Logos Universality Mentality Education Novelty: Social Sciences
ISSN: 2284-5747 | e-ISSN: 2458-1054
Covered in: ERIH PLUS, CEEOL, J- GATE, CrossRef, CrossCheck, Google Scholar, Ideas RePeC, Econpapers, Socionet, KVK, WorldCat, ICI Journals Master List - Index Copernicus.

2023, Volume 12, Issue 1, pages: 24−36 | doi: https://doi.org/10.18662/lumenss/12.1/76

Rights of the Minors in International and European Legislation after the Application of The New York Convention of 1989

Simion BELEA

Dr., Technical University of Cluj-Napoca, North University Centre of Baia Mare, Baia Mare, Romania,
simionbla@yahoo.com

Abstract: This article provides a reflection on the rights of minors after the New York Convention of 1989 and its entry into force. The international legal system, as well as the European one, recognizes important rights of minors, guaranteeing them an increasing autonomy in accordance with their ability to evolve. The primary aspect of the Convention is constituted by the superior principle of the child, which must be taken into account first and foremost in any situation involving minors, and not only in proceedings concerning them. After a reflective argumentation, the paper concludes with the hope that new educational policies will be devised among EU states that would be able to develop strategies so that every minor, without exceptions, can exercise their right to citizenship.

Keywords: *Convention; Minors' Rights; Parental Authority; Disability; Vulnerable.*

How to cite: Belea, S. (2023). Rights of the minors in international and European legislation after the application of the New York Convention of 1989. *Logos Universality Mentality Education Novelty: Social Sciences, 12*(1), 24−36. https://doi.org/10.18662/lumenss/12.1/76

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Introduction

Today all children are equal, as any distinction between natural and legitimate children has been definitively overcome. There are several legal areas related to the personal and patrimonial interests of the minor. With regard to the acts of the minor, it is necessary to distinguish between the rights of the person and types of capacity, such as capacity for discernment, right to listen, special capacities, etc. The age limits on the capacity to act and the responsible functions of legal representatives derive directly from the right to protection and care which is necessary for the child's well-being. International regulatory sources have always paid great attention to the rights of the child, establishing protective and sanctioning measures in numerous UN instruments, many inspired by the Universal Declaration of Human Rights. This is due to the 1989 New York Convention on the Rights of the Child, ratified by Romania through Law No 18 of 28 September 1990. On the basis of the specific guarantees for the protection of children's rights, as holders of rights already proclaimed by the 1948 Universal Declaration of Human Rights, and taking into account the particular phase of human existence through which they "pass through", i.e. childhood and adolescence, the above-mentioned Convention recognises a wide range of rights for all minors - including foreigners, even if they are illegal: the right to non-discrimination, the right to participation, to protection, to live with their families, to health, to education, to a standard of living sufficient for development, the right to be detained only as a measure of last resort and in separate facilities from adults.

2. The Evolution of Child Protection Rights

Children's rights have evolved in certain aspects, in a similar way with the broader recognition of human rights. Gradually, their rights were predominantly declared in the form of protection since minors, for a long period of time, had been considered passive subjects of the law, incapable of asserting and defending their rights. In the past, minors were in a condition of human inferiority and absolute incompleteness, making them dependent on others. The policy regarding children's rights in the last century was expressed through a series of important legislative instruments that organized the protection of minors' rights until they became of age. The interest in the ***child*** is identified with achieving their right to education as fully as possible by creating conditions that can foster the broadest and most complete development of their personality, gradually emphasizing their autonomy and

responsibility. The first international instrument mentioning children's rights is the *Minimum Age Convention*[1] , adopted by the International Labour Conference in 1919[2] . The first significant mention of children's rights can be found in the Declaration of the Rights of the Child within the framework of the League of Nations in 1924[3]. This document, preceding the *Universal Declaration of Human Rights*, was not yet conceived as an instrument capable of enhancing the value of the child as a rights holder but rather as a recipient. However, it did urge states to guarantee protection for children. The drafting of the declaration was in response to the dramatic events characterizing the early 1900s, especially during World War I. The disappearance of millions of people, the issue of widows and orphans, brought to the forefront the question of safeguarding future generations. The declaration is considered a collaborator of the International Red Cross, which developed a short and concise text, presented to the International Union for Child Welfare, and subsequently unanimously adopted by the League of Nations[4]: the *Geneva Declaration of 1924*[5]. The declaration states the material and emotional needs of minors but maintains an assistance-oriented system. After the dissolution of the League of Nations, progress was observed in the project for a Charter of Children's Rights.In the year 1959, the Declaration of the Rights of the Child

[1] The International Labour Organization (ILO) committed to establishing international standards for the limitation of child labour as early as 1919 through Convention No. 5, which sets the minimum age for employment in industry at the age of 14.

[2]

[3]The Declaration of the Rights of the Child is a document drafted in Geneva on February 23, 1924, by the League of Nations in response to the consequences of World War I on children. The document was adopted by the General Assembly of the League of Nations in 1924.

[4] The League of Nations, or The Society of Nations was an intergovernmental organization established after World War I in 1919, following the Paris Peace Conference, which concluded the bloody conflict. It served as a precursor to the United Nations. The League was the first international security organization with the primary objective of maintaining global peace. You can find more information about it here: https://ro.wikipedia.org/wiki/Societatea_Na%C8%9Biunilor

[5] The Geneva Declaration of the Rights of the Child is a document that was drafted in 1924 by the League of Nations in response to the devastating consequences that World War I had, especially on children. To create this document, the League of Nations referred to the Children's Charter, written in 1923 by Mrs. Eglantyne Jebb within the framework of the Red Cross. She later founded the non-governmental organization Save the Children in 1919. Subsequently, with the establishment of the United Nations (UN), the declaration was approved on November 20, 1959, by the UN General Assembly and was revised in 1989, followed by the International Convention on the Rights of the Child.

was drafted and approved by the United Nations General Assembly. This document maintains the same intentions as those outlined in the 1924 Geneva Declaration but calls upon states to make a more pragmatic commitment to its implementation and dissemination. The Declaration introduces the concept of ownership of children's rights, referring to the Universal Declaration of Human Rights of 1948 and the 1924 Declaration. It establishes a series of rights that were not included in the Universal Declaration of Human Rights, including the prohibition or admission of work for minors who have not reached the minimum age, the prohibition of using children in productive activities that could harm their health or hinder their physical and mental development, and the right of the child to receive special care.

Although the Declaration remained non-binding for many states, it recognizes the principles of non-discrimination and adequate legal protection for the child (Cortes, 2008), both before and after birth. It reaffirms the prohibition of any form of child exploitation and calls for the education of children in peace, harmony, and tolerance. Thus, a new path was paved for the establishment of conventions having the value of binding legal norms until the beginning of the 21st century. With the dissemination of new sociological, historical, and psychoanalytic knowledge, along with the first legislative innovations, numerous educators, psychologists, sociologists, and magistrates have sought to promote the idea that the child should be the central subject of provisions concerning them, and that their interests should be prioritized over those of adults.

3. The 1989 New York Convention on the Rights of the Child

Adopted by the United Nations General Assembly through Resolution 44/25 on November 20, 1989, the Convention on the Rights of the Child (CRC) has become one of the primary instruments for the protection of human rights within the UN system[6]. This is due to both the rapid succession of signatures and ratifications by member states of the organization and the content of the Convention, which not only develops but also substantially complements the existing instruments up to that point[7].

[6] The Convention on the Rights of the Child was adopted by the United Nations General Assembly on November 20, 1989. Romania took up the Convention through the adoption of Law No. 18/1990 for the ratification of the Convention on the Rights of the Child (published in the Official Gazette No. 314 on June 13, 2001).
Source: https://ro.wikipedia.org/wiki/Conven%C8%9Bia_asupra_Drepturilor_Copilului , accessed on June 12, 2023.

[7] It was only with the emergence of the Convention on the Rights of the Child and Adolescents, adopted by the United Nations General Assembly in 1989, that an epochal

From the former perspective, the Convention garnered an unprecedented consensus. It was opened for signature on January 26, 1990, and within just six months, it reached the number of ratifications required for it to come into force, which occurred on September 2, 1990. The pace of ratifications and accessions continued, making it the international human rights instrument with the largest number of state parties. From the latter perspective, the Convention goes beyond merely clarifying the content and scope of principles already expressed in previous conventions and documents, particularly the two International Covenants of December 16, 1966: the International Covenant on Civil and Political Rights (ICCPR[8]) and the International Covenant on Economic, Social and Cultural Rights (ICESCR[9]). These, along with the Universal Declaration of Human Rights of December 10, 1948, constitute the so-called United Nations Declaration of Human Rights.

Furthermore, the Convention includes several pivotal articles in which the rights of the child are applied by all signatory states. For example, Article 4 of the Convention establishes that signatory states commit to adopting all necessary legislative, administrative, and other measures to fulfil the recognized rights of children and young people (Fadiga, 2015). These rights encompass their well-being, autonomy, the right to education, the right to rest and recreational activities, the right to participate in cultural and artistic activities, the freedom of association, assembly, expression, the right to seek, receive, and disseminate information. Legally, the Convention has outlined the guidelines concerning the age of majority, recommending that signatory

turning point occurred. Minors are finally recognized as active subjects of law and, as such, capable of making decisions, having a voice, and being holders of obligations and responsibilities, as well as rights and warranties of protection.

[8] The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly through Resolution 2200A (XXI) on December 16, 1966, and it came into force on March 23, 1976, in accordance with Article 49 of the Covenant. Article 49 allowed the Covenant to come into force three months after the submission of the thirty-fifth instrument of ratification or accession. The Covenant commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of expression, freedom of assembly, electoral rights, and the right to a fair and equitable trial. Accessed on August 30, 2023. https://ro.wikipedia.org/wiki/Pactul_interna%C8%9Bional_pentru_drepturile_civile_%C8%99i_politice

[9] The International Covenant on Economic, Social, and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, through GA Resolution 2200A (XXI), and it came into force on January 3, 1976. Accessed on June 23, 2023. https://ro.wikipedia.org/wiki/Pactul_interna%C8%9Bional_pentru_drepturile_economice,_sociale_%C8%99i_culturale

states review their legislation regarding the enrolment of young people in the military or their recruitment. For instance, the main field of application *ratione personae*[10] of the Convention in New York is limited to children who have not reached the age of 18, except where the domestic law of the state allows them to reach the age of majority earlier. This rule was extensively discussed during negotiations, both concerning the notion of the age of majority and the initial moment of protection. On the other hand, a definition of the child based solely on the concept of majority was deemed undesirable due to the diversity of solutions according to national legal systems. The reference to 18 as the age of majority, criticized by some developing countries, was maintained to provide special protection to children up to that age and to act as an incentive for countries that establish a younger age, including for military service, freedom of conscience, religion, freedom to be heard, and the right to express an opinion on any matter of interest to the child.

The four fundamental principles of the Convention:

a) Non-Discrimination (Article 2): The rights enshrined in the Convention must be guaranteed to all minors. This article specifies that each state commits to respecting and ensuring the rights of every child, regardless of race, colour, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth, or other status. In this regard, each state is called upon to implement all necessary provisions to protect every child or adolescent from any form of discrimination.

b) Best Interests of the Child (Article 3): In all laws, actions, public or private initiatives, and in any problematic situation, the best interests of the child/adolescent must be a primary consideration. This article establishes that the best interests of the child must be understood as a paramount consideration. This means that for every decision, parents and relevant institutions must be guided by the children themselves in the decisions that concern them.

c) Right to Life, Survival, and Development of the Child (Article 6): States must allocate the maximum available resources to protect the life and healthy development of children, including through cooperation among them. This article emphasizes the importance of considering the child's best interests as a paramount consideration. This means that for every decision, parents and

[10]**Ratione personae** is a Latin expression that means "in relation to the person." It refers to the situation in which the jurisdiction of a judicial body is determined or attracted by a specific characteristic or quality of the person involved (e.g., individuals who have the status of being a member of the military).

relevant institutions must be guided by the children themselves in the decisions that concern them.

d) The Right to be Heard (Article 12): This article refers to the right of children to be heard in all decision-making processes that concern them and the corresponding obligation for adults to give due weight to their views. However, this article defines how every child or adolescent is ensured the opportunity for their rights to be respected by all public institutions, such as the Parliament, the Government, or the School. Therefore, each state must implement all necessary legislative and administrative measures to ensure compliance with Convention rights.

4. The Rights of Minors with Disabilities

Another important international treaty that advances the principle of equality is the United Nations Convention on the Rights of Persons with Disabilities. The Convention, in Article 7, admits that children with disabilities have the full enjoyment of all human rights and fundamental freedoms on an equal basis with others. Article 30 of the Convention acknowledges the right of persons with disabilities to participate in cultural, recreational, and sports activities and to have leisure time. Additionally, the same Article 30 contains a specific reference to children with disabilities, obliging States to take all appropriate measures *to ensure that children with disabilities have equal access to recreational activities, games, and sports, including those in the school system* (Article 30(5)(d) - CRPD).

Article 2 of the United Nations Convention, which constitutes its necessary complement, requires states to respect the rights set out in the Convention for every child and young person, without discrimination, including those based on disability.

There are three fundamental ideas supporting the above provisions:

a) Children with disabilities are rights holders, not beneficiaries of support measures or economic benefits, more or less generous.

b) The rights they possess are the same rights that any child or young person has: the right to live a dignified life, to fulfil themselves as individuals, and to be active participants in an open society.

c) It is the responsibility of states to take the necessary measures to ensure that disability does not constitute an obstacle to the full and effective exercise of these rights.

To understand the meaning of the terms used in the Convention and their concrete implications, it is necessary, first of all, to focus on the concept of "disability." Defining this term is not simple. (Bernardini, 2016) The term

refers to very different life situations related to deficiencies—congenital or acquired, temporary or permanent—in motor, sensory, intellectual, or psycho-social faculties of a person. Perceiving the word "*disability*" as synonymous with *non-impairment*, however, helps to understand how human rights norms address this phenomenon. In this regard, another normative text is helpful: the United Nations Convention on the Rights of Persons with Disabilities, dated December 13, 2006, in force for almost all countries worldwide. (Seatzu, 2008, p. 535)[11]

The Convention rejects the idea that humanity can be divided into two groups: on the one hand, individuals who possess a normal set of skills (because they walk on their feet, can perform arithmetic operations, know how to behave in a socially convenient or acceptable manner, etc.), and on the other hand, those who, for some reason, lack one or more of these abilities (Franzina & Aquironi, 2019, p. 293). This binary idea, centred on the parameter of normality, is contrasted by the Convention with the image of a complex and heterogeneous humanity, composed of unique individuals who differ from each other in terms of abilities and ways of life but are equal in dignity. (Barnes & Mercer, 2010)[12].

Diversity − in skills such as appearance, language, culture, etc. − is fundamentally, according to international human rights law, a characteristic feature of the human condition. According to the Convention, disability does not describe a person's impairment; rather, disability is the condition in which that person finds themselves due to the fact that society, as organized, hinders them from fully enjoying their rights[13]. Disability, understood in the terms just described, does not speak about the person who has a condition; it arises in society - that is, from its rules and practices - and in society it can be overcome. In this sense, it is a challenge: to renew society itself, making it inclusive. There are several international norms that recognize the fundamental rights of minors with disabilities.

Article 23 of the Convention on the Rights of the Child and Article 7 of the Convention on the Rights of Persons with Disabilities specifically refer to

[11] A/RES/61/106. On the Convention, see the extensive literature. (Seatzu, 2008, p. 535).
[12]On the abandonment of the so-called "ableist paradigm" and the emergence of a conception of disability centered on the rights of the individual and their inclusion, see C. Barnes, G. Mercer (2010).
[13] In the words of General Comment No. 9 on the Convention on the Rights of the Child (CRC), adopted on February 27, 2007, by the United Nations Committee on the Rights of the Child, disability consists of "a combination of social, cultural, attitudinal, and physical obstacles which children with disabilities encounter in their daily lives" (CRC/C/GC/9, The Rights of Children with Disabilities, p. 2).

minors experiencing a disability condition. Other norms, on the other hand, have a more general scope, either referring to all minors, regardless of disability, or because, on the other hand, they refer to all persons with disabilities, regardless of their age. This is the case, for example, with the provisions established in the European Convention on Human Rights (ECHR). International human rights protection, in addition to being developed on multiple levels (universal and regional levels), is largely reflected in normative texts with a special character, specifically addressing certain categories of rights, people, or social phenomena. The Convention on the Rights of Persons with Disabilities provides, in Article 7, paragraph 2, that (*in all actions*) concerning a child with disabilities, the best interests of the child - meaning the interest of preserving and promoting their psychophysical well-being, dignity, their right to full development as an individual and in society - shall be a primary consideration.

5. The rights of minors in Europe

The Council of Europe and its member states have adopted various legal instruments, programs, and guidelines to address the issues facing minors in Europe today. Minors in the member states of the Council of Europe are entitled to many rights protected by the European Convention on Human Rights, the United Nations Convention on the Rights of the Child, and other international human rights instruments. The promotion and protection of the rights of minors are one of the top priorities of the European Union. In this context, the term "*fundamental rights* of the European Union" is used to express the concept of human rights that are essential for individuals residing within the Union. These rights are defined in Article 1 of the Charter of Fundamental Rights of the European Union, also known as the Charter of Nissa. It was solemnly proclaimed for the first time on December 7, 2000, in Nissa, and for the second time, in an adapted version, on December 12, 2007, in Strasbourg by the Parliament, the Council, and the Commission. It became legally binding upon the entry into force of the Lisbon Treaty on December 1, 2009, which consists of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). The Charter of Fundamental Rights of the European Union protects the rights enjoyed by people, in general, and *minors in particular*, in the European territory and is imposed as a current and effective device for the protection and promotion of the rights and freedoms of citizens in the face of developments and changes in society.

Article 24 of the Charter of Fundamental Rights, entitled "The Rights of the Child," emphasizes that *minors have the right to the protection and care necessary*

for their well-being, and it underscores that, in all actions relating to children, their best interests must be a primary consideration. This objective derives from international commitments, as all member states have ratified the United Nations Convention on the Rights of the Child. In accordance with this regulatory framework, the European Union adopts a comprehensive approach to ensure that measures related to children's rights are fully integrated into European policy on fundamental rights (Rieti, 2010). Parental responsibility plays an important role in European policies concerning minors. It is essential to know that each parent has the so-called *parental responsibility* or the complex of responsibilities of parents towards their children, which includes the right to their education, upbringing, and maintenance until they reach the age of majority (or emancipation) and economic independence. In fact, a minor is considered legally incapacitated until they reach the age of majority, which implies the need for a legal representative, i.e., a person who can act on their behalf in performing valid legal acts. Parents play this important role by exercising parental responsibility.

Likewise, the European Union is committed to guaranteeing the rights of minors also in terms of external actions[14], directing its foreign policy decisively and unambiguously towards combating violence against minors, child labour exploitation, child sex tourism, or the involvement of minors in armed conflicts.

It is worth noting that, unlike other regions of the world, the member countries of the European Union have uniformity in defining the age at which a person reaches the age of majority, which is identified as 18 years old. This age is also taken into account by Regulation (EU) 2019/1111 of the Council of June 25, 2019, on jurisdiction, recognition, and enforcement of decisions in matrimonial matters and matters of parental responsibility.

Even the so-called "United Nations Standard Minimum Rules for the Administration of Juvenile Justice," approved by the United Nations on November 29, 1985, are recognized by EU member states. These rules acknowledge the accused minor's right to all procedural guarantees, including the right to defence, the right to parental or guardian assistance, the right to be represented by a lawyer or to request the appointment of a lawyer ex officio, the right not to be subjected to extrajudicial measures that involve community service or other measures without the consent of the minor or a

[14] Each initiative must be implemented in accordance with the guidelines set by the Commission in the communication dated February 5, 2008, COM(2008) 55 final, with the following subject: *"Reserving a Special Place for Children in EU Foreign Policy and the Related Action Plan."*

parent or guardian. It also emphasizes that juvenile justice is an integral part of the national development process of each country.(Bottaro, 2007).

Moreover, the European Convention on the Exercise of Children's Rights provides that minors should be given sufficient freedom in procedures that concern them before a judicial authority. They are entitled to the following rights, which they can request to benefit from:

a) To receive any relevant information.

b) To be consulted and express their opinion.

c) To be informed about the possible consequences of accepting their opinion and the possible consequences of any decision.

The Framework Decision of the European Union dated March 15, 2001, regarding the position of the victim in the criminal proceedings (2001/220/JAI), specifies that particularly vulnerable victims, including minors, should benefit from specific treatment that optimally addresses their situation. In this regard, in 2006, the European Commission adopted the document "*Towards an EU Strategy on the Rights of the Child."*

Indeed, it is known that criminal justice procedures are not always sensitive to the needs of child victims of crimes. For this reason, considering future activities on the subject of crime victims and children's rights within the Union, it was considered urgent to raise the issue of child victims at the European Union level, especially in terms of:

- identifying it as a priority of the European Union.
- highlighting the most urgent issues: child trafficking and prostitution, violence against children, discrimination, child poverty, social exclusion, child labour, health, and education.

In this way, the Commission and the Parliament have required EU candidate states to demonstrate that they have ensured the stability of institutions and guarantee democracy, respect for human rights, and especially those of children.

Conclusions

Although the focus of the New York Convention is on the rights of children and adolescents, the text has all the characteristics of an international treaty, and over the years different organisations involved in the protection of these rights have produced versions of the Convention in different languages, adapted to children and adolescents in order to promote their rights. The rights of minors should be seen as a precious public good and a strategic defence for combating poverty, especially educational poverty, as stated in the

EU Strategy on the Rights of the Child. Furthermore, the European institutions as well as − in particular the European Commission seem determined to help minors develop their potential as involved and responsible citizens. For this to happen, participation in democratic life must start from childhood. All minors have the right to express their opinion on issues that concern them and to be taken into account. An important issue in EU justice is that it becomes the guarantor for the protection of the juvenile suspect/defendant, who must be protected in the context of criminal proceedings. Every minor has the right to adequate living conditions and equal opportunities from the earliest stages of life. Education on children's rights should develop greater awareness among minors that they are holders and bearers of fundamental rights, which would enable them to play an appropriate role in expressing their views, demands and needs; this participatory process could ensure more effective interventions for them.

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