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## The Right of the Child to Access Information and to Express Views Freely

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## The Right of the Child to Access Information and to Express Views Freely

**Keywords:** child, information, freedom, speech, religion

The Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989, and ratified by Poland on July 7, 1991,<sup>1</sup> includes, among others, declarations of children's rights to information and to express their views freely in all matters concerning them directly (Art. 7, 12—17). The rules contained within the Convention affect the delicate, and often fraught with emotion and tension, spheres of life and relations within the family between parents and children. Hence, both the discussion concerning the interpretation of these rules and implementation of them into the legal system of individual states is characterized by axiological, pedagogical, psychological and ideological tensions around the issue.

### 1. The child's right to information

In order to formulate a catalogue of children's rights, it is important to consider the content of the Convention, in particular articles 7, 13 and 17, as well as provisions within in the European Convention on the Exer-

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<sup>1</sup> *Dziennik Ustaw Rzeczypospolitej Polskiej* 1991, No. 120, item 526 (*Journal of Laws of the Republic of Poland*, abbreviation: Dz.U.).

cise of Children's Rights of 1996,<sup>2</sup> which in its preamble recognizes that children should be provided with relevant information in order to promote their rights and best interests and that due weight be applied to children. Article 2 defines "relevant information," as information appropriate to the age and understanding of children, which should be given to them to allow the full exercise of their rights, unless this would be contrary to their welfare. As a result, the following directory of children's rights in the field of information can be formulated as:

- (a) the right to information on parentage (the knowledge of their parents).

According to Art. 7, the child, if it is possible, has the right to know their parents (par. 1) and the State ensures that this right will be guaranteed in their domestic law (par. 2). The practical problem arises when the child is adopted. When signing the Convention, Poland did so with two caveats. One of them was with regard to Art. 7, stipulating that the right of an adopted child to know its natural parents shall be subject to limitation by the validity of the legal solutions enabling adopters to keep secret the child's origin. This reservation was withdrawn in 2013.<sup>3</sup> Similar objections were also reported by then-Czechoslovakia, stating that "in the case of adoption that is not subject to appeal, based on the anonymity of such adoptions, and artificial insemination, the doctor performing the procedure is required to ensure that the husband and wife of one side, and the other donor remain anonymous, failure to inform the child about the name or names of the natural parents is not in conflict with this provision."<sup>4</sup>

In addition, Art. 20 of the European Convention on the Adoption of Children of 1967<sup>5</sup> contains the provisions for obtaining information relat-

<sup>2</sup> European Convention on the Exercise of Children's Rights, drawn up in Strasbourg on January 25, 1996, Dz.U. 2000, No. 107, item 1128.

<sup>3</sup> Ustawa z dnia 10 października 2012 r. o zmianie zakresu obowiązywania Konwencji o prawach dziecka, przyjętej dnia 20 listopada 1989 r. w Nowym Jorku, Dz.U. of 2012, item 1333; Oświadczenie Rządowe z dnia 27 marca 2013 r. w sprawie zmiany zakresu obowiązywania Konwencji o prawach dziecka, przyjętej dnia 20 listopada 1989 r. w Nowym Jorku, Dz.U. of 2013, item 677.

<sup>4</sup> Oświadczenie Rządowe z dnia 30 września 1991 r. w sprawie ratyfikacji przez Rzeczpospolitą Polską Konwencji o prawach dziecka, przyjętej przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz.U. 1991, No. 120, item 527.

<sup>5</sup> Europejska Konwencja o Przystosowaniu Dzieci, sporządzona w Strasburgu dnia 24 kwietnia 1967 r., ratyfikowana przez Polskę w dniu 24 kwietnia 1996 r., Dz.U. 1999, No. 99, item 1157.

ing to individuals. It requires the implementation of a decision to allow an adoption without disclosing the identity of the adopter to the child's family (par. 1), and also declares that the adopter and the adoptee should have the right to obtain documents from the act of civil status attesting to the fact, date and place of birth of the adopted person, but not expressly revealing the fact of adoption nor the identity of the natural parents (par. 3). However, with regard to the storage and dispensing of acts of civil status, the Convention indicates that the acts should be kept and copies of them be issued at least in such a way that persons who have no legal interest in the matter could not find out that the person was adopted, or if this fact is known — they would not be able to establish the identity of the natural parents (par. 4).

Discussion on the subject of the right to information about the identity of the parents appeared not only in the context of adoption and IVF, but also for the sake of the realization of this right into questioning the possibility of the function of the so-called Window of Life in which a woman can anonymously leave her child.<sup>6</sup> From the discussion, the position of UN experts shows that the right to information about the identity of the parents has a greater importance than the right to life, whose implementation enables this “Window of Life.”

- (b) The right to seek, receive and impart information, as well as ideas of all kinds, regardless of boundaries, either orally, in writing or in print, in the form of art, or through any other medium of the child's choice;
- (c) the right to receive information, appropriate to the age and understanding of the child, which should be given to them to allow them the full exercise of their rights, unless this would be contrary to their welfare.

An example of a particularly delicate sphere, which is health, are detailed settlements proposed for example by the Polish Ombudsman as “the Charter of Rights of the Dying Child,”<sup>7</sup> which in Art. 6 declares that each sick child has the right to be informed and to participate in making decisions relating to the care they receive, in accordance with their

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<sup>6</sup> See A. БАЕАВАН: “‘Okna życia’ przeszkadzają ONZ.” *Nasz Dziennik*, published online: [www.naszdziennik.pl/wp/4690,okna-zycia-przeszkadzaja-onz.html](http://www.naszdziennik.pl/wp/4690,okna-zycia-przeszkadzaja-onz.html) [13.06.2012].

<sup>7</sup> RZECZNIK PRAW OBYWATELSKICH: “Karta Praw Dziecka Śmiertelnie Chorego w Domu.” In: *Raport o korespondencji i kontaktach między Rzecznikiem Praw Obywatelskich i Ministrem Zdrowia w sprawie przestrzegania praw obywateli do ochrony zdrowia w okresie od 14 lutego 2006 do 30 kwietnia 2009*. Biała Księga, Biuletyn Rzecznika Praw Obywatelskich 2009, No. 4, pp. 525—526.

age and understanding. In contrast, the European Charter for Children in Hospital,<sup>8</sup> adopted at the European Conference of the European Association for Children in Hospital in 1999, includes a provision that children and parents should have the right to obtain information in a manner appropriate to their age and comprehension (Art. 5, par. 1).

- (d) The right to be informed (including by proxy) about the possible consequences of their position, as well as the possible consequences of any decision in judicial and administrative proceedings.

This issue has found its details in the European Convention, which contains, among others, the procedural rights of the child. And so, Art. 3 declares the right to be informed and to express their views in proceedings. Therefore, a child considered by internal law as having sufficient understanding, in proceedings affecting him or her before a judicial authority, should be granted and may themselves request the right to receive all relevant information, to be consulted and to express their views, as well as to be informed of the possible effects of their position and the possible consequences of any decision. The consequence of this is formulated in Art. 5, the possibility of granting additional rights to children, in particular the right to request assistance by a person chosen by them who would assist them in expressing their views.

On the other hand, in Art. 5 of the Convention, Member States undertake judicial authorities so that in proceedings concerning children, before any decisions about the child considered by internal law as having sufficient understanding, ensure that the child has received all relevant information, in appropriate cases, if necessary — informally, consulting the opinion of the child, in person or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be obviously contrary to the child's well-being, allowing the child to express his or her views and applying due weight to the views expressed by the child. In such proceedings, a duly constituted representative, in accordance with Art. 10, par. 1, unless it would be obviously contrary to the best interests of the child, during proceedings relating to the child held before a judicial authority, should provide the child with all relevant information, if the child is considered to have sufficient understanding by internal law. This representative should provide explanations to the child, if the child is considered to have sufficient under-

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<sup>8</sup> European Association for Children in Hospital, Charter, in: [www.each-for-sick-children.org/each-charter/the-10-articles-of-the-each-charter.html](http://www.each-for-sick-children.org/each-charter/the-10-articles-of-the-each-charter.html) (accessed 6.1.2015).

standing, on the possible consequences of its position and actions by the representative, identify the child's position and present it to the judicial authority.

An example of the application of the Convention standards was developed by the Polish Foundation "Nobody's Children," in the "Bill of Rights of the Child Victim/Witness to a Crime," in which Art. 10 provides that a child victim/witness to a crime has the right to information concerning his or her participation and role in the proceedings at a level appropriate to their developmental capabilities (par. 1), and the child should be informed in particular about the right to refuse to testify or refuse to answer the questions in a manner adapted to the development of the child, if the child is able to grasp the importance of this information (par. 2).<sup>9</sup>

(e) The right to information about the educational process.

An example of implementing this power are, among others, the rights of students codified in educational institutions. According to the Statute of Primary School No. 23 in Zabrze,<sup>10</sup> the right of the student-child to information about the learning process is carried out by the fact that the Director of the institution ensures students the opportunity to familiarize themselves with the statutes and information about the measures they are entitled to in case of violation of their rights. In addition, the school should inform the students about all decisions made regarding the student; for example, to move on to another class, at the request of the student or parents, the issued assessment should be briefly justified. A student also has the right to know what the interim or annual evaluation will be. Each teacher, in the manner and time specified in the school statute must submit such information, and before that, meet the criteria for evaluating behaviour and know what are the possibilities of appeal from the final assessment are, by improving it or taking an exam (§ 8 and 27).

In turn, the Statute of Primary School No. 28 in Zabrze<sup>11</sup> includes, among others, the student's rights to open and up-to-date assessments of individual subjects, to familiarize themselves with school regulations, and most of all, with the internal grading system and criteria for evalu-

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<sup>9</sup> FUNDACJA "DZIECI NICZYJE": *Karta Praw Dziecka Ofiary/Świadka Przystępstwa*. Retrieved from: [www.canee.net/files/org\\_640karta\\_praw.pdf](http://www.canee.net/files/org_640karta_praw.pdf) (accessed 1.4.2015).

<sup>10</sup> "Statut Szkoły Podstawowej Nr 23 im. Tadeusza Kościuszki w Zabrzu": <http://www.sp23zabrze.edupage.org/files/statut.pdf> (accessed 4.1.2015).

<sup>11</sup> "Statut Szkoły Podstawowej nr 28 w Zabrzu": <http://www.sp28.zabrze.pl/wp-content/uploads/2013/04/Statut.pdf> (accessed 1.4.2015).

ation of behaviour, to the current information about school life (among others awards, penalties, etc.), conveyed at appeals for fair, objective and transparent assessments and strategies of the control in advances in education, to information about educational requirements resulting from the curricula and how to verify educational achievements, principles of evaluating the behaviour, as well as to obtain information about the expected intra-annual assessments (annual), including inadequate assessments, a month before the classification meeting of the Board of Education (§ 2).

## 2. The right of the child to express their views

Article 12 of the Convention provides for a bright child to express their own views and the right to express them freely in all matters concerning them, accepting these views with due attention, according to the age and maturity of the child.

- (a) The right to express themselves in judicial and administrative proceedings.

Hence, the child shall, in particular, be provided the opportunity to express themselves in all judicial and administrative proceedings concerning his or her person, directly or through a representative or an appropriate body, in accordance with the procedural rules of national law. This provision is implemented in Polish law by Art. 573 § 2 of the Code of Civil Procedure. It is worth, in this context, to recall and cite two decisions of the Supreme Court. The first being from December 15, 1998 (I CKN 1122/98), regarding the guardian of the minor, that the court is obliged to consult with their position, if the degree of maturity of the minor permits it, and this is deliberate. In any such case, the court considers the opportunity to take reasonable requests of the minor, if it is consistent with his well-being. This obligation is not stated directly in the Code of Civil Procedure (Art. 573, 574 and 576), but is primarily due to Art. 12 of the Convention on the Rights of the Child. The judges state that the adoption of such obligations corresponds to the principle of the 3rd Recommendation No. R/84/4 of the Committee of Ministers of the Council of Europe on February 28, 1984, with respect to parental responsibility, calling for, directed to the authority responsible for making decisions about parental responsibilities of the child, to familiarize them-

selves with the child's position.<sup>12</sup> The minor expresses his or her position before the court, which hears it, or before experts, who are to express an opinion on the case.

In the second decision — from December 16, 1997 (III CZP 63/97) — judges found that the clear wording of Art. 12 of the Convention, especially its second point, shows the child's established guarantee of the possibility to express themselves in any legal proceedings that concern him or her. This does not mean, however, that this requirement can only take place by granting the child a status of participant in the proceedings. The Convention leaves the determination of how to implement this obligation regulated by domestic law of the competent State. In our procedure, the opportunity to express a belief by a child is guaranteed by the institution to be heard, provided for in Art. 576 § 2, in connection with Art. 573 § 2 k.p.c. On the topic of the desirability of listening to the child, the Supreme Court has expressed in its decision in the above resolution of the full composition of the Civil Chamber. This is even more stressed by the Supreme Court in its resolution of May 3, 1979 (III CZP 14/79-OSNCP in 1979, item 230) taken in the composition of the ordinary, but related to the procedural rights of minors on the restriction of parental authority over them. The entrance of this into the life of the Convention on the Rights of the Child has resulted in only such a change, that formulated so far by way of judicial interpretation the recommendation to listen to the child became henceforth the duty of the court process on any matter concerning a child whose mental state and physical development permits, and also in the case of the deprivation of parental authority over him.

Any violation by a court of this duty should be assessed in terms of material deficiencies affecting the outcome of the case. However, it is important to underscore, that this obligation does not need to be carried out only in the form of directly hearing the child before the court, especially in the courtroom. Due to the confirmed-in-practice fact that direct contact with the court often has a harmful effect on the child's psyche, the court has the opportunity to familiarize themselves with a child's position through their subsidiary bodies, such as the curator or opinion of the diagnostic-consulting centre, and finally the opinion of an expert psychologist.

In the end, it must be emphasised that hearing, as a sufficient guarantee of the child's process to present his views in legal proceedings con-

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<sup>12</sup> The competent authority who makes all decisions on parental responsibility or the exercise thereof, relating to the fundamental interests of the child, should be familiar with his position, if the level of maturity of the child permits" — see M. SAFJAN (ed.): *Standardy prawne Rady Europy, teksty i komentarze*. Vol. I: *Prawo rodzinne*. Warszawa 1994, p. 202.



cerning the establishment of his rights, is provided for by Art. 72, par. 3, of the Polish Constitution of April 2, 1997.

(b) The right to freedom of expression.

According to Art. 13 of the Convention, a child has the right to freedom of expression; this right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of boundaries, either orally, in writing or in print, in the form of art, or through any other medium of the child's choice (par. 1). However, the exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary for the respect of the rights or reputations of others or for the protection of national or public order, or public health or morals (para. 2).

An example of the application of this law in an educational context is the provision found in the already cited above Statute of Elementary School No. 23 in Zabrze. A student has the right to freedom of expression of its thoughts and beliefs, if it does not infringe on the welfare of others, the child has the right to express an opinion on curricula and teaching methods, and important issues in the life of the school, class, local government, [the child] has the right to express opinions and present their position (e.g. in a conflict) or on decisions relating to another student. A student also, as long as it does not infringe on the good of others, can deliver controversial views and opinions contrary to the canon of teaching. Maybe, for example, they wish to express their own judgments and opinions about historical or literary heroes, but it does not absolve them from having the knowledge of the teaching material. These ideas, which may be controversial or inconsistent with the views of the teacher's opinions, cannot affect the student's periodic assessment of merit. The fundamental rights of the students also state that a student has the right to present their views to the school council, pedagogical council and the Director, including their conclusions and opinions on all school matters.

In turn, the Statute of Elementary School No. 28 in Zabrze states that the student has the right to tolerance in terms of expressing their own thoughts and religious beliefs — if it does not violate the welfare of others.

(c) The right to freedom of thought, belief and religion, including its practice.

According to Art. 14 of the Convention, States Parties have the obligation to respect the rights of the child to freedom of thought, conscience

and religion (par. 1), and the freedom to practice one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect national security and public order, health or morals or the fundamental rights and freedoms of others (par. 3).<sup>13</sup>

The Convention grants the child the freedom of religion, conscience and religion, without taking into account age limit above which the law could be considered. It is hard to specify at what age a child could decide with full knowledge their choice of religion. On the other hand, this right is also limited by the rights of parents who invariably, also in this situation, have the right to direct their own children in exercising their rights. In literature,<sup>14</sup> you can meet with these background themes in conflicts between parents and children. One author describes the following situation: Roman Catholic parents raised their son in this same spirit, then abandoned this faith and bound themselves as Jehovah's Witnesses and forced their 14-year-old son to abandon his Catholic practices in order to participate in the Jehovah's Witnesses meetings. The case went to court and ended up limiting parental rights of the boy who was taken to a foster home. The basis for such a decision was, among others, that a child at that age, who was raised in the Catholic faith, cannot be forced to change their religion and to undertake those religious practices.<sup>15</sup>

The Polish Constitution of 1997, in Art. 48, par. 1, states: "Parents have the right to educate their children in conformity with their own convictions. This upbringing should respect the degree of maturity of the child, as well as his freedom of conscience and religion and its beliefs." This is a record remaining in full compliance with the UN Convention. This issue also found its regulation in the rules concerning, among others, organizing religious education in public schools.<sup>16</sup>

(d) The right of association and the right to assembly.

Another prescribed by legislation and related to the right to expression, is the right of association. In Art. 15 of the UN Convention of the State — parties recognized the rights of the child to freedom of associa-

<sup>13</sup> See H. MISZTAL: "Gwarancje prawa międzynarodowego i polskiego w zakresie uprawnień rodziców do religijnego wychowania dzieci." *Studia z Prawa Wyznaniowego* 1 (2000), pp. 5—20.

<sup>14</sup> H. BZDAK: *Prawo dziecka do życia i godnego wychowania — uwarunkowania prawne, religijne, społeczne*. Szczecin 2000, p. 163.

<sup>15</sup> See K. BORKOWSKA: *Prawo dziecka do wypowiedzi w sprawach rozpoznawanych przez sąd rodzinny*. Helsińska Fundacja Praw Człowieka, Warszawa 2014, p. 23.

<sup>16</sup> Ustawa z dnia 7 września 1991 r. o systemie oświaty, Dz.U. 2004. No. 256, item 2572, as amended, Art. 12 par. 1.

tion and freedom to peaceful assembly (para. 1), provided that the exercise of those rights cannot be imposed by any restrictions except those that are legitimate and which are necessary in a democratic society to ensure the interests of national security, public order, health or morals, or the protection of the rights and freedoms of others (par. 2).

Every person, similarly to a child, if he is granted the right to speak, should be able to implement it. One form of that execution would be the freedom to take an active part in formal social groups and associations. Such organizations generally have a specific objective of action, which is implemented by its members, with voting rights, which impacts others. Children were given the opportunity to participate in school organizations, organizations dealing with environmental and charitable activities or sports, both cultural and religious.<sup>17</sup>

It should also be noted that by ratifying the UN Convention on the Rights of the Child, Poland declared that it considers that the execution of child's rights under the Convention, in particular the rights defined in articles 12 to 16, shall be made with safeguarding the respect of parental authority, in accordance with Polish customs and traditions, regarding the place of the child within the family and outside the family. A child's right to information and the right to express their views are so connected to one another, and therefore both parts of the above presentation should be considered together.

<sup>17</sup> K. BORKOWSKA: *Prawo dziecka do wypowiedzi...*, p. 23.

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### Summary

The Convention on the Rights of the Child adopted by the UN General Assembly on November 20, 1989, and ratified by Poland on July 7, 1991 (Dz.U. 1991, No. 120, item 526), includes in its contents, among others, declarations of children’s rights to information and to express those views freely in all matters concerning them directly. In particular, the right to information includes more specific issues: the right to informa-

tion on parentage (the knowledge of their parents); “the right to seek, receive and impart information and ideas of all kinds, regardless of boundaries, either orally, in writing or in print, in the form of art or through any other medium of the child’s choice”; the right to receive relevant information, dependant on the age and understanding of children, which should give them the freedom to fully exercise their rights, unless this would be contrary to their welfare, and right to information about the educational process. However, the right to expression includes the right to speak in judicial and administrative proceedings, the right to freedom of expression, the right to freedom of thought, belief and religion, including its practice, the right to association and the right to assembly.

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## Le droit de l'enfant à l'information et celui d'exprimer librement son opinion

### Résumé

La Convention relative aux droits de l'enfant de l'ONU adoptée par l'Assemblée générale des Nations unies le 20 novembre 1989, et ratifiée par la Pologne le 7 juillet 1991 (Dz. U. z 1991 r., Nr 120, poz. 526) contient entre autres les déclarations des droits de l'enfant à l'information et d'exprimer librement son opinion sur toute question l'intéressant directement. Ce sont en particulier les droits à l'information qui contiennent des problèmes plus détaillés : le droit d'obtenir l'information concernant son origine (de retrouver ses parents), le droit « de rechercher, de recevoir et de répandre des informations et des idées de toute espèce, sans considération de frontières, sous une forme orale, écrite, imprimée ou artistique, ou par tout autre moyen du choix de l'enfant », le droit d'obtenir des informations — conformément à son âge et à son degré de maturité — que l'on doit lui fournir pour permettre la réalisation complète de ses droits (sauf si cela était en contradiction avec son bien) et, enfin, le droit de recueillir des informations au cours de sa formation. Par contre, le droit d'exprimer librement son opinion contient le droit d'être entendu dans toute procédure judiciaire ou administrative, les droits à la liberté de pensée, de convictions et de religion ainsi que les droits à la liberté d'association et de réunion.

**Mots clés :** enfant, information, liberté, expression, confession

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## Il diritto del bambino all'informazione ed a esprimere le proprie opinioni

### Sommario

La Convenzione sui diritti dell'infanzia dell'ONU, approvata dall'Assemblea Generale delle Nazioni Unite il 20 novembre 1989, ratificata dalla Polonia il 7 luglio 1991 (Gazz. Uff. polacca del 1991, n. 120, pos. 526) include nel suo contenuto tra l'altro le

dichiarazioni dei diritti del bambino all'informazione ed a esprimere liberamente le proprie opinioni in tutte le questioni che lo riguardano direttamente. In particolare il diritto all'informazione comprende problematiche più dettagliate: il diritto all'informazione che riguarda le origini (la conoscenza dei propri genitori), il diritto a cercare, ricevere e trasmettere informazioni ed idee di ogni genere, indipendentemente dalle frontiere, in forma orale, scritta o per mezzo della stampa, in forma artistica o usando ogni altro mezzo di comunicazione a scelta del bambino, il diritto a ricevere informazioni, adeguate a seconda dell'età e del discernimento dei bambini che devono essere loro impartite per permettere l'esecuzione completa dei loro diritti, a meno che siano in contraddizione con il loro bene e il diritto all'informazione sul processo di formazione. Invece il diritto ad esprimere le opinioni include il diritto a pronunciarsi nel procedimento giuridico ed amministrativo, il diritto alla libera espressione, il diritto alla libertà di pensiero, di concezione del mondo e di religione, tra cui a praticarla, il diritto di associazione e il diritto di riunione.

**Parole chiave:** bambino, informazione, libertà, affermazione, confessione