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Among the international legal instruments having the force of *jus cogens*, the international conventions occupy prominent places which, according to The Statute of the International Court of Justice,[1] are "whether general or particular" and are the first source[2] of the international law (cf. Art. 38 al.).

Amongst the said international conventions, prepared and adopted by the United Nations (UN), the Council of Europe , and other particular international organizations, are those that provide for and protect the Rights of the Child, hence the need to examine and evaluate the text for the better understanding of the international juridical status of the child, which the world's states must take into consideration both in their national laws, and with regard to the specific actions they should be involved in order to ensure the child's conditions for his or her dignified life and the proper juridical protection.[3]

[1] For the text of this statute — which has been published at the same time as the Charter of the United Nations was, and signed in San Francisco on June 26, 1945, see: www.anr.gov.ro/docs/legislatie/international/Carta_organizatiei_Natiunilor_Unite_ONU_pdf.

[2] The second, the third, and the fourth source of the Internal Law are: (a) International Customary Law; (b) General Principles of International Law; and (c) Jurisprudence of the International Court of Justice.

[3] As regards this type of protection, see N.V. Dură: "Les droits fondamentaux de l'homme et leur protection juridique." *Annals of the Lower Danube University in Galati*,

1. European Convention on Human Rights (Rome, 1950)

The European Convention on Human Rights, which mentions the right to the family life among other fundamental human rights,[4] recognizes the child's right to identity since birth (cf. Art. 8 al. 2). The same convention includes the family life — the child being a constitutive part thereof — among the rights of the person,[5] and grants its juridical protection, "although it does not define it,"[6] as the UN's International Covenant on Civil and Political Rights (1966) does. Indeed, for this covenant, "the family is the natural and fundamental group unit of society," which "is entitled to be protected by society and the State" (Art. 23, par. 1).

The convention did not define the family but, at the same time, the European Court of Justice did not make — in its jurisprudence — the distinction between the "legitimate" family and the "natural" one. Besides, for the European Court of Justice, the family is not established through marriage, "but it is a factual relation."[7]

The European Court of Justice does not exclude "the relation between a natural father and a child born out of wedlock" as — for the Court — the family is not restrained "solely to the relations based on wedlock," but also to the relations "of the parties that live together outside the wedlock." Therefore, for the Court, "the child born in such a relation is part of the familial cell from the moment when he or she was born," and the

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Fascicle XXII, Law and Public Administration, 2008, no. 2, pp. 19—23; Idem: "General Principles of European Union Legislation Regarding the Juridical Protection of the Human Rights." *Journal of Danubius Studies and Research*, 2013, vol. III, no. 2, pp. 7—14.

[4] See, N.V. Dură: "Drepturile şi libertăţile omului în gândirea juridică europeană. De la 'Justiniani Institutiones' la 'Tratatul instituind o Constituţie pentru Europa' [Human Rights and Freedoms in European Juridical Understanding. Since 'Justiniani Institutiones' to 'The Treaty for a European Constitution']." *Annals of Ovidius University*, Series: Law and Administrative Science, 2006, no. 1, pp. 129—151; Idem: "The Fundamental Rights and Liberties of Man in the E.U. Law." *Dionysiana*, 2010, IV, no. 1, pp. 431—464; Idem: "The Rights of the Persons who Lost Their Autonomy and Their Social Protection." *Journal of Danubius Studies and Research*, 2012, vol. II, no. 1, pp. 86—95; Idem: "General Principles of European Union Legislation Regarding the Juridical Protection of the Human Rights." *Journal of Danubius Studies and Research*, 2013, vol. III, no. 2, pp. 7—14.

[5] According to Art. 8 of The European Convention on Human Rights, everyone has "the right to respect for his private and family life."

[6] C. Bîrsan: *Convenţia europeană a drepturilor omului. Comentariu pe articole* [European Convention on Human Rights. Comments on Articles]. Vol. I. Bucharest 2005, p. 626.

[7] Ibidem.

relations between the parents and the child, which represent the "family life," are established even if, on the moment of the child's birth "the parents do not live together or the relation has previously been broken." [8]

Therefore, in the understanding of the Court, the relations between the parents and their children — which have always been considered as one of the main issues of the family life — are not strictly determined by the *matrimonium* (the civil or religious marriage), but the birth of the child. Moreover, the right to family life occurs on the very moment when the child is born, because "prior to the birth there has been no family life between the child and his or her parents, as there have not been any social relationships."[9]

At the same time, we should also remark that the Court "does not see in the common life the condition without which one cannot talk about the family life between the parents and their underage child. According to the jurisprudence of the Court, the relationship created by a wedlock between the two spouses must be considered family life regardless of their living together or apart." Consequently, the child born from this union is naturally a part of the relationship; hence, "the simple fact of his birth generates between him and his parents a relationship as constitutive part of the family life, though they do not live together with him."[10]

Finally, according to the jurisprudence of the Court, although "certain subsequent events can break this connection, on the moment of birth the family life exists."[11]

In the opinion of certain European jurists, the family life can only exist "based either on the simple juridical relationship or the one of kinship, without the need of being coupled with the common life."[12] The same jurists underline that the family life between the parents and the children does not take into consideration the way in which "the relation between the parent and child is established, as the family life does exist regardless of the fact that the relationship is biological or juridical. Thus, between the parent and his or her child there is a family life even if the child is born out of wedlock, because the parenthood is not established based on such relationship."[13]

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[8] A. Drăghici: *Protecția juridică a drepturilor copilului* [Juridical protection of Children]. Bucharest 2013, pp. 166—167.

[9] R. Chiriță: *Convenția europeană a drepturilor omului. Comentarii şi explicații* [European Convention on Human Rights. Comments and explanation]. Ediția a II-a. Bucureşti 2008, p. 437.

[10] Ibidem.

[11] Ibidem.

[12] Ibidem, p. 438.

[13] Ibidem.

Certainly, the family life is not suspended after the divorce of the parents and when one parent is authorized to take care of the child! Besides, the European Court of Justice considers that "the relationships between the parents are not relevant from the licit or illicit point of view […]. Instead, in order to admit the existence of a family life between a biologic parent and his or her child, it is required that the parenthood of that specific person is beyond any doubt."[14]

In case of adoption, the European Court of Justice decided that "the relationships between the adoptive parents and the child are family relations, even if they did not ever live together."[15]

As regards "the family life" of homosexual couples, "the European Court of Justice stipulated that according to the permanent jurisprudence of the Convention authorities, the long-term homosexual relations between two males do not fall under the application of the right to family life as protected by Article 8."[16] However, as regards the relations between "the children and the homosexual parents, the European Court of Justice […] stipulated against the solutions expressed by certain national courts that it is not possible to interdict a principle that is included in the Convention, based on which a homosexual parent is not entitled to be authorized to raise and educate his child."[17]

In the situation of the couple consisting "of one trans-sexual, that is a woman that became a man, and his concubine who gave birth to a child after the so-called A.I.A.D (Artificial Insemination by Anonymous Donor)," the instance of European Convention of Human Rights considers that we are dealing with "a significant element of the familial life."[18] Beyond any doubt, the European Court of Justice only took into consideration the existence of the family life "between the trans-sexual person that lives together with the mother and the child born in the conditions mentioned above, because the Court did not accept — as a magistrate of the Court said — the possibility to acknowledge that specific person as a parent as a result of admitting this method. In order to decide that, the Court used as a starting point — the same magistrate concluded — the remark that there is no European legislation granting parenthood rights to the trans-sexual persons."[19]

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[14] Ibidem.

[15] Ibidem, p. 439.

[16] C. Bîrsan: *Convenția europeană a drepturilor omului. Comentariu pe articole*..., p. 634.

[17] Ibidem.

[18] Ibidem, p. 635.

[19] Ibidem.

2. European Convention on the Adoption of Children (Strasbourg, April 24, 1967)

On April 24, 1967, the member states of the Council of Europe adopted in Strasbourg the European Convention on the Adoption of Children.[20]

In the Preamble of this convention, the states considered that although "the institution of the adoption" exists "in their legislations," yet there are "differing views as to the principles which should govern adoption and differences in the procedure for effecting, and the legal consequences of, adoption."

For the authors of the convention, "the child" was a person that "has not attained the age of 18, is not and has not been married, and is not deemed in law to have come of age" (Art. 3).

Over time, the matrimonial full age — along with the transition from the child to the grown-up status — was different from one epoch to another. For example, during the Roman times, in order to conclude a marriage *secundum praecepta legum* (according to the legal provisions), that is to proceed a *iustas nuptias* (legal weddings), the both parties must have reached the adulthood (ἡβη-, *pubertas*). The *masculi* (men) must have reached 14 years of age, that is *puberi*, and the *feminae* (women) 12 years of age, that is *nubiles*.[21] On the other hand, in the Byzantine Empire, the age of 16 for men and 14 for women was required.[22] This age limitation beyond which the young couples could have concluded the marriage, perpetuated until the modern age, when the law-maker enforced the age of 18 as adulthood for men and 16 for women, with dispensation for the last one down to the age of 15.[23]

Based on Art. 7 of the convention from 1967, "a child may be adopted only if the adopter has attained the minimum age prescribed for the purpose, this age being neither less than 21 nor more than 35 years"

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[20] Romania has adhered to this convention through the Law no. 15 issued on March 15, 1993, published in *The Official Gazette* no. 67 of March 31, 1993, with the following specification: "Romania will not apply the provisions of Art. 7, according to which the minimum age of the adopter cannot be under 21 years and over 35," because in the Romanian law the minimum age is 18 years, without the maximum limitation."

[21] *Justiniani Institutiones*, lb. I, cap. X.

[22] See, *Digestae*, XXIII, 1, 9; *Codex Justinianus*, V, 60, 3; *Basilicales*, XXVIII, 1, 7 şi XXXVIII, 19; *Prochiron*, IV, 2, etc.

[23] The law issued in Romania during the communist regime stipulated the possibility of conferring matrimonial dispensation to the female part "only after reaching the age of 15, not under this age" (I. N. Floca: *Drept canonic ortodox* [Orthodox Canonical Law]. Vol. II. Bucharest, 1990, p. 77).

(Art. 7, par. 1). However, the convention admitted the right of the states to stipulate in their national legislations to "permit the requirement as to the minimum age to be waived […] when the adopter is the child's father or mother," and "by reason of exceptional circumstances" (Art. 7, par. 2), without any specification concerning such circumstances.

The convention also provided the obligation of the competent authority (a trial court or an administrative authority) not to grant an adoption "unless it is satisfied that the adoption will be in the interest of the child" (Art. 8, par. 1), and "until appropriate enquiries have been made concerning the adopter, the child and his family" (Art. 9, par. 1).

The same convention has also stipulated that "the number of children who may be adopted by an adopter shall not be restricted by law" (Art. 12, par. 1), and "if adoption improves the legal position of a child, a person shall not be prohibited by law from adopting his own child not born in lawful wedlock" (Art. 12, par. 3).

Such provisions regarding the age under which a person can still be considered a child, the adopter's age, the conditions of adoption, etc. have also been reiterated in the texts of the conventions issued later on.

3. Minimum Age Convention (June 26, 1973)

The Minimum Age Convention was adopted on June 26, 1973, which was intended for and succeeded in gradually replacing up until then existing (international) legal instruments in force that regulated the minimum age for admission to employment (cf. the Preamble).

Since the first convention on the minimum age for admission to employment entered into force in 1919, until the 1973, other similar conventions had also been elaborated, adopted, and published; however, those conventions had only taken into account a specific sector of activity (industry, agriculture, underground/miner work, etc.).

The signatory states of the 1973 Convention, put forward by the International Labour Organization, undertake "to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons" (Art. 1).

As regards "the minimum age," the Convention provided that it shall not be "less than the age of completion of compulsory schooling and, in

any case, shall not be less than 15 years" (Art. 2, al. 3), but in the member states whose economy and educational facilities "are insufficiently developed" may "initially" specify "a minimum age of 14 years" (Art. 2, al. 4).

At the same time, the Convention provides that "National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work" (Art. 7, al. 1).

4. European Convention on the Legal Status of Children Born Out of Wedlock (Strasbourg, October 15, 1975)

Beginning with the Preamble of the European Convention on the Legal Status of Children Born out of Wedlock[24] — adopted in Strasbourg on October 15, 1975 — the member states of the Council of Europe declared that their desire is to facilitate "the adoption of common rules in the field of law" and make efforts "to improve the legal status of children born out of wedlock" intended to effectively contribute as well to harmonize the laws of the member States in this field."

After the convention adopted in October 1975, "the father and mother of a child born out of wedlock shall have the same obligation to maintain the child as if it were born in wedlock" (Art. 6, par. 1). Thus, a child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family, as if it had been born in wedlock" (Art. 9).

5. European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (Luxemburg, May 20, 1980)

On May 20, 1980, in Luxemburg, the Council of Europe adopted the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Chil-

[24] Romania has adhered to this Convention through the Law no. 101 issued on September 16, 1992, published in *The Official Gazette* no. 243 of September 30, 1992.

dren.[25] In the Preamble of this Convention it was mentioned that the recognition and application of the decisions concerning the custody of a child results in providing "greater protection of the welfare of children," and "the right of access of parents is a normal corollary to the right of custody." At the same time, it was mentioned the fact that in order to solve the "cases where children have been improperly removed across an international frontier," the EU member states expressed their desire to establish "legal co-operation between their authorities."

It is noteworthy that "for the purposes of this Convention," that is the convention of May 20, 1980, a "child" means "a person of any nationality, so long as he is under 16 years of age and has not the right to decide on his own place of residence under the law of his habitual residence, the law of his nationality or the internal law of the State addressed" (Art. 1, al. a).

According to the understanding of the authors and of the signatory parties of this convention, the child is a "person" that is entitled to the status of "child" until 16 years of age, not 14, as previously issued international documents stipulate.[26]

As regards the right of access of parents, the convention of May 1980 established that "the competent authority of the State addressed may fix the conditions for the implementation and exercise of the right of access taking into account, in particular, undertakings given by the parties on this matter" (Art. 11, al. 2), and in such cases where "no decision on the right of access has been taken or where recognition or enforcement of the decision relating to custody is refused, the central authority of the State addressed may apply to its competent authorities for a decision on the right of access, if the person claiming a right of access so requests" (Art. 11, al. 3).

According to the provisions of the 1980 Convention, the customary law — as a source of the international law — can be invoked in order to obtain the recognition or enforcement of a decision related to children custody and the restoration of such custodies. At the same time, the text of the Convention expressly provides that it "shall not exclude the possibility of relying on any other international instrument in force between the State of origin and the State addressed or on any other law of the State addressed not derived from an international agreement for the purpose of obtaining recognition or enforcement of a decision" (Art. 19).

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[25] Also published in *The Official Gazette*, Part I, no. 367 of May 29, 2003.

[26] As, for instance: The Geneva Declaration of the Rights of the Child; The New York Declaration of the Rights of the Child, UN, November 20, 1959, etc.

Therefore, in the present situation the convention allows not only the possibility of relying on any other international legal instrument, as, for example, the UN General Assembly declarations, international covenants, treaties etc., but also the invocation of the customary national law, whose value is recognized as source of the EU member states law, and *ipso facto*, of jus cogens in matters of children custody and custody commitment.

Moreover, the 1980 Convention recognized also the value of source for the international law in the field of child custody to the positive national law (*jus scriptum*), namely the law of the EU member states. As regards this reality, the convention provides that when "two or more Contracting States have enacted uniform laws in relation to custody of children or created a special system of recognition or enforcement of decisions in this field," they "shall be free to apply, between themselves, those laws or that system in place of this Convention or any part of it," provided that "the States […] shall notify their decision to the Secretary General of the Council of Europe" (Art. 20, al. 2).

Thus, this uniform legislation in the field of child custody — based on the positive national law and the customary law of two or more contracting states — could have been applied in place of the provisions of this convention.

6. Convention on the Civil Aspects of International Child Abduction (Hague, October 25, 1980)

Designed to protect children "internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access" (Preamble, the EU member states adopted the Convention of Hague issued on October 25, 1980 on the Civil Aspects of International Child Abduction[27]).

The text of the convention[28] provides *expressis verbis* that the application of the convention — the first objective of which was to ensure "the prompt return of children wrongfully removed to or retained in any Con-

[27] For the text of the convention, see: http://www.copii.ro/afisareact6982.html?id_act=260.

[28] Romania has also adhered to the convention through the Law no. 100/1992 (*The Official Gazette* no. 243 of September 30, 1992).

tracting State" (Art. 1, par. a) shall cease to apply "when the child attains the age of 16 years" (Art. 4).

According to Art. 11, "The judicial or administrative authorities of Contracting States" are those who "shall act expeditiously in proceedings for the return of children." However, the authority is not enabled to act for the return of the child "if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views" (Art. 11, par. a).

The convention enabled the "central authorities" of the contracting states to initiate or promote "either directly or through intermediaries, […] to make arrangements for organising or securing the effective exercise of rights of access, and the conditions to which the exercise of these rights may be subject" (Art. 21).

The signatory States of the Convention of May 20, 1980 have emphasized as well that such provision "shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States" (Art. 35).

7. Convention on the Rights of the Child (New York, November 20, 1989)

The basic principles formulated in the Declaration of the Rights of the Child (November 20, 1959) can be also, to a large extent, found in the text of the Convention on the Rights of the Child[29] adopted by the UN General Assembly on November 20, 1989 and entering into force on September 2, 1990.

The convention clearly provided the right of the children to take advantage of both exercising the human rights, and their juridical protection. Indeed, the 1989 Convention provided it to be compulsory for the state parties to "respect the right of the child to freedom of thought, conscience and religion" (Art. 14, par. 1) and to consider his or her capacity of "forming his or her views," "of the age and maturity of the child" (Art. 12, par. 1).

[29] The Convention of the Rights of the Child (http://www.copii.ro/afisareactdece.html?id_act=241). Romania has ratified this Convention through the Law no. 18/1990, published in *The Official Gazette of Romania*, Part. I, no. 109 of September 28, 1990 and re-published in *The Official Gazette of Romania*, Part I, no. 314 of June 13, 2001.

The Preamble of the Convention on the Rights of the Child, adopted by the UN General Assembly on November 20, 1989, reminded that in the Universal Declaration of Human Rights the United Nations proclaimed that "childhood is entitled to special care and assistance," hence "the need — the authors justified — to extend particular care to the child […], stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 […]."

According to the understanding expressed by the Convention on the Rights of the Child of 1989, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (Art. 1). Thus, under the provisions of the convention every human being below the age of 18 is considered to be a "child."

Amongst others, the states parties were under the obligation to take "all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members" (Art. 2, par. 2). At the same time, the convention stipulates that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" (Art. 3, par. 1).

The same convention provided that "States Parties recognize that every child has the inherent right to life" (Art. 6, par. 1). Besides, the UN General Assembly provided — in the Second Optional Protocol to the International Covenant on Civil and Political Rights, adopted on December 15, 1989, that "abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,"[30] including the child, who is considered by the convention a "human being below the age of eighteen years" (Art. 1).

The 1989 Convention also provided the right of the child "to know and be cared for by his or her parents" (Art. 7, par. 1). In the particular case that the children are involved in "abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence" (Art. 9, par. 1).

The convention has also stipulated the right of the child "to maintain on a regular basis […] personal relations and direct contacts with both parents," who "reside in different States." Therefore, according to

[30] The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Preamble (Romania has ratified this Covenant on January 25, 1991, through the Law no. 7 published in *The Official Gazette of Romania*, Part I, no. 18 of January 26, 1991).

the convention, there must be respected the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention" (Art. 10, par. 2).

Another important issue that the Convention underlines is the obligation of the state parties to "assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, […]" (Art. 12, par. 1); thus, the child is entitled "to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law" (Art. 12, par 2).

The convention also stipulates that the state parties "shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (Art. 19, par. 1).

The child "temporarily or permanently deprived of his or her family environment […] shall be entitled to special protection and assistance provided by the State" (Art. 20, par. 1). Such protection includes "foster placement," "adoption," or "placement in suitable institutions for the care of children."

When considering a solution in such situations, the Convention adopted by UN General Assembly on November 20, 1989, expressly demands that "due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (Art. 26, par. 2).

According to the provisions of the convention, the recognition of the benefits legally provided shall take into consideration "the resources and the circumstances of the child and persons having responsibility for the maintenance of the child […]" (Art. 26, par. 2).

The same convention provided the obligation of the states parties to take "all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the States Party and from abroad" (Art. 27, par. 4)

The same provisions of the convention dispose that the child has to be educated in the spirit "of respect for the child's parents, his or her

own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own" (Art. 29, par. 1 let. c), in order to take the responsibility of "life in a free society, in the spirit of [...] equality [...] and friendship among all peoples, [regardless of their] ethnic, national and religious [...] origin" (Art. 29, par. 1 let. d).

Raising the child in the spirit of respect for the "national values" of his country also includes the responsibility for life in the spirit of understanding and respect for the values of the persons belonging to other ethnic, national, and religious groups. Besides, Art. 30 of the convention provides *expressis verbis* that every child of "indigenous origin" or belonging to "ethnic, religious or linguistic minorities" shall not be "denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion" (Art. 30).

The Convention of 1989 also provided the obligation of the states parties to ensure respect for the "Rules of International Humanitarian Law" and to apply them "in armed conflicts" for "the protection of the child" (Art. 38, par. 1), hence their obligation to "refrain from recruiting any person who has not attained the age of fifteen years into their armed forces" (Art. 38, par. 3).

8. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague, May 29, 1993)

The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption was adopted in Hague, on May 29, 1993,[31] and Romania ratified the document through the Law no. 84/18.10.1994, published in *The Official Gazette*, Part. I, n. 298/21.10.1994.

Following Art. 6, par. 1 of the convention, through the Law 84/18.10.1994 the Romanian Parliament established "The Romanian Committee for Adoptions as central authority in charge with fulfilling the obligations under the Convention" (Art. 2).[32]

[31] Available in Romanian at: http://lege5.ro/gratuit/gu3tgnbr/conventia_de_la_haga_asupra_protectiei_copiilor.

[32] Article amended by the Law no. 274 of June 21, 2004 (Art. 13 on July 15, 2004).

Among others, the signatory states declared that "intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin."

The fact of the same signatory states declaring the preparation and adoption of the convention also stemmed from their belief regarding "the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children" (cf. the Preamble).

According to the expression mentioned by the signatory states, the preparation of the convention adopted in Hague in May 1993 took into account "the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children […]" (the Preamble).

The general principles of international law, that is the text of the third source of the convention, represented not only the legal background of this document, but also the documentary reference that guided and advised them in their approach and evaluation of the way the protection of the children is applied and in the cooperation between the states in terms of international adoption.

The Hague Convention of May 29, 1993, provides that the adoption involves the recognition of three real facts, which are:

"a. (recognition of) the legal parent-child relationship between the child and his or her adoptive parents;

b. (recognition of) parental responsibility of the adoptive parents for the child;

c. (recognition of) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made" (Art. 26, par. 1).

9. Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children (Hague, October 19, 1996)

The EU member states adopted on October 19, 1996 the Hague Convention on parental responsibility and protection of children.[33]

The preparation and adoption of the Convention was decided by the urge need of revising "the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors" and the desire of the signatory States "to establish common provisions to this effect." In order to fulfil such needs the signatory States took "into account […] the United Nations Convention on the Rights of the Child of 20 November 1989" (the Preamble).

The Convention adopted on October 19, 1996, replaced both the "Convention relating to the settlement of guardianship of minors, signed in Hague on June 12, 1902," and the "Convention concerning the powers of authorities and the law applicable in respect of the protection of infants, signed on October 5, 1961" (Art. 51).

The 1996 Convention has been signed as well by the states which were members of the Hague Conference on Private International Law (Art. 57, par. 1).

Similarly to the previous conventions, this one has also been prepared in English and French languages (Art. 63, let. g).

Starting with Art. 1, the authors of the 1996 Convention intended to stress that the term "parental responsibility" includes "parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child" (Art. 1, par. 2).

Thus, the convention provides that the "parental authority, or any analogous relationship of authority," that is the guardian or other legal representative, has not only rights and obligations, but also "powers" applied to the children — according to the law — "from the moment of theirbirth […] until they reach the age of 18 years" (Art. 2). In other words, the age of majority is not any longer 16 years, as the previous conventions provided, but 18 years of age.

According to the provisions of Art. 29, par. 1 of the Convention adopted in Hague on October 19, 1996, Romania designated in 2007 "The

[33] Published in *Official Journal of the European Union*, L 151/39 of June 11, 2008 RO, and in *The Official Gazette of Romania*, Part I, no. 895 of December 28, 2007.

National Authority for the Protection of the Child, as central Authority to discharge the duties which are imposed by the Convention [...]" (Law no. 361/2007, Art. 2 par. 1).[34]

As regards the articles 23, 26, and 52 of the convention, the Romanian Law no. 361/2007 issued for the ratification of the convention provides that such articles "allow the Contracting States the flexibility to a certain degree, intended to apply a simpler and quicker procedure of recognizing and enforcing the legal decisions [...]. Therefore, a decision taken in a EU Member State on a matter regarding the Convention is recognized and enforced in Romania through the application of the internal rules relevant for the community law" (Art. 2, par. 2).

Thus, Romania, alike other EU member states, reserved the right to apply the provisions of the convention according to the national relevant rules belonging to the community law. Besides, the investigation and application of the international conventions in the all EU member states has been done through the respective rules belonging to the customary law, which is an undeniable reality.

As regards "Article 60 corroborated with the paragraph (1) of Art. 55 of the Convention," Romania reserved the right to both "take measures for the protection of the goods of a child situated on the national territory," through the "powers of the Romanian authorities," and "the right to deny the parental responsibility or the measures that are incompatible to those taken by the national authorities regarding such goods" (Art. 3, par. b).

10. Convention of the International Labour Organization (Geneva, June 17, 1999)

The 87th Session of the General Conference of the International Labour Organization — called in Geneva on June 17, 1999 — adopted the Convention of the International Labour Organization (no. 182/1999), concerning the prohibition and immediate action for the elimination of the worst forms of child labour.

[34] The Law no. 361/2007 for the ratification of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children, enforced in Hague on October 19, 1996, published in *The Official Gazette*, Part I, no. 895 of December 28, 2007.

For the signatory states of the convention "the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action" was an obvious and urgent reality, hence "the importance of free basic education," which contribute to the prohibition of these forms of labour (the Preamble).

According to the provisions of the convention,[35] "the term 'child' shall apply to all persons under the age of 18" (Art. 2).

For the Convention no. 182/1999, the worst forms of child labour are:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. (Art. 3)

11. Convention on Contact Concerning Children (Strasbourg, May 15, 2003)

The Convention on Contact Concerning Children — published by the Council of Europe member states in Strasbourg on May 15, 2003 and adopted on July 17, 2006 — recognized "not only parents but also children as holders of rights"; consequently, the convention provided the replacement of the notion "access to children" with the notion of "contact concerning children" (the Preamble).

The signatory states of this convention agreed "on the need for children to have contact not only with both parents but also with certain other persons having family ties with children and the importance for parents and those other persons to remain in contact with children, subject to the best interests of the child" (the Preamble).

[35] Romania has ratified this convention through the Law no. 203/2000, published in *The Official Gazette*, Part I, no. 577 of November 17, 2000 (http://www.copii.ro/afisareactd602.html?id_act=268).

According to this Convention, "child" means "a person under 18 years of age in respect of whom a contact order may be made or enforced in a State Party" (Art. 2, c), and "family ties" means "a close relationship such as between a child and his or her grandparents or brothers or sisters, based on law or on a family relationship" (Art. 2, d).

The signatory states of this convention clearly specified that "in their mutual relations, States Parties which are members of the European Community shall apply Community rules and shall therefore not apply the rules arising from this Convention, except in so far as there is no Community rule governing the particular subject concerned" (Art. 20, par. 3). Besides, the authors of the Convention also referred to the provisions of the previous conventions, namely the conventions adopted on May 20, 1980 and November 20, 1989 (cf. the Preamble).

According to Art. 25 of the said convention, "no reservation may be made in respect of any provision of this Convention," that is the convention published on July 17, 2006 "on contacts concerning children." Nevertheless, this provision did not allow the signatory states or those that adopted the Convention[36] to apply it according to their national legislation or their own interests.

12. Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague, November 23, 2007)

The convention adopted in Hague on November 23, 2007 refers to the recovery of the support on international level for the children and other members of the family; the main purpose of the Convention was to ensure the effective recovery of this maintenance support for children outside the country.

On June 9, 2011, the Council of Europe adopted the decision on approving the Convention of Hague signed on November 23, 2007; however, after this procedure some Council of Europe member states changed their previous statement.

[36] Romania has adopted and published it in *The Official Gazette*, Part I, no. 257 of April 17, 2007.

13. European Convention on the Adoption of Children (Revised) (Strasbourg, November 27, 2008)

The revised European Convention on the Adoption of Children,[37] — which has been adopted on November 27, 2008 in Strasbourg and enforced as an international document on April 4, 2009, stipulates that the revision of the Hague Convention signed on May 29, 1993 on child protection and co-operation in Respect of Intercountry Adoption was needed because "although the institution of the adoption of children exists in the law of all member states of the Council of Europe, differing views as to the principles which should govern adoption and differences in adoption procedures and in the legal consequences of adoption remain in these countries" (the Preamble).

Starting with the Preamble of this European Convention adopted in Strasbourg on November 27, 2008, the member States of the Council of Europeand other signatory states reaffirmed the principle according to which "the best interests of the child shall be of paramount consideration."

According to the provisions of the convention, "an adoption shall be valid only if it is granted by a court or an administrative authority […]" (Art. 3), which should not consider the adoption as valid unless "it is satisfied that the adoption will be in the best interests of the child" (Art. 4, par. 1).

The two authorities — namely the court and the competent administrative authority — must also take into account the "consent of the child" when he or she has the "sufficient understanding" and "on attaining an age which shall be prescribed by law" (Art. 5, par. 1 let. b).

The revised European Convention on the Adoption of Children considers a "child" the person who "has not attained the age of 18, is not and has not been married, is not in and has not entered into a registered partnership and has not reached majority" (Art. 1, par. 1).

The authors of the convention have also underlined that "this Convention covers only legal institutions of adoption which create a permanent child-parent relationship" (Art. 1, par. 2) and "a child may be adopted only if the adopter has attained the minimum age, […] this minimum age being neither less than 18 nor more than 30 years."

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[37] The convention has been signed by Romania as well in Strasbourg, on March 4, 2009, and ratified by the Romanian Parliament through the Law no. 138/2011, published in *The Official Gazette of Romania*, Part I, no. 515 of July 21, 2011.

The convention has also provided the obligation of "an appropriate age difference between the adopter and the child, [...] preferably a difference of at least 16 years" (Art. 9, par. 1). However, the law can provide — the text of the convention mentions — the possibility of derogation for the minimum age or the age difference, "having regard to the best interests of the child" (Art. 9, par. 2).

According to the provisions of Art. 7, par. 1 of the convention, the law shall permit a child to be adopted only under the condition that the adoption is concluded "by two persons of different sex," "who are married to each other" and "by one person." However, the convention provides the possibility of the EU to extend the scope of adoption application to "same-sex couples who are married to each other or who have entered into a registered partnership together" (Art. 7, par. 2).

The presentation, however brief, of the texts of the thirteen international conventions analysed in this paper offers the possibility to easily understand that the rights of the child are considered basic human rights which are recognized as soon as the child is born.

The scientific approach consisting in the investigation and examination of these international conventions concerning the rights of the child additionally offered the possibility to remark that such international documents having binding juridical force — presented chronologically, according to their coming into force — also evinces the evolution of the world states awareness concerning both the need of harmonizing the legislation in this field, and the obligation of taking concrete and effective measures on ensuring the legal protection of the children.

As a result of the affirmation of the norms and principles of the international law and establishing concrete measures aiming at ensuring the juridical protection of the child, the signatory states of above discussed conventions will certainly contribute to the enforcement of the international law of the family — of which "the child" is an integral part — that must represent one of the permanent preoccupations of the international organizations that promote and protect the human rights, including the rights of the child.

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Nicolae V. Dură, Teodosie Petrescu

Children's Rights
Provisions of Certain International Conventions

Summary

The subject of the article is the analysis of thirteen international Conventions concerning the rights of the child presented chronologically, according to their coming into force. Such an analysis gave the authors the opportunity to remark that such international documents having compulsory juridical force also evince the evolution of the world states awareness concerning both the need of harmonizing the legislation in this field, and the obligation of taking concrete and effective measures on ensuring the legal protection of the children.

Nicolae V. Dură, Teodosie Petrescu

Les droits de l'enfant
dans les réglementations des conventions internationales

Résumé

Les treize conventions internationales concernant les droits de l'enfant — présentés ici de manière chronologique conformément à leur mise en application — sont l'objet de l'analyse effectuée par les auteurs du présent article. Cette analyse a donné aux auteurs la possibilité de dénoter que le contenu de ces documents internationaux, ayant force de loi, démontre la croissance de la conscience des États dans le monde entier à propos

du besoin d'uniformiser la législation dans ce domaine et d'inciter à entreprendre des démarches concrètes et efficaces visant à garantir la protection juridique des enfants.

Mots clés : statut de l'enfant dans les conventions internationales, protection juridique, responsabilité des parents

Nicolae V. Dură, Teodosie Petrescu

I diritti del bambino nelle norme delle convenzioni internazionali

Sommario

L'oggetto dell'analisi eseguita dagli autori dell'articolo è rappresentato da tredici convenzioni internazionali sui diritti del bambino, presentate in ordine cronologico secondo la loro entrata in vigore. Tale analisi ha dato agli autori la possibilità di annotare che il contenuto di questi documenti internazionali che hanno validità legale assoluta, segnala una crescita della consapevolezza degli stati di tutto il mondo sulla necessità di uniformare la legislazione in tal campo e l'impegno ad intraprendere passi concreti ed efficaci mirati a garantire la tutela giuridica dei bambini.

Parole chiave: status del bambino nelle convenzioni internazionali, tutela giuridica, responsabilità dei genitori