

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 Rädde 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 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 Rights¹⁵ 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 Rights²⁸ 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 (‘UNCRC’), 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.
- Klaffkowski, 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.
- Miształ, 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.