimension of human personality. The Church and the community of the faithful must offer young adults a vision of sexual relations as life-giving and transfiguring: an intimate union of body, mind, and Spirit, sanctified by holy matrimony. The body is "a temple of the Holy Spirit within you" (1 Corinthians 6:19), and even in its sexual nature is called to exhibit the sanctity of God's dwelling place.'[73]

This structure should also be upheld by values that acknowledge the distinct and indispensable role of parents in shaping the childhood and upbringing of every child.[74] The document *For the Life of the World* assigns a particular responsibility to parents, urging them to exert more significant influence and supervision over their children:

> 'To protect children against this profound perversion of their created natures is one of the most urgent responsibilities incumbent upon adult Christians in the age of mass communication. St. John Chrysostom advises parents that they serve as "gatekeepers of the senses" for their children. A gatekeeper is not a tyrant, as Chrysostom makes clear; but, in controlling a child's access to the world, the gatekeeper endows him or her with the ability to govern his or her own appetites in later life. And this role of gatekeeping may be more important today than ever before, given how completely our senses can be overwhelmed by the incessant din and spectacle of modern mass media.'[75]

These verses do not suggest that parents should hand over their children to society; it is the opposite. Parents are encouraged to protect and safeguard their children from the potentially harmful impact of the broader society. Considering this fundamental aspect, it is essential to highlight that there has been a recent surge in attempts to adopt a pessimistic approach toward defining the role of the family and immediate social surroundings of children within the norms governing their social status and rights. This shift is occurring under the guise of addressing deviations in children's developmental experiences, which are seen as individual, sporadic, unregulated, and not subject to normative guidelines.[76]

4.1. Household as Political

In Aristotle's time, the concept of οἶκος (oikos, or household) held great importance in his interpretation of politics. The household was formed from natural and social unions (man and woman, parents and children, master and slave). A collection of

73 Ibid.
74 Devrnja, 2022, p. 114.
75 'For the Life of the World: Toward a Social Ethos of the Orthodox Church', 2020.
76 Devrnja, 2022, p. 113.

households formed a village, and a collection of villages established a distinctive political community (koinōnía politiké)[77], which Aristotle designated as the central concept of his political idea, the pólis (πόλις). The pólis was nothing but the ultimate result of a development driven by the natural impulse of people to create a political community of citizens.[78] It is evident how relevant the household is for maintaining a society, even as a metaphysical concept. It not only embeds itself within the social structure but also the political framework inherent in the concept of oikos. It is not coincidental that the Pastoral Epistles in the New Testament specifically emphasise the significance of authority, linked to divine providence, prominently highlighted in Titus 3:1 and 1 Timothy 2:1–2.[79]

Thomas Hobbes, arguably the most significant and the only genuinely systematic political thinker, spoke of the pre-political (natural) state, implying a struggle of all against all. According to Hobbes, it was not a state of ongoing war but its persistent potentiality, a concept we always acknowledge. From this fear and awareness of the potential for war arises resentment, anger, and destructive aggressiveness. Each sees themselves as a potential victim of murder. Cultivating our aggressive nature gives birth to political culture in a narrower sense. Out of the total vulnerability of all arises political coexistence, secured by the authority of power—ultimately, the state's authority.[80]

The dark secret behind modern organised society is not safety but the perpetual jeopardy of every life. Hence, the principle of any society is no longer an ethical alliance between *logos* and *nomos* but the balancing of brutal forces beyond good and evil.[81] Carl Schmitt makes a shift from Hobbes. According to him, the potential war of individuals has evolved into a potential war of the communities. Hobbes' idea follows that an individual is only partially obligated to submit to the state, as the purpose of the state is to preserve the life of the individual. In the other case, it implies linking the "political" with the notion of "absolute obligation", especially if we equate communities with the people. Hence, an 'absolute obligation' arises to sacrifice one's life for the community.[82] We could affirm that the family is the foundation of society to the extent that its members are willing to make the ultimate sacrifice for another – out of the otherness of the other (the struggle for their preservation), for the other in their – unique – being.[83] Political freedom ultimately demands risking one's own consciousness and sense of self.[84] Therefore, the family is not just a "cell of society" but the minimum framework in which the political intersects with the ethical.[85] Con-

77 Zunjic, 1995, p. 228.
78 Ibid.
79 Džalto, 2021, p. 36.
80 Kocijančič, 2016, pp. 92–93.
81 Ibid., p. 94.
82 Ibid., p. 97.
83 Ibid., p. 133.
84 Ibid., p. 97.
85 Ibid., p. 133.

sequently, the destruction of the family leads to the destruction of the political being, understanding of political freedom, removal of any collective identity, and potential liberation of people that would lead to control of the forces that do not recognise otherness and intrinsic value of each being. Put differently, the imbalance we frequently experience, highlighting the individual's rights over the family as a collective entity, inherently will lead to the individual's liberation from their own self.

5. Conclusion

The values upheld by the nuclear family, the prevailing and sought-after structure for defining social, emotional, and communal aspects of the family today, might seem far removed from the traditional family models that characterised Judeo-Christian civilisation for centuries. Nonetheless, they remain the cornerstone of a proper, constructive, and responsible approach to raising children, one that we are obligated to endorse and safeguard through personal example and a normative legal framework. For children, the family stands as the most suitable and ideal social and emotional environment for their upbringing, and any encouragement of such a model through international documents and state laws should be commended.

The Apostle Paul reminds us, 'And do not be conformed to this world, but be transformed by the renewing of your mind, that you may prove what the will of God is, that which is good and acceptable and perfect (Rom. 12:2).' Conforming solely to Christ signifies the birth of a new identity, establishing a critical relationship with the reality we inhabit. The Church's mission should focus on the ongoing development of believers' identities. Its imperative lies in fostering a community comprised of responsible individuals—active participants in history, striving to affirm the values of the Kingdom of God within the context of human history.

Through this paper, we have attempted to demonstrate the significance of baptism for the early Church as it provided a unique identity for children within the family, but even more within the Church as an extended family. The newly baptised child affirms children's ontological importance within the family unit. Before Christianity, children were almost treated similarly to slaves. Emphasising the ontological identity instilled in children led to stronger familial bonds and the overall family unit. At the same time, the Church became a family for the baptised child, bearing responsibility and involvement in those actions within society that would endanger the well-being of children. Through its documents, the Orthodox Church has highlighted the importance of children while drawing attention to the significance of the family as a whole. Only in this dialectic between the family and the child does the Church find the most optimal environment for our society. Currently, the Serbian Orthodox Church adheres to canonical context and Church regulations evident in this work, yet lacks an officially adopted document outlining a child safeguarding policy or dedicated institution.

In today's world, children and their well-being are jeopardised once more, insisting on their individuality, which tends to obliterate the importance of the family and its significance. The underlying principles of all the canons and rules we have discussed highlight baptism as a transformative event affirming biological birth as the potential eternal birth of each child. This sacrament signifies the baptised child's entry into a new family—the Church community. It is no longer solely the duty of parents to safeguard their children; the responsibility is shared, and the Church assumes its role as a family of eschatological significance, affirming the dignity of each individual.

Bibliography

Afanasjev, N. (2008) *Stupanje u Crkvu*, Kraljevo: Eparhija Žička.

Boswell, J. (1995) *Same-Sex Unions in Premodern Europe*. 1st Vintage Books edn. New York.

Clapsis, E. (2016) 'Human Rights and the Orthodox Church in a Global World', Θεολογία, 2016/2, pp. 113–130.

OHCHR (2023) Convention on the Rights of the Child [Online]. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child.

Devrnja, Z. (2022) 'The Orthodox Church and the Rights of Children', *Astra Salvensis*, 2022/10, pp. 107–118.

Džalto, D. (2021) *Anarchy and the Kingdom of God: From Eschatology to Orthodox Political Theology and Back*. New York: Fordham University Press.

Elliott, J. (2003) 'The Jesus Movement Was Not Egalitarian but Family-Oriented', *Biblical Interpret*, 2003/11, pp. 173–210. Available at: https://doi.org/10.1163/156851503765661276.

'For the Life of the World: Toward a Social Ethos of the Orthodox Church' (WWW Document), *Greek Orthodox Archdiocese of America*, 2020. Available at: https://www.goarch.org/social-ethos (Accessed: 21 November 2023).

Gorbachev, M. (1996) *Memoirs*. 1. edn. New York: Doubleday.

Grdzelidze, T. (2018) 'Human Rights and the Orthodox Church the Dignity of Human Beings: Created in the Imago Dei' in Diamantopoulou, E. A., Christians, L.-L. (eds.) *Orthodox Christianity and Human Rights in Europe: A Dialogue between Theological Paradigms and Socio-Legal Pragmatics, Gods, Humans and Religions*. Bruxelles – Bern–Berlin–New York– Oxford–Wien: P.I.E. Peter, pp. 307–323.

Hezser, C. (2003) 'The Impact of Household Slaves on the Jewish Family in Roman Palestine', *Journal for the Study of Judaism in the Persian, Hellenistic, and Roman Period*, 2003/34, pp. 375–424.

Hippo, A. (1887) 'Letter 98' in Schaff, P. (ed.), Cunningham, J.G. (Tran.) *From Nicene and Post-Nicene Fathers*, First Series, Buffalo–NY: Christian Literature Publishing Co.

Jevtić, A. (ed.) (2005) *Svešteni kanoni Crkve*. Belgrade: Pravoslavni bogoslovski fakultet.

Joubert, S.J. (1995) 'Managing the Household' in Esler, P.F. (ed.) *Modelling Early Christianity: Social-Scientific Studies of the New Testament in Its Context*. London: Routledge.

Jović, R. (2011) 'Istorijat verske nastave u Srbiji' in *Verska Nastava u Beogradskim Školama*. Belgrade: PBF PKI Institut za pedagoška istraživanja, pp. 78–89.

Jović, R. (2015) *Counter Cultural Christianity: Hope for an Alternative*. ΣΥΜ–ΒΟΛΗ, 2015/1, pp. 67–82.

Jović, R. (2017) 'Religious Education–Challenges and Perspectives in Contemporary Society: Western Balkans/Serbia', *Astra Salvensis*, pp. 11–20.

Jović, R. (2018) 'Delusion of Truth: Church as Community', *Astra Salvensis*, 2018/6, pp. 477–484.

Jović, R. (2018) *Dinamika hrišćanskog identiteta*. Belgrade: Pravoslavni bogoslovski fakultet, Institut za Teološka Istraživanja.

Jović, R. (2021) 'In Front of the World: the Birth of the Subject', *Astra Salvensis*, 2021/9, pp. 165–172.

Kalaitzidis, P. (2018) 'Individual versus Collective Rights: the Theological Foundation of Human Rights: An Eastern Orthodox View', in Diamantopoulou, E.A., Christians, L.-L. (eds.) *Orthodox Christianity and Human Rights in Europe: A Dialogue between Theological Paradigms and Socio-Legal Pragmatics, Gods, Humans and Religions*. Bruxelles–Bern–Berlin–New York–Oxford–Wien: P.I.E. Peter Lang, pp. 273–297.

Kocijančič, G. (2016) 'Erotika, politika itd.: tri opita o duši', *Otačnik*, Belgrade: Bernar.

Kulman, O. (2011) 'Krštenje u Novom Zavetu', *Otačnik*, Belgrade.

Lassen, E.M. (1997) 'The Roman Family: Ideal and Metaphor' in Moxnes, H. (ed.), *Constructing Early Christian Families: Family as Social Reality and Metaphor*. London–New York: Routledge.

Lincoln, A.T., Wedderburn, A.J.M. (2010) *The Theology of the Later Pauline Letters, Repr. ed, New Testament theology*. Cambridge: Cambridge University Press.

MacDonald, M.Y. (2004) *The Pauline Churches: a Socio-Historical Study of Institutionalization in the Pauline and Deutero-Pauline Writings*. Cambridge-New York: Cambridge University Press.

Marsh, C., Payne, D. (2012) 'Religiosity, Tolerance and Respect for Human Rights in the Orthodox World' in Brüning, A., Zweerde, E. van der (eds.) O*rthodox Christianity and Human Rights, Eastern Christian Studies*. Leuven: Peeters; Walpole, MA, pp. 201–214.

Mutavdžić, N. (2016) 'Istorijski razvoj institucije kumstva u svetotajinskom životu drevne Crkve', *Religija i tolerancija,* 2016/14, pp. 313–340.

Nicodemus the Hagiorite, Agapius the Monk (2005) *The Rudder (Pedalion): Of the Metaphorical Ship of the One Holy Catholic and Apostolic Church of Orthodox Christians*, Ralph J. Masterjohn and The Orthodox Christian Educational Society, West Brookfield.

'Osnovy ucheniya Russkoy pravoslavnoy tserkvi o dostoinstve svobode i pravakh cheloveka', *The Russian Orthodox Church: Department for External Church Relations*, 2008. [Online]. Available at: https://mospat.ru/en/documents/180-osnovy-ucheniya-russkoy-pravoslavnoy-tserkvi-o-dostoinstve-svobode-i-pravakh-cheloveka/ (Accessed: 21 November 2023).

Papanikolaou, A. (2012) *The Mystical as Political: Democracy and non-Radical Orthodoxy*, Notre Dame: University of Notre Dame Press.

Skolnik, F., Berenbaum, M. (eds.) (2007) *Encyclopaedia Judaica*. 2nd edn. Detroit: Macmillan Reference USA in association with the Keter Pub. House.

Talley, T.J. (1986) *The Origins of the Liturgical Year*. New York: Pueblo Pub. Co.

'The Mission of the Orthodox Church in Today's World', *Holy and Great Council Pentecost 2016 "He called all to unity"*, 2016 [Online]. Available at: https://www.holycouncil.org/mission-orthodox-church-todays-world (Accessed: 23 June 2023).

Verner, D.C. (1981) *The Household of God and the Social World of the Pastoral Epistles* (PhD), Atlanta: Emory University.
Wilken, R.L. (2003) *The Christians as the Romans Saw Them*, 2003/2, Yale University Press, New Haven London.
Winter, B.W. (2001) *After Paul Left Corinth: the Influence of Secular Ethics and SocialChange,* Grand Rapids–Mich: W.B. Eerdmans.
'Zbornik osnovnih zakonodavnih i pravnih propisa Srpske Pravoslavne Crkve', *Sveti Arhijerejski Sinod*, Belgrade, 2008.
'Zbornik pravila, uredaba i naredaba Arhijerejskog Sabora Pravoslavne Srpske Crkve u Kraljevini Srbiji (od 1839–1900 godine)', *Državna štamparija Kraljevine Srbije*, Belgrade, 1990.
Zunjic, S. (1995) 'The Biological and the Political Side of Human Nature in Aristotle' in Boudouris, K. (ed.) *Aristotelian Political Philosophy.* Athens: Ionia Publications.

| CHAPTER 10 |

The Child Protection Policy of the Reformed Church in Hungary

Olivér Árpád HOMICSKÓ – Márk BIRINYI

ABSTRACT

This study summarises the activities of the Reformed Church in Hungary in the field of child protection, with particular reference to institutionalised child protection services. The Church's child protection policy is biblically based, allowing for personal interpretation and application of the biblical teachings. The church operates a child protection network, including family transition homes, Sure Start Children's Homes and after-school study halls. The network also includes the Hungarian Reformed Child Protection Service – Foster Parent Network, which provides foster care for children in need. The ultimate aim is to either reunite children with their birth families or to find adoptive families.

KEYWORDS

child protection, child protection activities of the Reformed Church in Hungary, best practice, biblical foundation, specificities of assistance

In this study we will present the child protection activities of the Reformed Church in Hungary in an analytical way. In Hungary today, it is the Diaconia of the Reformed Church (hereafter: 'Diaconia') that carries out the methodological ecclesiastical tasks related to the child protection institutions maintained by the Reformed Church, with the content and scope designated by the respective sectoral management. The Diaconia is an independent ecclesiastical legal entity operating within the Reformed Church in Hungary (hereafter: 'MRE'). It is important to emphasise that the Diaconia performs tasks in the field of child protection which would otherwise be the responsibility of the state under applicable legislation. It also follows that Reformed child protection policy cannot be interpreted in terms of the provision of public services per se, but that the Diaconia performs tasks delegated by the state, determined by secular legislation and other public legal regulators. At the same time, if we examine the quality of the provided services, we can see fundamental differences in content and mission, as compared to the provision of these services by the state. We will

Olivér Árpád HOMICSKÓ – Márk BIRINYI (2025) 'The Child Protection Policy of the Reformed Church in Hungary' in Katarzyna ZOMBORY – Márta BENYUSZ (eds.) *Religion and Children's Rights.* Miskolc–Budapest: Central European Academic Publishing. pp. 225–241. https://doi.org/10.71009/2025.kzmb.racr_10

present the organisational units and the child protection tasks that are carried out within the MRE, primarily within the organisational framework of the Diaconia.

The role of child protection in the Reformed Church in Hungary is not a 21st century phenomenon. One could say – and perhaps it would be more correct – that the role of the Reformed Church in Hungary in the protection of children has a history of several centuries, since the care of orphans has always been the target area of the church's care for the poor. If we examine only the 20th century in more detail, we can still say that the Reformed Church has always sought to protect children. In his Easter message of 1923, László Ravasz criticised the Dunamelléki Diocese of the Reformed Church as follows:

> 'At the same time, significant material resources and moral capital are lying dormant in our Church. I only point to the tasks related to the education of girls. The task of this generation of men is to secure the future by winning the souls of women. Yet, we are not the ones who imprint the souls of 99 out of every hundred girls. Does Hungarian Calvinism appreciate its enormous responsibility in this respect? The work of the mission is still progressing too slowly. How many congregations have youth associations, Bible-reading circles, church care for the poor? In the congregations of Budapest, there is still no church care for the poor, no official prison or hospital mission. There is still a shortage of prison shelters, day care centres and night shelters with the Word. Where is the organization of Reformed child protection and where is the establishment of a Reformed patronage?'[1]

1. The Biblical Foundation[2]

In reviewing the principles of the Reformed Church for the protection of children, we have to state that, unlike other denominations, the Reformed Church in Hungary does not have a strong socio-political and theologically based position, that is, a mandate issued by the church. The foundation of the Reformed denomination's system for the protection of children is the Scripture, which provides us with direction and guidance. One of the central elements of the Reformation was the centrality of Scripture, which allowed the Bible, as God's revelation, to be accessible and understandable to all believers. The foundation of this centrality was the principle of Sola Scriptura – 'Scripture alone' – first articulated by Luther during the Reformation. This is further confirmed by 2. Timothy 3:16–17, which reads, 'All Scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, for instruction in righteousness,' 2. Timothy 3:16.

1 Sárospataki Református Lapok, 1923. április 15. (XVIII. évfolyam, 15. szám), pp. 59–60.
2 The biblical verses taken from the Holy Bible, New King James Version.

During the Reformation, Scripture took centre stage as the only standard of faith and practice. Being Scripture-centred also means that each believer personally interprets and applies the teachings of the Bible in his or her life. Apostle James' general epistle confirms this:

> 'But be doers of the word, and not hearers only, deceiving yourselves. For if anyone is a hearer of the word and not a doer, he is like a man observing his natural face in a mirror; for he observes himself, goes away, and immediately forgets what kind of man he was. But he who looks into the perfect law of liberty and continues in it, and is not a forgetful hearer but a doer of the work, this one will be blessed in what he does.'(James 1:22–25)

This substantive truth allows us to begin our study with a biblical foundation, to place the child and the related social issues in an anthropological context, based on scripture.

The young child is a full human being from the point of view of biblical (theological) anthropology. There is no existential difference, only a qualitative difference in development in a child compared to an adult. Not less, only different. According to testimony from the Bible, a child is a gift from God (Psalm 128:3–4). It is a special blessing to have many children, a large family. The blessing of children is a joy (Deuteronomy 28:4), a reward (Psalm 127:3), a recognition (Job 5:25), and a jewel (Prov 17:6). In the order of creation, having children is an opportunity and a duty given to parents by God. In the Old Testament, childlessness was considered shameful, a punishment from God (Genesis 30:23). The burdens of pregnancy, childbirth and child-rearing were dwarfed by the burden of the inability to procreate (1 Samuel 1:6–7), infertility and miscarriage (Exodus 23:26). The infant, regardless of its sex, was cared for by the mother in early life. This kind of care is comparable to God's care: 'Can a woman forget her nursing child, and not have compassion on the son of her womb?' (Isaiah 49:15) Mothers raised their children with care, anticipating both physical and spiritual needs (Proverbs 1:8; 6:20). Weaning occurred later than is usual today, in the second or third years of a child's life (Genesis 21:8; 1 Samuel 1:23), or possibly even later, at the age of 4–6 (1 Samuel 1:23). Thereafter, it was the mother's responsibility to raise her daughters until their marriage. Alongside a mother's care and upbringing of her sons, the father also had two main duties. In addition to the fostering of good habits and practical knowledge (Exodus 22:35) and experience (Proverbs 8:12), the aim was to educate sons for a lifetime of obedience to God (Deuteronomy 4:10; 4:23; 31:12–13; 2 Kings 27–28; Psalm 34:12). The father was primarily responsible for the upbringing of the sons, while the role of the mother remained important, but secondary. The tasks of teaching, admonishing, disciplining and consoling were shared according to the gender roles of the time (Deuteronomy 8:5; Proverbs 3:12; 13:24; Isaiah 66:13).

Anyone who shapes the lives of others is, in a general sense, participating in their education. The model of education is God himself, as he educates his people, his children. He sets an example for every person entrusted with education through his

goodness (Psalm 25:8; Romans 2:4), love (Jeremiah 31:3), discipline (Hebrews 12:6–11), comfort (Isaiah 66:13), providence (Hosea 11:1–4) and grace (Titus 2:11–12). At the heart of every educational endeavour is education by God, the aim of which is to bring us into communion with himself (John 3:40; 1 Corinthians 11:32; Revelation 3:19).

There was also a shadowy aspect to the social perception of childhood in the ancient Jewish tradition. The Book of Proverbs considers foolishness to be the opposite of wisdom, as inherent in the nature of a child (Proverbs 22:15). The child was considered ignorant and capricious, unable to comply with the Law, and therefore in need of discipline. Although Jewish culture was free of brutal practices towards children, it considered the state of life of the Law-abiding adult man as the ideal. This phenomenon is not unique to Judaism. In the Mediterranean cultures of the first century, there is both an appreciation and a devaluation of the child. Childhood was a kind of "basic training" for adulthood, before attaining the truly valuable state.

The child's God-given dignity is defended by Jesus (Matthew 18:5; 25:40). He places obedience to the Father above filial obedience to the Law and obedience to the parent (Luke 2:27; 43:51). The child Jesus exemplified both aspects (Luke 2, 49. 51). Only when parents hinder their child's freely experienced relationship with God (Luke 2:49) or explicitly disapprove of it (Matthew 10:35–37), can the bond break between parent and child. In the apostolic age, the Old Testament does not dissolve the provisions for the relationship between parents and their children and its quality, but supplements them. The so-called house-rules in Colossians 3:20–21 and Ephesians 6:1–4 recognise the subordinate role of children in the eyes of society, but also the example Jesus set for them of children's weakness, vulnerability and inability to accomplish certain tasks. 'Children, obey your parents in the Lord, for this is right.' (Ephesians 6:1) The exhortation was addressed to all children, including the youngest. Children are called to obedience both because of their social status and because the framework of obedience is their relationship with Christ. Parents also owe obedience to Christ as wives and husbands, which partly circumscribes and partly qualitatively defines the basis of obedience. It is Christ in whom parent and child are placed side by side, all members of the family taking responsibility for one another and all being devoted to one another in obedience. Paul expands and reciprocates the meaning of the 5th commandment by exhorting fathers not to provoke their children to disobedience in their upbringing, and he is not speaking only of the obedience of children (Ephesians 6:2). A parent also owes obedience to his child. The criteria for obedience are described in Colossians in the Christian family's house-rules as the new Christ-like man is formed. A Christian parent is obedient in his or her God-given task of child-rearing when he or she exemplifies Christ's attitude: compassionate, kind, humble, gentle, patient, forgiving and loving.

The New Testament makes no less a demand than that the image of Christ be formed in both the educator and the 'educated' by the Holy Spirit: 'My little children, for whom I labor in birth again until Christ is formed in you,' (Galatians 4:19) 'But we all, with unveiled face, beholding as in a mirror the glory of the Lord, are being transformed into the same image from glory to glory, just as by the Spirit of the Lord.'

(2 Corinthians 3:18) This formation is a process which takes place in a Christian family from birth. It is the mother's responsibility as much as the father's to consciously form the child, to help and support his development. Interestingly, the term "τεκνοτροφέω" – raising a child in the physical, spiritual sense – occurs only once in the New Testament (1. Timothy 5:10). Here Paul mentions the task of raising children among the virtues of widows. He commends those who have brought up children, but castigates those who have not cared for the people of their house as deniers of the faith, whom he considers to be worse than the nonbelievers.

Many documents from the ancient East, dating from the same time as the Old Testament, show that respect for parents was valued and protected throughout the world. However, contrary to the teachings of Jesus, these writings do not mention respect for children. To respect a small child, he says, is to give him the care, attention and patience he deserves, as one who is both at the mercy of his parents and entrusted to them.

2. Brief Reviews of the Current Hungarian Child Protection System

In 1989, the New York Convention formally outlined what became internationally recognised as children's rights, establishing a new framework for protecting the well-being of minors. Hungary adopted these principles in 1991 through the enactment of Act LXIV, which integrated the convention's ideas into its legal system.

In 1997, Hungary took another significant leap forward in child protection by passing Act XXXI, which focused on both the protection of children and the responsibilities of guardians. This law marked a turning point in the country's approach to child welfare, establishing a more efficient and structured system to safeguard children's rights. It was a crucial development in ensuring that all indigent or disadvantaged children would receive equal protection and support. The act introduced a hierarchical framework that adhered not only to Hungarian legal principles but also to international standards, demonstrating the country's commitment to upholding global values in child protection.

The modern child protection system in Hungary, guided by this legislation, is built around three main pillars: supporting the upbringing of children within their families and fostering their physical, emotional, and intellectual development; preventing and addressing situations that endanger or harm children; and providing substitute care, such as foster homes or institutions, when necessary. The aim of this system is to ensure that every child, regardless of their circumstances, has access to the necessary resources and protections to thrive. Through this approach, Hungary has sought to create a robust and comprehensive child welfare system that prioritises the well-being of its youngest citizens.

The Child Protection Act (Act XXXI of 1997) has undergone several revisions over the years. A significant amendment, effective from January 1 2014, introduced a rule prohibiting the placement of children under the age of 12 in children's homes. Instead,

such children were to be placed with foster families, except in cases where the child was chronically ill, had a disability, or belonged to a larger sibling group that needed to stay together. At the same time, the role of guardianship for children without parental care was redefined. A child protection guardian was assigned to replace the head of the child protection facility. This change aimed to better safeguard the child's rights and avoid potential conflicts of interest that could arise when the facility head also served as the child's guardian. Further changes were made starting on January 1 2017, refining the conditions under which foster care could be bypassed. The updated rule stated that foster care should only be avoided if placing a chronically ill or severely disabled child in a foster family would not be in the child's best interest, due to their health needs, or if it was not feasible. Similarly, foster care could be bypassed if it was impossible to keep siblings together in foster families.

The Child Protection Act has been amended several times in recent years, but the basic aims have not changed: the most important task of the government's social policy remains the protection of the child's physical, mental and emotional health and the promotion of his or her upbringing in the family. To help achieve these goals, the role of church-based childcare providers has become increasingly important since 2012. As a result of the involvement of the churches, we are seeing a gradual transfer of childcare institutions to churches. For this reason, it is an important question — and thus also the aim of this study — to examine what kind of child protection system is maintained by the Reformed Church in Hungary.

3. The Institutional System of the Diaconia of the Reformed Church in the Context of Child Protection

The main activity of the Diaconia is the exercise of full charter rights, maintenance, and administrative and management tasks with respect to social and child welfare and child protection institutions — those either established by the Reformed Church in Hungary or by the Diaconia itself, as authorised by the Church. The scope of the tasks to be performed and other activities are determined by the secular law in force and the internal legal regulations of the Reformed Church in Hungary and the Diaconia.[3] It carries out its tasks in accordance with Article 16 of Act II of 2000 on the Charity Service of the Hungarian Reformed Church. Professional aid activities are structured through the institutions and services it maintains. It is an independent and fully competent charter organisation of the public church charity service institutions and services founded by the Diaconia on the basis of the Synod or the Synod's authorisation — i.e., it is responsible for the operation, management and supervision of these institutions.

3 Organisational and Operational Regulations of the Diaconia of the Reformed Church. Current legislation: 1. January 2022, para. 7.

The Diaconia carries out methodological activities related to social, child protection and integration.[4] The Director General of the Diaconia liaises with, among others, state and government bodies in the social and guardianship administration.[5] The Deputy Director General directly controls the monitoring activities that examine the legality, economy, efficiency and effectiveness of the operation of social, child welfare, child protection or integration services maintained by parishes or dioceses.[6] The aim of the Diaconal Office within the framework of the Diaconia is to promote and support the professional operation of the deaconry institutions maintained by the Diaconia, and to initiate improvements in order to provide quality services.[7] Within this framework, the Diaconal Office performs the social and child protection methodological tasks defined by special legislation.[8] The aim of the Department for Social Inclusion of the Diaconia is to organise and provide development, compensation and social services to the most disadvantaged in accordance with the missionary goals of the Hungarian Reformed Church. In particular, it is responsible for coordinating, assisting and monitoring the professional work of the Sure Start Children's Houses and after-school study halls established within the framework of social inclusion measures and tenders, as well as the Reformed Roma college(s), and for implementing the programmes and tasks of the Hungarian Reformed Church in the area of empowerment.[9]

In addition to maintaining the institutions, the Diaconia performs professional development, methodological and monitoring tasks; provides professional assistance in the operation of Reformed services and institutions; assists in the development of and presents good working models for congregational deaconry; organises training courses and conferences; and develops concepts and development proposals. In addition, the Diaconia liaises with charitable organisations of other churches, social professional organisations, municipalities and the government. In recent years, the provision of professional services has largely been determined by organisational changes, the war emergency, the resulting economic crisis and the continuous and intense workload caused by the capacity transfers from the state.

From 2022, the scope of the Diaconia has been significantly expanded. From 1 January the Diaconia has been responsible for the maintenance of the two Reformed Roma colleges (Wáli István Reformed Roma College (WISZ), and the Budapest Reformed Roma College (REFOROM)), assuming the tasks related to the employment of social missionary pastors from the defunct Reformed Mission Centre, and

4 Organisational and Operational Regulations of the Diaconia of the Reformed Church. Current legislation: 01. 01. 2022, para. 1.3.
5 Ibid., para. 2.1.1. b).
6 Ibid., para. 2.2.1. l).
7 Ibid., para. 1.1.
8 Ibid., para. 1.2.
9 Ibid., para. 2.

the tasks of the National Roma Mission and the related HEKS[10] project from the MRE Synod Office.

As a result of the reorganisation of internal church tasks adopted by the Synod of the MRE, a new organisational unit was established within the Diaconia: the activities of the National Reformed Roma Mission were reorganised under the Social Inclusion department, including the tasks related to the exercise of the charter rights of WISZ and REFOROM, as well as the tasks related to the after-school study halls and Sure Start Children's Homes.

3.1. Cooperation of the Diaconia With Other MRE Institutions

The Diaconia carries out its basic activities in close cooperation with the Hungarian Reformed Charity Service Foundation (hereafter: 'MRSZA'), with the resulting synergies making the provision of tasks more efficient both professionally and economically. MRSZA is an NGO which primarily provides humanitarian assistance. Among the various areas of service, such as social services, child protection and social inclusion, and the social missions coordinated by MRSZA, the charitable service and the implementers of the various social development programmes cooperate at a strategic and operational implementation level. The duplication between the service areas has been eliminated, leading to more efficient use of financial and human resources. Every Monday, the staff participate in a joint devotional service, and there is also a free flow of information concerning each ministry area in the forums supporting the management. Professional development activities, previously confined to social sector issues, have been opened up to include mission service issues. Public relations activities also have a unified image, with both the Diaconia and the MRSZA adopting the same elements in their image presentation and both organisations paying particular attention to coordinated communication.

3.2. External Collaborations of the Diaconia

The Diaconia proactively seeks to involve the ministries of the congregations in all its activities. A strong relationship has been developed with the Mission Service in the areas of the Roma mission, institutional ministry and social missions. There is ongoing cooperation with the Education Service in the field of territorial catch-up programmes, programmes which compensate for disadvantages and the school inclusion programme. An important development is that Károli Gáspár Reformed University considers the Diaconia to be its partner, and close cooperation has been established in the development of the content of social training courses and in consideration of the creation of professional deaconry training for the church's institutional system.

10 HEKS/EPER supports development cooperation projects in more than 30 countries (including Hungary) on four continents to fight poverty and injustice and advocates a dignified life for all people. At the same time, HEKS/EPER strives for systemic change with its development work – in Switzerland and worldwide. For this reason, HEKS provides support for the catch-up programs of the Reformed Church in Hungary, with particular regard to child protection.

3.3. Professional Development in the Diaconia

The Diaconia is a designated ecclesiastical social methodological institution, a methodological institution for ecclesiastical foster care, child and residential care, and a methodological institution for ecclesiastical schools. Within the framework of the social methodological activity, thematic online workshops are held (elderly, disability, addict-psychiatric-patient-homeless profile, normative and documentation). Within the framework of the child protection methodological activity, similar knowledge-building and consultative workshops, case discussions and consultations are held for both foster care and child residential care. In the area of inclusion, there are monthly workshops for the Sure Start Children's Homes, the after-school study halls, and the Roma-specialised colleges. All stakeholders who have or may have a link to the field are invited to the workshops, the total number of which is around 50 per year. Major thematic conferences are organised annually in the fields of social care, child protection services, inclusion and mission, attended by hundreds of participants. The Diaconia regularly publishes newsletters in all of these fields.

3.4. Basic Child Welfare Services Provided by the Diaconia

In terms of basic child welfare services, the transitional home for families and children's services to improve opportunities are being implemented. The Lorántffy Zsuzsanna Reformed Maternity Home for Families is a transitional home for families. The institution is managed by the head of the institution, who runs the Miskolc Maternity Home (headquarters) and the nearby Reformed Transitional Mothers' Home in Vissi. The latter is operated by the Diaconia and is not a separate legal entity. In the Miskolc Settlement, there are 6 social workers, while in the Vissi Settlement there is 1 professional manager/social worker and 4 additional social workers. The institution welcomes homeless mothers and their children from all over the country. The aim of the institution is to provide the temporarily homeless with provisional lodging and assistance with living arrangements.[11] The aim of the placement is to enable residents to leave the institution and to be able to lead independent lives. The level of care varies from individual to individual. The institution provides accommodation for both the mother and her child(ren) in a home-like setting.[12]

Services to improve children's opportunities include the Sure Start Children's Houses and the after-school study halls. Sure Start Children's Houses are run by the Diaconia in six locations: Mohács, Sellye, Mezőcsokonya, Bodvaszilas, Bodvaelenke and Bánréve. The Sure Start programme was born to counter social and economic inequality, which is growing and is highly concentrated in Hungary. Its mission is to intervene effectively to prevent the re-emergence of poverty and exclusion and to help build a more inclusive society. More Sure Start Children's Houses are currently being set up and their network developed in line with the principles of the programme.[13]

11 Lorántffy, 2022, p. 4.
12 Ibid.
13 Ibid.

The aim of the Children's House Services is to provide a preventive service to children with socio-cultural disadvantages, primarily children receiving regular child protection benefits, to ensure their healthy development, to compensate for their developmental delays, to strengthen parental competence and to provide a social inclusion service for parents and children not yet attending kindergarten. It supports the cultivation of community cultural traditions and values, the cultural activities of the communities, and the pursuit of cultural objectives aimed at improving the lifestyle of the population.

The Children's House Service operates under the direction and guidance of the Diaconia, which is its charter organisation. The Director General of the Diaconia exercises his professional supervisory authority over the Children's House Service through the head of the department for inclusion.

The Children's House Service is obliged, in accordance with the legal provisions in force at any given time, to provide services to families with socio-cultural disadvantages, to encourage them to use these services, and to provide them with regular professional services such as health assessment, competency-building activities and development, as well as meals. It is also required to organise programmes which encourage parents to participate in activities with their children, to provide parents with personal and competence development, to teach them the skills they need to bring up their children, to ensure personal hygiene and to manage their household, and to provide other preventive assistance. Furthermore, the Children's House Service is required to organise at least twelve community events a year for families with children under the age of three and for the local community, of which at least six must be tailored to the needs of the families using the services of the Children's House.

The Children's House Service may provide parents with medical, dietetic and other health advisory services, organise parent group discussions with the involvement of a specialist, and provide consultation with representatives of providers of care and services for children with disabilities or with different developmental needs, as well as with the parents of these children whose condition is certified by a doctor or a nurse providing primary health care. The House Service may assist parents in obtaining feedback on communication with their child and on their parenting methods, organise weekly play sessions for children and their parents, and ensure access to appropriate professionals for children with special needs living in the surrounding villages and settlements. The Service also recommends access to health care, other health services, social and child welfare services, help with family planning and prevention of unsafe pregnancies, and assistance to expectant mothers in preparing for the birth of their child, as well as providing washing, drying and cleaning facilities.

In terms of services for children's empowerment, the Diaconia operates afterschool study halls. These are the Sunrise School in Biharkeresztes, the Wise Solomon School, the Eben School, the Dawn Star School, the Beaver School, the Kisszekeresi School, the Komád School, the Okányi School, the Piliscsaba School, the Goat's Nest School in Pilisvörösvár, the Sellyei School, the Szatmárcseke School and the Mustard Seed School in Szendrő. The activities of these schools are also governed and operate

in accordance with legislation. The service of the after-school study hall is to provide voluntary social inclusion, primarily for children and sometimes for young adults who receive regular child protection benefits, or who are disadvantaged or severely disadvantaged.

4. Institutional Child Protection Services of the Reformed Church in Hungary

Recognising the shortcomings of the state child protection system, the Reformed Church in Hungary developed a child protection concept in 2006. The concept was to establish integrated child welfare and child protection institutions, with the churches assuming the entire scope of the child protection system. In the summer of 2008, pastors and church members began to recruit foster parents in the churches of Gégény, Szabolcsveresmarton, Beszterec, Dombrád, Kécske and Tiszakanyar.

The Hungarian Reformed Church's Office of Relief Services (known as the Diaconia from 2022) supported the concept, and on 20 November 2008 the MRE Synod unanimously voted to establish the Hungarian Reformed Child Protection Service – Foster Parent Network. All the necessary moral and financial support and conditions for the launch, operation and development of the service were thereby made available.[14] The establishment of the service was unique in the country, as there was no other specialised nationwide child protection service operated by a historical church. To explain why foster care was preferred to residential care, the belief is that healing the wounds of children who have been deprived of their families and have suffered multiple traumas is only possible in a loving, accepting family environment.[15]

The most considerable advantages of this institution are its small size and congregational foundation. One could say that it was built from the ground up and was created by the need that appeared in the congregation of the Reformed Church in Hungary. Within the framework of the Diaconia, there are now two large centres for specialised care for Reformed children, which carry out tasks related to child protection – one each in eastern and western Hungary.

The Hungarian Reformed Child Protection Service – Foster Parent Network was officially founded on 21 November 2008 by the Reformed Church in Hungary, in conjunction with the missionary activity of the church. It is a partially autonomous church institution operated by the Hungarian Reformed Church's Office for Relief Services[16] and is not an independent legal entity. From 1 January 2021, the name of the institution was changed to Kelet-magyarországi Református Gyermekvédelmi Központ (East-Hungarian Reformed Child Protection Centre), under the auspices of

14 Váradi, 2010, p. 120.
15 Ibid.
16 Organisational and Operational Regulations of the East-Hungarian Reformed Child Protection Centre, 2022, p. 5.

the Diaconia. The institution was established to enrich the child protection system, to provide high quality services and thus to contribute to improving the quality of care. The ultimate aim is to reunite the child with his/her birth family or, if this is not possible, with an adoptive family. The socialisation and re-socialisation of the child during the period of care and upbringing is carried out in line with Reformed Christian values and using the methods of Christian religious and moral education.[17] The function of the Reformed Child Protection Centres is to perform the tasks of the Foster Parents Network and to operate the Children's Home.[18] The Reformed Child Protection Centres may be presented through the Foster Parent Network on the one hand, and through the Children's Home functions on the other.

4.1. The Professional Added Value of the Child Protection Network of the Reformed Church in Hungary

One of the major strengths of the Reformed child protection network is its embeddedness in its congregations, engendering close community support. This link helps society to recognise children in difficulty and the supportive institutions as integral parts of the local community. The broad support of the local church contributes to the stability of the network.

The service environment places great emphasis on personalised development, with particular attention to children with special needs. Emphasis is also placed on talent management, making up deficits and ensuring that leisure time is spent in a useful way. The organisation works to relieve the burden on foster parents by organising family camps and outings, providing professional assistance and donations. The network runs its own self-help groups, which further strengthen the community. Appropriate religious education is provided, as requested by the foster parents. The organisation is also committed to strengthening minority identity. Voluntary deaconry services include recreational activities, talent development, outreach and fundraising.[19]

The active participation of pastors in the implementation of the professional programme has a significant impact on its content. This is particularly true for individual and group work, as well as for community events. By integrating Christian values and Reformed catechetical knowledge into the programme, pastors contribute to the overall development of the system. Their presence also has a positive impact on the children and young adults in child and young adult protective care, providing opportunities for spiritual support, increasing self-confidence and fostering emotional and intellectual growth. Employees also benefit from the presence of pastors, as they provide spiritual support and guidance, which increases job satisfaction and effectiveness. The inclusive and welcoming workplace culture developed by pastors respects employees of different faiths and beliefs; however, attitude formation continues to be

17 Ibid., p. 5.
18 Organisational and Operational Regulations of the West-Hungarian Reformed Child Protection Centre, 2022, p. 8.
19 Váradi, 2013, p. 120.

a great challenge. Social missions run by the Reformed Church in Hungary, such as the Roma mission, bring added value to the community. These programmes support marginalised groups and promote social integration and inclusion.

The benefits, both in absolute and relative terms, of maintaining the Diaconia are the significant contributions to the effectiveness of social care and inclusion services, particularly in comparison with state-run child protection services. The combined knowledge and resources of the programmes maintained by the Diaconia and operated by the MRSZA lead to more effective solutions. For example, donor coordination can be used to complement physical care, or service elements provided by different missions, and can be integrated into professional work (e.g., the Roma mission's career guidance programme has been extended to children in care).

5. Good Practices in the Child Protection System of the Reformed Church

5.1. Bibles for Children in Residential Homes

The aim of the project in 2023 was to give every child living in a residential home their own bible, which they can read and through which they can grow closer to the loving God, thereby strengthening their self-assessment, self-esteem and relationships. We are convinced that, by studying God's Word with a prayerful heart, the Christian man interprets and seeks God's guidance; it is important to learn how to do this and to make it a daily habit. Daily bible reading is like a meal for the Christian man, without which he withers away, but through which he gains new life and strength. Children need to be shown and taught how to read and interpret Scripture, so that reading becomes an experience. Group bible studies strengthen this aspect. The guiding principle of the initiative implemented by the Children's Protection Centre of the Reformed Church in West Hungary was: 'All Scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, for [c]instruction in righteousness, that the man of God may be complete, thoroughly equipped for every good work.' (2 Timothy 3:16-17).

The plan outlined above is designed to involve supporters and donors in the purchase of bibles. The strategy was to organise fundraising events during church visits or institutional occasions, where "bible tickets" were sold, with the proceeds going towards the purchase of bibles. These occasions were excellent opportunities to showcase the services of the institution and to raise awareness of the ministry for children, indirectly gaining more publicity and support for their activities. This approach not only facilitated the allocation of resources for the purchase of bibles but also created a closer link between the institution and the supportive environment, thus strengthening the common goal of ministry for children.

Each child is given a bible appropriate for his or her age group. The distribution of the bibles is part of a celebration in each home. A regularly occurring series of age-specific bible studies follows. Since active involvement with the congregation is also important, the local pastors and religion teachers also participate in bible studies.

5.2. Talent management

Many of the foster parents in the Reformed network place great emphasis on the development of gifted children, where a marked interest in sport, learning or art is noted. In cases where children are highly skilled in a particular sport, the cost of transport to competitions, equipment and nutritious meals will increase. Where young people are studying music, the financial burden on the foster parent is increased by the maintenance or the purchase of an instrument. Not all talented children can be nurtured in a school setting, so transport and extra lessons are again an extra cost. To help cover these costs, the Diaconia provides quarterly financial and, occasionally, material support. Some foster parents are unable to provide for the development of their children in a school setting. The school cannot provide the development teacher or specialist locally, so the development has to be carried out in either another institution or another municipality, which places an increased burden on the foster parent in terms of both time and transport costs. Financial support is also provided to cover this cost.

The vast majority of foster parents live in a family home with a garden. Toys and equipment appropriate for younger children are provided and installed everywhere. In our experience, there is an increasing number of trampolines, which can be an important tool for children's development. In the foster carers' advisory service, professionals pay great attention to ensuring that children spend an appropriate period of time outdoors, according to the season, the weather and their age. To help and support this aspect, the Diaconia provides developmental and sports equipment (bicycles, scooters, gymnastics balls, trampolines, sledges, running bikes, small plastic motorbikes, skipping ropes, etc.).

The network's priority is to promote learning and develop talent. However, in order for this work to have a real impact on everyday life, it is necessary to compensate for the limited financial resources of foster families by providing equipment. The active involvement and development of foster parents is also necessary in order to ensure the appropriate and targeted use of resources. One of the network's main goals is to help our children catch up in their studies and to nurture their talents. Helping children and young people to develop their potential – indirectly preventing early school leaving — promotes healthy lifestyles for children. Within this, talent assessment, talent development and care are given priority. These activities cannot be carried out effectively without establishing and maintaining effective working relationships and partnerships. The Reformed child protection system strives to develop excellent partnerships with all professionals, institutions and municipalities involved in the development of the child and his or her family.

Children in care receive psychological assessments and development assistance in nearby facilities. Determining the psychological status of the children in care and assessing their abilities and skills are primarily the tasks of external psychologists. The Diaconia supports this work with group self-awareness activities. Gifted children without psychological or emotional problems are relatively simple to care for professionally, as they can manage independently in many respects. Talent management

for gifted children with problems, on the other hand, requires additional group work. Low academic achievement, anxious or inhibited, or mentally disabled children may be problematic. Their development is hindered not by a lack of abilities, but by difficulties in their personality development, e.g., increased anxiety, mood swings, emotional disturbance, vegetative psychic symptoms, insufficient development of motivation, will, etc. These children are included in the personality development group (30 hours). The mentors are university students who carry out their work on a voluntary basis. The mentored children and students work on the basis of a development plan in the form of distance learning on the Internet, based on the individualised material sent to them by the mentors.

Talent management competence development is closely linked to the work of the Specialised Services for Children and Young People in the Directorate-General for Social Affairs and Child Protection.

5.3. Mental Health Support Through Pastoral Care

A distinctive feature of the Reformed child protection system is that mental health and pastoral care support provided by pastors can be an alternative to psychiatric care for those suffering from mental health problems or trauma. Their presence is perhaps one of the least visible, yet essential parts of this work. Children are visited in their own environment, giving them the opportunity to approach the pastor with their problems and to feel that they are important. Experiential community-strengthening gatherings provide an opportunity for reaching out and listening, where authentic and Christ-centred spirituality can be expressed in the context of summer camps, meetings and family days, for children and professional staff alike.

It is critical to build good relationships with local pastors and to sensitise them to child protection. Good communication and the availability of "basic services" can lead to joint success for the child, the professional network and the local community.

6. Summary

The Reformed Church in Hungary has a long history of protecting children, with the care of orphans being a target area of the church's diaconal work for several centuries. Today, the Diaconia of the Reformed Church carries out the ecclesiastical methodological tasks related to child protection institutions maintained by the church, with the content and scope designated by the respective sectoral management. The Diaconia performs tasks in the field of child protection that would otherwise be the responsibility of the state under applicable legislation. The Reformed Church's programme for the protection of children is based on scripture, which provides direction and guidance. The young child is considered a full human being from the point of view of biblical anthropology, and the child's God-given dignity is defended by Jesus. The Diaconia of the Reformed Church in Hungary is responsible for the maintenance, administrative and management tasks of social and child welfare institutions. It

carries out its tasks in accordance with the secular law in force and the internal legal regulations of the Reformed Church in Hungary and the Diaconia — and it liaises with state and government bodies in the social and guardianship administration. It is responsible for the maintenance of the two Reformed Roma colleges, assuming the tasks related to the employment of social missionary pastors from the defunct Reformed Mission Centre, and the tasks of the National Roma Mission and the related HEKS project from the MRE Synod Office.

The Reformed Church in Hungary's Diaconia program provides social care and inclusion services for children and young adults in protective care. Led by pastors who integrate Christian values and Reformed catechetical knowledge into the program, the Diaconia provides basic child welfare services, including a transitional home for families and children's services. The Lorántffy Zsuzsanna Reformed Maternity Home for Families offers provisional lodging and assistance with living arrangements for homeless mothers and their children. The Sure Start Children's Houses provide a preventive service to young children with socio-cultural disadvantages, compensating for developmental delays and strengthening parental competence. The program also supports marginalised groups and promotes social integration and inclusion through initiatives such as the Roma mission. The Hungarian Reformed Child Protection Service – Foster Parent Network was officially founded in 2008, providing high-quality services to contribute to improving the quality of care. The program provides financial and material support for the development of gifted children, including transport to competitions and extra lessons. The program also provides developmental and sports equipment to foster families and promotes talent assessment, development, and care. Overall, the Diaconia program aims to provide spiritual support and guidance to both employees and those in care, while also promoting social integration and inclusion for disadvantaged children and young adults.

The Reformed child protection system offers mental health and pastoral care support as an alternative to psychiatric care for children suffering from mental health problems or trauma. Pastors visit children in their own environment, providing them with a safe space to approach with their problems. Experiential community-strengthening gatherings, such as summer camps and family days, offer opportunities for authentic and Christ-centred spirituality. Building good relationships with local pastors and sensitising them to child protection is critical to joint success for the child, the professional network, and the local community.

Bibliography

Literature Reference

Holy Bible, New King James Version. Available at: https://thekingsbible.com/.

Sárospataki Református Lapok, 1923. április 15. (XVIII. évfolyam, 15. szám).

Váradi, I. (2010): 'A Magyarországi Református Egyház szerepvállalása a gyermekvédelemben' in *Confessio.*

Strategic Documents and Other Institutional Sources

Organisational and Operational Regulations of the Diaconia of the Reformed Church. Current legislation, 01 January 2022.

Organisational and Operational Regulations of the Lorántffy, p. Zsuzsanna Reformed Maternity Home for Families, 01 January 2022.

Organisational and Operational Regulations of the East-Hungarian Reformed Child Protection Centre, 01 January 2022.

Organisational and Operational Regulations of the West-Hungarian Reformed Child Protection Centre, 01 January 2022.