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## The Children's Rights Regulations and Rules of International Law

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## The Children's Rights Regulations and Rules of International Law

**Keywords:** international legal instruments, the quality of a parent, the legal protection of the children

Children's rights are provided for in the texts of numerous international legal instruments, some of which were subject of our study: declarations, pacts, resolutions, regulations, recommendations and the Charter of Fundamental Rights of the European Union; the texts of these instruments provide a first-hand documentary reference not only in the drafting and publication process of the Rules and Regulations on Children's Rights, but also of its principles.

In order to better capture the way in which — for nearly a century — the international community has approached and perceived the issue of the child, I would like to present these international legal instruments in the chronological order of their occurrence.

### 1. The Declaration of the Rights of the Child (Geneva, September 26, 1924)

On September 26, 1924, the General Assembly of the League of Nations adopted the Geneva Declaration of the Rights of the Child,<sup>1</sup>

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<sup>1</sup> The Declaration of the Rights of the Child (Geneva, September 26, 1924) — [http://ro.wikipedia.org/wiki/Declara%C8%9Bia\\_de\\_la\\_Geneva\\_din\\_1924\\_privind\\_Drepturile\\_Copilului](http://ro.wikipedia.org/wiki/Declara%C8%9Bia_de_la_Geneva_din_1924_privind_Drepturile_Copilului).

whose initiator and overseer was Eglantyne Jebb, founder of the international organization “Save the Children.” This first international instrument which provided for the need for the special legal protection of the child actually reiterated five basic principles outlined and adopted by the international organization “Save the Children,” in Geneva, on February 23, 1923. According to the first principle, “The child shall have the means necessary to its normal development, both material and spiritual.”

Thus, in 1924 the child’s right not only to the “material,” but also the “spiritual” means was recognized, means which should be provided by the State or by the society in which he or she is born.

In the subsequent international documents, the reference to such “spiritual” means — which, of course, cannot be separated from the “spiritual-religious” ones — was either allusive or totally ignored.

The second principle of the Geneva Declaration obliged the States to feed the “hungry child,” to care for the “sick child,” to help the “retarded child,” to rehabilitate the “delinquent child” and to protect “the orphan and the widow.”

However, in international law, the Geneva Declaration did not have the power of *ius cogens*, but served only as “guidelines that countries may or may not follow.”<sup>2</sup>

## 2. The Universal Declaration of Human Rights (New York, 1948)

In 1948, the General Assembly of UN adopted and proclaimed the Universal Declaration of Human Rights.<sup>3</sup> Among other things, the Declaration states that “the family” — which includes the two spouses (male and female) and the children — is “the natural and fundamental group unit of society and is entitled to protection by society and the State” (Art. 16).

The declaration states that “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection” (Art. 25, par. 2) and that “Parents have a prior right to choose the kind of education that shall be given to their children” (Art. 26, par. 3).

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<sup>2</sup> Ibidem.

<sup>3</sup> For the full text see: [http://www.anr.gov.ro/docs/legislatie/internationala/Declaratia\\_Universala\\_a\\_Drepturilor\\_Omului.pdf](http://www.anr.gov.ro/docs/legislatie/internationala/Declaratia_Universala_a_Drepturilor_Omului.pdf).

Thus, the declaration provides for the parents' right to choose — for their children — the form of education (public, private or religious) according to their own religious beliefs.<sup>4</sup> Since that date, this right has been consistently stated in the text of international legal instruments,<sup>5</sup> claiming thus the children's right to the freedom of religion,<sup>6</sup> one of the fundamental human rights.

The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, provided not only for the right of every human being “to education,” but also the obligation of States to ensure “free, at least in the elementary and fundamental stages” education (Art. 26, par. 1), whose beneficiaries are, of course, the children.

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<sup>4</sup> See N. V. DURĂ, C. MITITELU: “International Covenant on Economic, Social and Cultural Rights.” In: 8th Edition of International Conference *The European Integration — Realities and Perspectives* Proceedings. Galati. 2013, pp. 130—136; C. MITITELU, M. MITRA RADU: “International Covenant on Civil and Political Rights.” *Journal of Danubius Studies and Research*, 2013, vol. III, no. 2, pp. 47—57; N. V. DURĂ: “The rights and fundamental freedoms and their legal protection. The right to religion and to religious freedom.” *Orthodoxy*, LVI (2005), no. 3—4, pp. 7—55; IDEM: “Christian religious values and ‘the cultural, religious and humanist heritage’. ‘Secularism’ and ‘religious freedom’.” In: Symposium *Modernity, postmodernity and religion*, Constanta, May 2005. Iași 2005, pp. 19—35; IDEM: “The right to human dignity (dignitas humana) and religious freedom. From *natural jus* to *jus cogens*.” In: *Ovidius University Annals. Series: Law and Administrative Sciences*, 2006, no. 1, pp. 86—128; IDEM: “The Law no. 489/2006 on Religious Freedom and General Regime of Religious Cults in Romania.” *Dionysiana*, II (2008), no. 1, pp. 37—54.

<sup>5</sup> See, N. V. DURĂ: “Instruction and Education within the themes of some International Conferences. An evaluation of the subjects approached by these from the angle of some Reports, Recommendations and Decisions.” In: International Conference, *Exploration, Education and Progress in the third Millennium*, Galați, 24th—25th of April 2009, vol. II, pp. 203—217.

<sup>6</sup> See IDEM: “Religious freedom and the general regime of religious cults in Romania.” *Ovidius University of Constanta Annals. Series: Theology*, 2009, Year VII, no. 1, pp. 20—45; IDEM: “The European juridical thinking, concerning the human rights, expressed along the centuries.” *Acta Universitatis Danubius. Juridica*, 2010, no. 2 (VII), pp. 153—192; IDEM: “Proselytism and the Right to Change Religion: The Romanian Debate.” *Law and Religion in the 21st Century. Relations between States and Religious Communities*. Eds. S. FERRARI, R. CRISTOFORI. Ashgate Publishing Limited, England 2010, pp. 279—290; IDEM: “The Fundamental Rights and Liberties of Man in the EU Law.” *Dionysiana*, 2010, IV, No. 1, pp. 431—464; IDEM: “Proselytism and the right to change religion in the light of Romanian legislation.” *Orthodoxy*, 2010, year I s.n., no. 2, pp. 11—21; IDEM: “Religious Freedom in Romania.” *Theologia Pontica*, 2012, year V, no. 3—4, pp. 9—24; 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.

### 3. The Declaration of the Rights of the Child (New York, November 20, 1959)

The Declaration of the Rights of the Child proclaimed by the UN General Assembly on November 20, 1959 by Resolution no. 1386 (XIV) sets forth ten principles, namely:

1. Every child shall enjoy all the rights set forth in this Declaration “without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.”
2. The laws of the UN States must have “the paramount interest of the child” for he or she to enjoy “special protection” and benefit from “the given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.”
3. Every child “shall be entitled from his birth to a name and a nationality.”
4. Every child should benefit from “social security,” hence his or her right to “adequate nutrition, housing, recreation and medical services.”
5. Every child “who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.”
6. Typically, every child should grow “in the care and under the responsibility of his parents, and [...] in an atmosphere of affection and of moral and material security.” For the children without families, and for those who do not have the necessary means of subsistence, the “Society and the public authorities shall have the duty to extend particular care.” Also, “payment of State and other assistance towards the maintenance of children of large families is desirable.”
7. Every child “is entitled to receive education, which shall be free and compulsory, at least in the elementary stages.” At the same time, it was provided that, by the education received — from parents and school — the child must develop “his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society.”
8. “The child shall in all circumstances be among the first to receive protection and relief.”

9. A child cannot be admitted “to employment before an appropriate minimum age,” that is 14 years, and cannot be “permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.”
10. Every child must be “protected from practices which may foster racial, religious and any other form of discrimination.”

Among other things, the Declaration of the Rights of the Child, proclaimed by Resolution 1386 (XIV) of the UN General Assembly on November 20, 1959, provided that every child should enjoy “all the rights set out in this Declaration” without distinction or discrimination regarding his or her “religion” (Principle 1).<sup>7</sup>

The same Declaration provided that every child should have the right to “develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity” (Principle 2).<sup>8</sup>

As such, any form of religious education — whether state, private or confessional — must aim at the development of these qualities in a healthy and normal environment and in conditions of freedom and dignity, hence the obligation of state authorities to ensure the way in which the educational, religious process takes place, in all three types of schools (public, private, and religious).

#### 4. The International Covenant on Economic, Social and Cultural Rights (New York, December 16, 1966, entered into force on January 3, 1976)

The International Covenant on Economic, Social and Cultural Rights<sup>9</sup> — adopted by the United Nations General Assembly on December 16, 1966 by Resolution 2200 A (XXI), which entered into force on January 3,

<sup>7</sup> The Declaration of the Rights of the Child (New York, November 20, 1959) — [http://ro.wikipedia.org/wiki/Declara%C8%9Bia\\_drepturilor\\_copilului](http://ro.wikipedia.org/wiki/Declara%C8%9Bia_drepturilor_copilului)

<sup>8</sup> Ibidem.

<sup>9</sup> International Covenant on Economic, Social and Cultural Rights — <https://www.law.georgetown.edu/rossrights/chapters/documents/originalICCPROP.pdf>. For the Romanian text of the Pact — which was ratified by Romania in October 1974, and published in *The Official Gazette of Romania*, Pt. I, no. 146 of 20 November 1974. See [http://www.irido.ro/file.php?fisiere\\_id=79&inline](http://www.irido.ro/file.php?fisiere_id=79&inline)

1976 — requires the States Parties to provide “the widest possible protection and assistance [...] to the family [...] while it is responsible for the care and education of dependent children” (Art. 10, par. 1).

The same International Covenant<sup>10</sup> obliges the States Parties to take “special measures of protection and assistance [...] on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.”

These states were also required to protect “children and young persons [...] from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law” (Art. 10, par. 3).

## 5. The International Covenant on Civil and Political Rights (New York, December 16, 1966, entered into force on March 23, 1976)

The International Covenant on Civil and Political Rights<sup>11</sup> — adopted by the United Nations General Assembly on December 16, 1966 and entered into force on March 23, 1976 — also reiterated that “every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State,” that “every child shall be registered immediately after birth and shall have a name” and, finally, that “every child has the right to acquire a nationality” (Art. 24). The States Parties to this International Covenant<sup>12</sup> also instituted a “Human Rights Com-

<sup>10</sup> Regarding its provisions, see N. V. DURĂ, C. MITITELU: “International Covenant on Economic, Social and Cultural Rights.” In: 8th Edition of International Conference *The European Integration — Realities and Perspectives*. Proceedings. Danubius University Press, Galati 2013, pp. 130—136.

<sup>11</sup> International Covenant on Civil and Political Rights — [http://ec.europa.eu/justice/policies/privacy/docs/16-12-1996\\_en.pdf](http://ec.europa.eu/justice/policies/privacy/docs/16-12-1996_en.pdf). For the Romanian text of the Pact, which was ratified by Romania on October 31, 1974, and published in *The Official Gazette of Romania*, Pt. I, no. 146 of 20 November 1974.

<sup>12</sup> Regarding its provisions, see MITITELU, M. MITRA RADU: “International Covenant on Civil and Political Rights.” *Journal of Danubius Studies and Research*, 2013, Vol. III, no. 2, pp. 47—57.

mittee,” consisting of “nationals of States Parties,” who shall be “persons of high moral character and recognized competence in the field of human rights” (Art. 28, par. 1 and 2).

Under the Optional Protocol to the International Covenant on Civil and Political Rights<sup>13</sup> — adopted by UN General Assembly by Resolution 2200 A (XXI) of December 16, 1966 and entered into force on March 23, 1976 — the committee was empowered “to receive and consider, [...], communications from individuals claiming to be victims of the violations of any of the rights enunciated in the Covenant” (the Preamble). As such, children are also entitled to address to this Committee whenever they become victims of the violation of the rights set for them by this covenant.

## 6. The Beijing Rules (1985)

In 1985, the United Nations adopted the “Beijing Rules,”<sup>14</sup> which represent the UN standard of minimum rules on the administration of juvenile justice and “the first international document detailing the rules for the administration of justice in what concerns juveniles, focusing on children’s rights.”<sup>15</sup>

These “rules” — involving “a person aged up to 18 years” — were primarily focused on the “nature of the punishment for an offense” and on determining whether the offender “is or is not a minor.”<sup>16</sup>

The text of these “rules” sets a number of ten “fundamental principles.” One of them states that “the goals of juvenile justice must include, on the one hand, to promote the welfare of minors, and, on the other hand, the reaction of the authorities commensurate with the nature of the offense and with the individual offender.”<sup>17</sup>

Another principle postulates that, for the juveniles in conflict with the law, “the death penalty and corporal punishment will be abolished for all crimes.”<sup>18</sup>

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<sup>13</sup> The Optional Protocol was ratified by Romania on June 28, 1993 by Law no. 39, published in *The Official Gazette*, pt. I, no. 193 of 30 June 1993.

<sup>14</sup> *The Administration of Justice in the Community. International Standards and Regulations*. 2nd edn. Ed. G. W. GILES. Bucharest 2001, pp. 87—121.

<sup>15</sup> *Ibidem*, p. 89.

<sup>16</sup> *Ibidem*, p. 90.

<sup>17</sup> *Ibidem*, p. 91.

<sup>18</sup> *Ibidem*.



According to another principle, “when implementing institutional treatment,” “appropriate educational services to assist juveniles in their return to society” will be made available to minors.<sup>19</sup>

## 7. Resolution 40/33 of November 29, 1985

By Resolution 40/33 — adopted by the UN General Assembly on November 29, 1985 — Member States were asked to adapt “their national legislation, policies and practices, particularly in training juvenile justice personnel, to the Beijing Rules.”<sup>20</sup>

In the text of the same resolution, it was stated that the provisions of such “rules” must be applied “to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.”<sup>21</sup>

Regarding “the punishment of minors,” the States Parties were asked to consider “not only the seriousness of the offense, but also the individual circumstances of perpetrators — social status, family status, damage or other factors affecting personal circumstances.”<sup>22</sup>

The resolution provided for the need to perform “a control at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.”<sup>23</sup>

The resolution did indeed express reference to “children’s rights” in all stages of the procedure on the administration of justice, and also provided for the obligation to ensure “the Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority.”<sup>24</sup>

As for “the preventive detention,” the resolution demanded that it be used “only as a measure of last resort and for the shortest possible period of time” and, “whenever possible, detention pending trial shall

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<sup>19</sup> Ibidem.

<sup>20</sup> Ibidem, p. 98.

<sup>21</sup> Ibidem, p. 100 (Principle 2, 1).

<sup>22</sup> Ibidem, p. 102 (Principle 5, 1. Commentary).

<sup>23</sup> Ibidem, p. 103 (Principle 6, 1).

<sup>24</sup> Ibidem, p. 104 (Principle 7, 1).

be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.”<sup>25</sup>

Finally, pursuant to Resolution 40/33 of 1985, “minors will not be subject to corporal punishment.”<sup>26</sup>

## 8. CE Recommendation no. 1065/1987 on the Traffic in Children and Other Forms of Child Exploitation

In 1987, the Parliamentary Assembly of the Council of Europe has made a Recommendation on the traffic in children and other forms of child exploitation. It was the Recommendation no. 1065/1987, which recognized that “children have the right to be brought up in a secure and humane way, and that society has an obligation to protect them and look after their interests” (section 1).

The European Union Council also took note of the overt existence of “the international trade in children for such purposes as prostitution, pornography, slavery, illegal adoption, etc.” (section 2), and urged Member States to urgently adopt a set of measures, of which the following have been postulated: (a) public information concerning the sale of and traffic in children, and the exploitation of child labour (section 6 d); (b) inform educators and youth of the rights of the child, and incorporate human rights education in school curricula at all levels (section 6 e); (c) enact strict laws and regulations to combat child pornography and harmonize member states’ relevant legislation (section 6 g); (d) promote and pursue a policy directed at meeting the needs of abandoned and street children (section 6 h).

## 9. UN Resolution no. 45/112 of December 14, 1990

In Resolution 45/112 of December 14, 1990, the General Assembly of the United Nations set out the principles for the prevention of juvenile delinquency, called “the Riyadh Guidelines.”

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<sup>25</sup> Ibidem, p. 108 (Principle 13, 1 and 2).

<sup>26</sup> Ibidem, p. 111 (Principle 17, 3).

Among other things, this resolution reminded the UN member states that “the implementation of the present Guidelines, in accordance with national legal systems, represents a policy of bringing them to the attention of relevant authorities, including policy makers, juvenile justice personnel, educators, the mass media, practitioners and scholars.”<sup>27</sup>

Although, in recent decades, the EU legislation on matrimonial matters has increased, however, the differences — and sometimes the divergences — in terms of knowledge and harmonization of the laws, and in terms of the application of the European family law, at the national level, still remain a reality.

However, these differences also concern the juridical authority and the enforcement of judgments in matrimonial matters, hence the need for a set of European principles relating to family law, in order to contribute to the harmonization of this law in the European Union. Moreover, it has also been the main aim of establishing — on September 1, 2001 — the Commission on European Family Law.

## 10. UN Resolution of May 25, 2000

On May 25, 2000, the UN General Assembly adopted — on the occasion of the 20th anniversary of the publication of the Convention on the Rights of the Child — a resolution which reiterated the commitment of the member states to strive “to promote and protect children’s rights,”<sup>28</sup> and, also, on this occasion, two optional protocols were adopted.

The First Protocol to the Convention on the Rights of the Child regards the child’s involvement in an armed conflict, and the second tackles three unfortunate realities, namely, “the sale of children, child prostitution and child pornography.”

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<sup>27</sup> UN General Assembly resolution, 45/112 of 14 December 1990, Art. 4.

<sup>28</sup> Resolution adopted by the General Assembly (97th Plenary Session, May 25, 2000). A/Res/54/263, p. 1.

## 11. The Commission on European Family Law (September 1, 2001)

On September 1, 2001 there was created the Commission on European Family Law, whose main objective was to draw up a set of “principles” that contribute to the harmonization of the European family law. This Commission prepared and published — in the form of “recommendations” — a set of principles concerning parental authority,<sup>29</sup> suggestively entitled “Principles of European Family Law Regarding Parental Responsibilities.”<sup>30</sup>

To dwell more deeply into the topic of European family law and on perception that this Commission has on the relationship between the child and parent, we are going to mention some of these principles:

1. The superior interest of the child must prevail in all matters relating to parental authority (par. 3, 3); in the preamble to the Principles it is stated that the Commission wishes to contribute “to the common European values on the Rights and Welfare of the Child”.
2. Children should not be discriminated on grounds of sex, race, colour, language, religion, political or other types of opinions, nationality, ethnicity or social origin, sexual orientation, disability, property, birth or other status, whether they refer to the child or to the persons holding parental authority (par. 3, 5).
3. Holders of parental authority should provide child care, protection and education, according to the personality and needs of the specific child development (par. 3, 11 (1)).
4. The child should not be subjected to corporal punishment or to any other unilateral treatment (par. 3, 11 (2)).
5. There should be provided direct contact between the child and his or her close relatives (par. 3, 25 (2)).

As for the phrase “parental authority,” it is perceived and defined by the Commission as “an accumulation of rights and obligations, which aim to promote and protect the welfare of children. They refer — as Principles 3.1 state in the text — in particular to: (a) care, protection and education; (b) maintaining personal relationships; (c) establishing residence; (d) property management and (e) legal representation.”<sup>31</sup>

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<sup>29</sup> See Principles of European Family Law Regarding Parental Responsibilities (<http://ceflonline.net/>).

<sup>30</sup> See web <http://ceflonline.net/>

<sup>31</sup> Principle 3, 1.

In the case of the dissolution or annulment of marriage, or of other forms of relationship that leads to the *de jure* or *de facto* separation of parents, and, *ipso facto*, to their living separately, they “have to agree on the person who will reside with the child.”<sup>32</sup> The Commission considers that the child “may alternatively reside with the holders of the parental authority, or pursuant to an agreement approved by the competent authority or to a decision taken by the latter.”<sup>33</sup> Thus, the child can reside alternately with both parents.

## 12. UN Resolution of May 10, 2002

In another resolution of the UN General Assembly — adopted on May 10, 2002 — the Member States reaffirmed “the obligation to take all measures to promote and protect the rights of every child, of every human being below the age of 18, including teenagers. We are determined — UN Member States declared — to respect the dignity of children and to ensure their welfare state.”<sup>34</sup>

Of course, in order to materialize these measures, the UN Member States need to cooperate specifically and effectively both in matters concerning “the social protection of vulnerable people”<sup>35</sup> and the judicial proceedings concerning criminal acts.<sup>36</sup>

## 13. European Council Regulation no. 2201/2003

The EU Council has developed and adopted the Regulation no. 1347/2000 of May 28, 2000 on the jurisdiction, recognition and enforcement of the judgments in matrimonial matters and in matters of paren-

<sup>32</sup> Principle 3. 20 (1).

<sup>33</sup> Principle 3. 20 (2).

<sup>34</sup> Resolution adopted by the GENERAL ASSEMBLY: *A World Fit for Children*, I, 4, p. 2. A/Res/S-27/2.

<sup>35</sup> C. MITITELU: “The Human Rights and the Social Protection of Vulnerable Individuals.” *Journal of Danubius Studies and Research*, 2012, vol. II, no. 1, pp. 70—77.

<sup>36</sup> M. MITRA RADU, C. MITITELU: “Specific Provisions on the Procedure for Judicial Cooperation in Criminal Matters.” *Ovidius University Annals. Series: Economic Sciences*, Vol. XIII, Issue 1, 2013, pp. 1599—1605.

tal responsibility for common children. This regulation, however, was repealed by Regulation no. 2201/2003 for two main reasons, namely: (a) that, among other things, it would have included provisions related to “common children,” that is, the children resulting from previous relationships, and not just the children of that family; (b) that this Regulation would have targeted a limited field of application concerning parental responsibility.

As such, on November 27, 2003, the EU Council adopted the “Regulation (EC) No. 2201 on the jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility,” which entered into force on August 1, 2004 and was applied from March 1, 2005.

In this regulation, “parental responsibility” means “all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access” (Art. 2, 7).

It should also be pointed out that, in Regulation no. 2201/2003, “parental responsibility” was shaped “in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child’s habitual residence, except for certain cases of a change in the child’s residence or pursuant to an agreement between the holders of parental responsibility” (Preamble, 12) .

Under Art. 8 of this Regulation, “the courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seized” (Art. 8, par. 1).

As for the “right of access,” the Regulation defines it as “the right to take a child to a place other than his or her habitual residence for a limited period of time” (Art. 2, par. 10). This right “is granted in an enforceable judgment given in a Member State shall be recognized and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin” (Art. 41, par. 1).

The Regulation gave to several UE States the possibility to apply the Conventions signed by them on “custody” instead of applying the rules provided for in this regulation (see Art. 59, par. 2).

According to Art. 60, “In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

- (a) the Hague Convention of 5 October 1961 [...];
- (b) the Luxembourg Convention of 8 September 1967 [...];
- (c) the Hague Convention of 1 June 1970 [...];
- (d) the European Convention of 20 May 1980 [...];
- (e) the Hague Convention of 25 October 1980 [...].”

In relation to the Hague Convention of October 19, 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children, this regulation applies in two situations, namely: “(a) where the child concerned has his or her habitual residence on the territory of a Member State;(b) as concerns the recognition and enforcement of a judgment given in a court of a Member State on the territory of another Member State, even if the child concerned has his or her habitual residence on the territory of a third State which is a contracting Party to the said Convention” (Art. 61).

The regulation also stipulates that for the “Member States with two or more systems of law or sets of rules concerning matters governed by this Regulation”; its provisions apply to the “territorial units” of that State where “the jurisdiction, recognition or enforcement are invoked” (Art. 66).

The provisions of the European Council Regulation no. 2201/2003 on “the jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility” have been often invoked in the European Court decisions,<sup>37</sup> which envisages both their authority and importance.

Finally, we would like to recall that, in accordance with the European Union Council Regulation no. 2116 of December 2, 2004 — which amended the Regulation no. 1347/2000 of the same Council on the Treaties concluded with the Holy See — in a divorce proceeding, if the defendant does not habitually reside in an EU Member State and is neither a national of a Member State, the courts of a Member State cannot rely on their domestic law jurisdiction in order to decide on this demand if the courts of another Member State have this jurisdiction under Art. 3 of this Regulation.<sup>38</sup>

<sup>37</sup> See, for example, Court Decision (3rd Chamber) of November 29, 2007 (Demand for a preliminary ruling drafted by Högsta domstolen (Sweden) — K. Sundelin Lopez/ M.E. Lopez Lizazo. Cauza C-68/07, in the Official Journal of the European Union, C82, April 14, 2007 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:082:SO:RO:HTML>)).

<sup>38</sup> Published in *Official Journal of the European Union*, L367 of December 14, 2004.

## 14. Charter of Fundamental Rights of the European Union (December 14, 2007)

Regarding the rights of children, we must also refer to the Charter of Fundamental Rights of the European Union<sup>39</sup> — published on December 14, 2007 — which expressly prohibits “the reproductive cloning of human beings” (Art. 3, letter d), and also provides for “the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions” (Art. 14, par. 3), thus affirming the principle enunciated by the provisions of international conventions and treaties.

The same Charter states the child’s right “to protection and care as is necessary for their well-being,” and for the freedom to express “views freely [...] on matters which concern them in accordance with their age and maturity” (Art. 24, par. 1).

The same Art. 24 of the Charter provides that “in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration” (Art. 24, par. 2) and that “every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests” (Art. 24, par. 3).

## Conclusions

The research and assessment of the documents presented in this paper clearly reveal that they had the gift of creating a set of principles on the Rights of the Child, which, “willy-nilly,” will be taken into account by the world’s states in their approach undertaken in order to harmonize their national legislation with the international law doctrine of the child.

The research and assessment of these documents — from the Geneva Declaration of 1924 on the Child’s Rights to the Convention adopted in Strasbourg in 2006, on the “personal relationships concerning children” — also revealed that the field of the international family law was con-

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<sup>39</sup> Charter of Fundamental Rights of the European Union. *Official Journal of the European Union*, March 30, 2010, C/83/389.



stantly concerned about the “person”<sup>40</sup> of the child, whose “*dignitas*”<sup>41</sup> (dignity) was also, in fact, the object of other instruments. The analysis of these documents — international instruments of *jus cogens* force — has revealed, however, that the countries of the world did not want only to enumerate the rights of the child, but also to expressly provide measures and sanctions to be taken to his or her legal protection, creating the premises for the harmonization of their national legislation, which — in the legal protection of children — still has some gaps.

The examination of these documents also provided us with the opportunity to see that they remain an evident testimony on the constructive contribution that the international law brought to the children’s rights and in their legal protection.

Finally, the brief presentation of these international legal instruments (declarations, pacts, resolutions and regulations) provides the endorsed researcher with the finding that, in recent decades, the international legislator was constantly concerned to develop new “rules” and “regulations” on the children’s rights and on their legal protection; hence the need that the basic principles enunciated by it should not be only known and inserted into the text of national laws, but also respected and applied by practical and concrete measures. We actually believe that these regulations and rules — set by these international legal instruments — will raise the interest, due to their contents, topics and interpellation, not only to those who have the quality of a parent or of a magistrate or of a legal sciences professor, but also to all the citizens of the world, because the child is the hope of life, and he or she should feel and be protected by the whole society where he or she has come to life.

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<sup>40</sup> On the international legal status of the human person, see V. DURĂ, C. MITITELU: “The Treaty of Nice, European Union Charter of Fundamental Rights.” In: 8th Edition of International Conference *The European Integration — Realities and Perspectives*, Proceedings. Danubius University Press, Galati 2013, pp. 123—129.

<sup>41</sup> See, N.V. DURĂ: “The right to human dignity (*dignitas humana*) and religious freedom. From *jus naturale* to *jus cogens*.” *Annals of the Ovidius University*. Series: Law and Administrative Sciences, 2006, no. 1, pp. 86—128.

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## The Children’s Rights Regulations and Rules of International Law

### Summary

The hermeneutical analysis of the text of the main regulations and rules of international law regarding the children’s rights, reveal to the reader that they created a set of principles on the Rights of the Child, which have to be taken by the world’s states in their approach undertaken in order to harmonize their national legislation with the international law doctrine of the child.

Among others, this article’s reader could also find out that in recent decades the international legislator was constantly concerned to develop new rules and regulations on the children’s rights and on their legal protection; hence the need that the basic principles enunciated by it should not be only known and inserted into the text of national laws, but also respected and applied by practical and concrete measures.

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## Les droits de l'enfant Réglementations et principes du droit international

### Résumé

L'analyse herméneutique du contenu des réglementations principales du droit international concernant les droits de l'enfant instruit le lecteur de l'ensemble des principes — définis comme « les droits de l'enfant » — que tous les États du monde doivent prendre en considération au moment où ils approprient la législation nationale aux principes de la loi internationale concernant les enfants.

Grâce à notre étude, le lecteur peut apprendre entre autres que les dernières décennies sont une période d'une préoccupation continuelle des législateurs internationaux qui font tout leur possible pour élaborer de nouvelles réglementations et de nouveaux principes liés aux droits de l'enfant et à sa protection juridique ; d'où le besoin de garantir que les principes de base élaborés jusqu'à présent soient non seulement connus et introduits dans les contenus des droits nationaux, mais aussi respectés et appliqués par la prise des démarches pratiques et concrètes.

**Mots clés :** moyens juridiques internationaux, qualité parentale, protection juridique des enfants

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## I diritti del bambino Norme e principi del diritto internazionale

### Sommario

L'analisi ermeneutica del contenuto delle norme principali del diritto internazionale concernente i diritti del bambino fa conoscere al lettore un insieme elaborato di principi indicati con il nome di diritti del bambino di cui gli stati di tutto il mondo devono tener conto durante l'adeguamento della legislazione nazionale alle norme del diritto internazionale che riguarda i bambini.

Grazie al nostro studio il lettore può, tra l'altro, venire a conoscenza del fatto che le ultime decadi sono state un periodo di cura incessante dei legislatori internazionali per elaborare nuove norme e principi legati ai diritti del bambino ed alla sua tutela giuridica; ne scaturisce la necessità di garantire che i principi fondamentali elaborati non solo siano conosciuti e riportati nel contenuto delle leggi nazionali, ma anche rispettati ed applicati intraprendendo passi pratici e concreti.

**Parole chiave:** misure giuridiche internazionali, qualità genitoriale, tutela giuridica dei bambini