

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

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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; France¹ 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 of 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=ioylyxM-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’.

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).

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