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CHILD RIGHTS IN THE EUROPEAN UNION: ENACTING PROCESS OF THE CHILD'S NEW PLACE IN THE LEGAL WORLD

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ABSTRACT

The role of children in society has changed and this change has also implied a transformation in the treatment given to them by Law. They are no longer considered an object, not even an object to protect as they once were, but they have come to be persons whose rights are to be protected. These changes have been seen in Europe, as the design of a strategy on the rights of children (2006) and the recent presentation of an agenda for the rights of the child (2011) evidence. Promotion and protection of children's rights came on the European scene in 2006 with the European Commission's Communication entitled "Towards an EU Strategy on the Rights of the Child". The EU Agenda for the Rights of the Child wants to give coherence to the political action for the coming years. In order to take into account the child rights' perspective in the measures that affect them, the Commission has made of the rights of the child an integral part of EU's fundamental rights policy. A new conception of the position of the child in society is being noted clearly in major pronouncements of the Commission and with certain shyness in the adoption of concrete measures, but, in any case, we can affirm the desire of the European Union to lead the process of recognition and respect for the rights of children.

Keywords: Best Interests of the Child, Children, EU Policies, Human Rights, UN Convention on Rights of the Child

Introduction

In February 2011 the Commission, in its Communication to the European Parliament, the Council, the European Economic and Social Committee of the Regions, presented an Agenda for the Rights of the Child. The Agenda is a new step in the process of enacting and implementation of children's rights within the European Union framework. Promotion and protection of children's rights comes on the European scene in 2006 with the European Commission's Communication entitled "Towards an EU Strategy on the Rights of the Child"¹. In it the Commission acknowledged children's rights as one of its main priorities in its

¹ "Towards an EU Strategy on the Rights of the Child". Communication from the Commission. COM(2006) 367 final.

Communication on Strategic Objectives 2005-2009. The Group of Commissioners on Fundamental Rights, Non-discrimination and Equal Opportunities decided in April 2005 to launch a specific initiative to advance the promotion, protection and fulfillment of children's rights in the EU policies. The starting point to provide legal basis in 2006 for the strategy was the following: "Under the Treaties and the case law of the Court of Justice, the EU does not have general competence in the area of fundamental rights, including children's rights. However, under Article 6.2 of the Treaty on the European Union (TEU), the EU must respect fundamental rights in whatever action it takes in accordance with its competences. (...) The EU's obligation to respect fundamental rights, including children's rights, implies not only a general duty to abstain from acts violating these rights, but also to take them into account wherever relevant in the conduct of its own policies under the various legal basis of the Treaties (mainstreaming). Moreover, notwithstanding the above-mentioned lack of general competence, various particular competencies under the Treaties do allow to take specific positive action to safeguard and promote children's rights. Any such action needs to respect the principles of subsidiarity and proportionality and must not encroach on the competence of the Member States. A number of different instruments and methods can be envisaged, including legislative action, soft-law, financial assistance or political dialogue". On these foundations, the Commission considers that the EU can bring essential and fundamental added value in the field of children's rights. The EU can lead the recognition and respect of children's rights, strengthening its defense and effectively spreading good practices of States. In the Communication, the strategy is structured in seven specific objectives supporting different actions:

1. Capitalising on existing activities while addressing urgent needs. In order to achieve this objective, the Commission would develop the following actions:
 - To attribute one single six digit telephone number (116xyz) within the EU for child helplines and one for child hotlines dedicated to missing and sexually exploited children (end 2006).

- To support the banking sector and credit cards companies to combat the use of credit cards when purchasing sexual images of children on the Internet (2006).
 - To launch an Action Plan on Children in Development Cooperation to address children's priority needs in developing countries (2007).
 - To promote a clustering of actions on child poverty in the EU (2007).
2. Identifying priorities for future EU action. On the basis of the analysis, which should be updated every five years and gradually tackle some critical areas, the Commission will launch a wide public consultation, including children, that will enable the EU to address children's rights in a comprehensive manner and to identify the main priorities for future action.
 3. Mainstreaming children's rights in EU legislative and non-legislative actions.
 4. Establishing efficient coordination and consultation mechanisms. In order to achieve this, the Commission will develop the following actions:
 - To bring together stakeholders in a European Forum for the Rights of the Child (2006).
 - To set up a web-based discussion and work platform (2006).
 - To involve children in the decision-making process (2007 onwards).
 - To set up a Commission Inter-service Group and to appoint a coordinator for the rights of the child (2006).
 5. Enhancing capacity and expertise on children's rights. To this end, the Commission will continue to make training available. And, in addition, practical tools such as guidance notes and instructions should be improved, distributed and used as training material.

6. Communicating more effectively on children's rights. To this end, it must design a communication strategy on children's rights (2007 onwards) and provide information on children's rights in a child-friendly manner (2007 onwards).
7. Promoting the rights of the child in external relations and, consequently, intensifying EU's active role in international forums to promote them.

While the strategy has generated activity and actions have been launched, with varying degrees of success or extension, Eurochild believes that there has been little coordination amongst the different services of the European Commission, no significant engagement from Member States and lack of political leadership². Despite criticism, that certainly cannot be ignored, interesting steps have been taken in order to set up structures and the establishment of the European Forum on the Rights of the Child is one of the most relevant³.

Certainly, as the European Union Agency for Fundamental Rights has said, the protection of the rights of the child in the EU has acquired a new dimension with the adoption and entering into force of the Treaty of Lisbon⁴. The Treaty provides that the European Union will contribute to the protection of human rights, especially the rights of the child, and reinforces the grounds for further EU action⁵. Also the Charter of Fundamental Rights of the European Union enshrines

² EUROCHILD, Policy position. Eurochild's proposals for the development of the EU's strategy on the rights of the child. May 2010.

³ The Communication "Towards an EU strategy on the rights of the child" advocated the setting up of a "European Forum for the Rights of the Child" as an instrument for promoting the effective exchange of information and good practices and establishing a network of stakeholders in this field. The role of the Forum is to advise and assist the Commission and other European Institutions. The Forum brings together key players –Member States, Ombudspersons for children, Council of Europe, UNICEF, NGOs, civil society and other stakeholders- in a common work place. This is essential to share experiences, information, actions, results and good practices.

⁴ EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, 2010, Developing indicators for the protection, respect and promotion of the rights of the child in the European Union, 6.

⁵ Art. 2.3, second paragraph ("It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child") and 2.5 ("In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth,

children's rights⁶. We should neither forget that Member States are all linked to the United Nations Convention on the Rights of the Child whose standards and principles must continue guiding EU policies and actions that have impact on the rights of the child⁷.

The Commission believes that in 2011 "the time to move up a gear on the rights of the child and to transform policy objectives into action" has arrived. Being that the reason why the Commission has proposed an EU agenda for the rights of the child with the purpose "to reaffirm the strong commitment of all EU institutions and of all Member States to promoting, protecting and fulfilling the rights of the child in all relevant EU policies and to turn into concrete results"⁸.

We will come back to this Agenda and what we can expect from it. Let me address another issue. The changes in the development of rights and the evolution lines pointed out by the agenda are not only a result of the existence of new social problems. There has been a change in the social position of the child that implies a change in the rights recognized to him. The following pages contain a reflection on these transformations.

solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter").

⁶ Art. 24: "The rights of the child. 1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. 3. 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".

⁷ The Commission recognizes this in its Communication to European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions of 15 February. COM (2011) 60 final.

⁸ An EU Agenda for the Rights of the Child. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions of 15 February. COM (2011) 60 final.

FROM THE CHILD AS AN OBJECT TO THE CHILD AS A PERSON, PASSING THROUGH CHILDREN'S PROTECTION

Franco Frattini said in Berlin in June 2007, in the framework of the European Forum on the Rights of the Child, the following words: "The main concept underpinning Commission action is to place children's concerns at the heart policy making. Previously we saw political developments which, sometimes, had consequences for children. Now the European strategy places, above all, the rights of the child as the priority. And strives to integrate this concept into all EU policies". But, how has the role of children changed? What are the reasons for this change?

There have been huge changes in the position of the child in society through history. Making our first stop in the Roman world, point forced to jurists, we find the paradigm of the child-object, father's property in a patriarchal and authoritarian social organization. Roman father had on his children the right of life and death, and more so the power to impose corporal punishment; he could modify the personal status of his children; he could give wife to his son or give in marriage his granddaughter; he could decide the divorce of his children or let them go to another family through adoption; he could, in short, sell them⁹. This power of the father was then slowly limited throughout history, but until very recently dimensions that make a fundamental legal institution for the societies who believe that the relationships of authority and obedience are the cornerstone of the social order have been retained¹⁰. While this perspective changes, passing from the prism of property to the perspective of protection, until not too long -and there are still remains in the legal system- children have been treated by Law as an object, sometimes a protection object. In the 19th century, within the framework of industrialization, certain issues dealing with children, such as high rates of infant

⁹ There were two categories of citizens: the parents and the children of family, these last legally dependent parents, remaining children to the right while the father (or grandfather) was alive. The death of the father changed children from the age of 14 in parents, although they had no children.

¹⁰ REIS MONTEIRO, A., 2008, *La revolución de los derechos del niño*, Madrid, Editorial Popular, 53-54.

mortality due to the lack of hygiene, poor diet and health care, using of children as cheap labor, etc., seemed to become more visible and intolerable for society¹¹. Ways of protection begun, therefore, to be articulated to meet children's special needs and a period of concern for children protection was opened. In the last third of the century and early years of the next, this translated into a social and legal reform movement¹². The first one manifested itself in the first national and international meetings –such as the International Congress on protection of children, held in Brussels in 1913- and the birth of some welfare organizations - such as the International Association for the protection of the child established in 1921 and joined League of Nations in 1924 or Save the Children, founded in 1919 by Eglantyne Jebb and her sister Dorothy Buxton in London-. Some countries had already begun in the last years of the 19th century to reform their laws to extend schooling and to delay the entry into the labor market. Children protection Law in 1904, inspired by a French one dated of 1874, was approved in Spain. In regards to the emergence of international instruments for children's protection it is obliged to mention the first link in the chain of legal recognition of children's rights: the Declaration on Children's Rights, on the basis of a draft of Eglantyne

¹¹ Francisco Canes says in an article about López Núñez that family needs were so extreme that children were exploited since very early because they were cheaply even, often, working in exchange for food. The families were forced to do so when they had to collect agricultural products or care domestic animals. Girls worked, mainly, of caring for their younger siblings or they were responsible for addressing household chores when the mother worked outside home. Some of them have not made any step on the school. Rural teachers complained that during the collection time school absenteeism had increased because parents prefer family economy to their children's education. CANES GARRIDO, F., 2009, Álvaro López Núñez (1865-1936) y la protección a la infancia en España, in BERRUEZO ALBÉNIZ, M. R. y CONEJERO LÓPEZ, S. (coords.), *El largo camino hacia una educación inclusiva: la educación especial y social del siglo XIX a nuestros días*. XV Coloquio de Historia de la Educación, Pamplona-Iruñea, 29, 30 June and 1 de July 2009, Vol. 2, 43.

Children, until the end of the 19th century, had been sold, imprisoned, tortured and used in arduous work developed within the mines and factories as a result of the industrialization process. During this time it precisely began to emerge the conception of the child as a subject worthy of protection.

¹² They can certainly be found before this time institutions for children protection, but in the 19th century substantial changes has been produced as regards the social consideration of disadvantaged children and the legal response to this concern. For a historical approach to the evolution of the system in Spain, from private charity to benefaction, see PALMA DEL TESO, A., 2006, *Administraciones Públicas y protección de la infancia. En especial estudio de la tutela administrativa de los menores desamparados*, Madrid, Ministerio de Administraciones Públicas, 21 y ss.

Jebb, was adopted by the General Assembly of the League of Nations unanimously in September 1924. Years later, on November 20, 1959, the General Assembly of the United Nations would also adopt unanimously a new Declaration on the Children's Rights.

The place that the child held in the middle of the 20th century was contradictory. Even once the figure of the child was consolidated the center of the family and therefore subject to special care, the child was not seen by law as a subject, but more as an economic, educational, and existential investment¹³. It is essential to protect the child but, although everybody speaks of his rights, the child is not a rights-bearing person. This explains that, even in 1977, an initiative of the European Conference on Family Law recommended to national legislators to no longer consider children as subjects protected by the law but as owners of the legally recognized rights. As for Spanish law, the child was considered an object of protection until the enactment of the Organic Law of Child Legal Protection in 1996¹⁴. This law was the first positive expression in the consideration of the child as a subject in the internal rules of our system following the ratification of the Convention of 1989.

We had to wait for the United Nations Convention on Children's Rights of 1989 to ensure that children and adolescents were considered to be persons by law and, that as such subjects of law, they were entitled to participate actively in decisions affecting their lives, even if in certain circumstances some prior rules did establish an obligation to hear the child.

Up until that moment, several arguments were used to justify the protection of children as a good for society allowing others to "do and undo" in children's lives. It is been said that children should be protected because in them lies

¹³ SÁNCHEZ VÁZQUEZ, M. J., 2007, *Ética e infancia: el niño como sujeto moral*, *Fundamentos en Humanidades*, año VIII – número I (15)/ (2007), 182.

¹⁴ Spanish Constitution does not take a clear position and in the reform of the CC of 1981 does not produce a significant change. ALÁEZ CORRAL (2003, *Minoría de edad y derechos fundamentales*, Madrid, Tecnos, 40-41) studies the reform of 1981 and he shows that it still regulates a power of the parent or guardian on the child although it is subordinated to the implementation of the function in child interests and subjected to judicial control.

society's future. As a consequence of this, child's protection turns out to be the protection of the adult he'll become. In other words, a child is not considered on himself to be worthy of being but because he's a would-be adult¹⁵. However, there is, as pointed out by Sánchez Vázquez, an important qualitative leap between seeing in the child a growing human being whose only meaning is to be the future of society and in incorporating the basic idea of the child as a subject of rights, with the conviction that every child, every teenager, should have the opportunity to develop and be recognized as a person¹⁶.

José Antonio Marina and Maria de la Válgoma say that claim's struggles have to deal with myths to be legitimized because power aims to seem clean with them. Power feels shame to appeal only to the law of the strongest –these authors say-. The myth to legitimize slavery was a natural difference between free and slave, a few have been born for commanding and others for obeying. This was also the myth to legitimize aristocracies, castes and racisms. The myth to legitimize absolutism was the divine origin of the authority. The myth to legitimize the religious coercion was to seek salvation and to obey a divine mandate. In women's discrimination, two myths were used to legitimize it. First: women are dangerous. Secondly: women are mentally inferior. The same remedy is recommended for them both: to control them, to protect them, to tie them in short¹⁷. From my point of view, in the case of children, the myth is his lack of natural ability to want what really favors their interest; children want what they should not want; because of this, adults should want for them. Legal systems adopt a paternalistic attitude in which another person decides for children, without them (without taking them into consideration), limiting their autonomy or

¹⁵ BARRANCO AVILÉS, M. C., 2006, ¿Por qué hay que proteger los derechos de los niños? Los derechos de los niños desde las teorías morales basadas en derechos, in BARRANCO AVILÉS, M. C., GARCÍA FERRER, J. J. (coords.), *Reconocimiento y protección de los derechos de los niños*. Madrid, Instituto Madrileño del Menor y la Familia, 18; O'NEILL, O., 2004, Los derechos de los niños y las vidas de los niños, in FANLO, I. *Derechos de los niños Una contribución teórica*, México, Fontamara, 77-106.

¹⁶ SÁNCHEZ VÁZQUEZ, M. J., 2007, Ética e infancia: el niño como sujeto moral. *Fundamentos en Humanidades*, año VIII – número I (15)/(2007), 190.

¹⁷ MARINA, J. A., VÁLGOMA, M., 2005, *La lucha por la dignidad. Teoría de la felicidad política*, Barcelona, Anagrama, 77.

freedom of decision in order to prevent them from getting damaged or provide them with a good.

It has not been –it is not becoming- simple to get rid of supposedly protective arguments which allow those who are socially powerful to take decisions about the life of another without him. But the process of development of human rights with its shock wave does not support another possibility: children are also human beings and, consequently, they are also holders of human rights.

HUMAN DIGNITY AND THE FOUNDATION OF THE RIGHTS

The consideration of the child as subject of human rights maintains –as it occurs with adults- in human dignity. The last basis of the human rights, and we are talking about each human being, not humanity understood as a whole, is founded in recognition of the intrinsic value of the human being. This assertion that we accept unblinking as a natural truth, as obvious, is the result of a long path of struggle for universality in the recognition of rights. The link between human dignity and autonomy of the subject has been indeed a legacy of the Enlightenment –although we can find prior glimpses of this position-: a person can be considered subject of rights because he is capable of carrying out a moral performance conscious and free. Dignity, that is not to be treated as a medium by another or by oneself, raises the man on the rest of the beings.

Acknowledging children to be beings with dignity which allows them to be subject to human rights is only possible if dignity is maintained to be a quality of every human being, a quality that belongs in its nature, regardless of its actions. Human being is valuable in itself and he is valuable now, not potentially. A child is not a person potentially; his rights are not respected because of what he will be, but because of what he is. That's the importance of overcoming those positions that protect the child under the slogan that children are the future of humanity.

Human dignity means that all human beings are equal among themselves and all have the same dignity which integrates with all human rights. The dignity of the human being does not support degrees, nor of some beings over others, nor in a

same human being. Everyone has equal dignity from the first to the last moment of their existence. Human dignity is inviolable; it cannot be attacked for any reason, even with the pretext of protecting some of the person's rights: it is a permanent, non-revocable and absolute principle. Anybody can never exploit a human being or treat him as an object¹⁸. Human dignity is the element that permits a common understanding of human rights and, therefore, all human rights invoke a common nature linked to the need of full respect for human dignity¹⁹. If every individual of the human species is a person and he must be considered owner of his rights, children are also owners of rights and they shouldn't have to wait for the evolution of life making them self-governing²⁰.

As a practical consequence of this new approach about children rights and the recognition of their progressive capacity to exercise them, we must stress that the limitations in the exercise of such rights must be interpreted restrictively. Only when the child has no capacity for the exercise of a right, it may be permissible being represented by someone else.

HIGHER INTEREST OF THE CHILD: SIGNIFICANCE OF THE PRINCIPLE AND ITS PRACTICAL CONSEQUENCES

It does not seem possible to redefine legal coordinates to children without making mention of the principle of the interest of the child, whose content is as unknown as unquestionable is its popular success. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law,

¹⁸ SOBRINO HEREDIA, J. M., 2008, Dignidad Humana. La dignidad humana será respetada y protegida, in MANGAS MARTÍN, A. (dir.), GONZÁLEZ ALONSO, L. N. (coord.), *Carta de los derechos fundamentales de la Unión Europea: comentario artículo por artículo*, Madrid, Biblioteca Nueva-Fundación BBVA, 107-126.

¹⁹ GROS ESPIELL, H., 1985, *Derechos Humanos, Derecho Internacional y Política Internacional*. Estudios de Derechos Humanos I, Caracas, 11; GROS ESPIELL, H., 2003, La Dignidad Humana en los Instrumentos Internacionales sobre Derechos Humanos, *Anuario de Derechos Humanos*, Volumen IV, 197.

²⁰ CABRERA CARO, L., 2002, Autonomía y dignidad: la titularidad de los derechos, *Anuario de Derechos Humanos*, Volumen III, 41.

administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration ²¹.

Doctrine agrees in considering that the interest of the child is linked to the development of the personality and to the protection of fundamental rights²². The determination of the interest of the child requires taking into account all the relevant circumstances, as well as the indivisible nature of the Convention of the rights of the child and the interdependence of its articles. It is essential to respond to the interest of the child to consider him individually. We are not talking about the interest of childhood, but the individual, the particular child, in his specific circumstances. The identification process of child's interest cannot be covered without the opinion of the child or adolescent himself, according to their age and maturity degree. The consideration of the child as a child subject makes him active protagonist of his own life. Although the decision can correspond to a third party and not to the child, the person who decides must take into account the views of the child. This does not mean that the person who decides should conclude solving as child wishes. To take into account means that it attends to what the child wants and the decision is adopted turning the will of the child into a significant element. What I just said means that special justification for decisions contrary to the will expressed by the child is required.

But rules on child's protection do not only demand that the interest of the child should be taken into account but they also refer to it as primary or higher. All measures with respect to the child should be based on the consideration of the

²¹ Art. 3 Convention.

²² ALONSO PÉREZ, M., 1997, La situación jurídica del menor en la Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor de Modificación del Código Civil y de la LEC: Luces y sombras, *Actualidad Civil*, 1, 24; LÁZARO GONZÁLEZ, I. (coord.), 2002, *Los menores en el Derecho español*, Madrid, Tecnos, 109; MORENO-TORRES SÁNCHEZ, J., 2009, *La seguridad jurídica en el sistema de protección de menores español*, Pamplona, Aranzadi-Universidad Pontificia Comillas, 84-101; PALMA DEL TESO, A., 2006, *Administraciones Públicas y protección de la infancia. En especial estudio de la tutela administrativa de los menores desamparados*, cited, 116; RIVERO HERNÁNDEZ, F., 1997, *El derecho de visita*, Barcelona, J. M. Bosch Editor, 157; ROCA I TRÍAS, E., 1999, Familia y cambio social (de la casa a la persona), *Cuadernos Civitas*, 220; ZUMAQUERO GIL, L., 2010, El interés del menor en los tribunales españoles, in ALDECOA LUZÁRRAGA, F., FORNER DELAYGUA, J. (dirs.); GONZÁLEZ BOU, E., GONZÁLEZ VIADA, N. (coords.). *La protección de los niños en el Derecho internacional y en las relaciones internacionales*, Madrid, Marcial Pons, 44.

child's interest, which must be treated as superior to any other legitimate interests. It is in situations of conflict where it is revealed the superiority of the child's interest over any other legitimate interest.

PROGRESSIVE CAPACITY OF THE CHILD ON THE EXERCISE OF THE RIGHTS

Recognizing the ownership of the rights to children on the basis of dignity they share with adults, children do not always have full capacity to exercise these rights for themselves and, therefore, have to make them effective through the intervention of a third party. It has always seemed to me that this statement only can be understandable to jurists but it will be strange to those who are not, unless they think of a very young child or they have in mind their own children. Children have full capacity to be holders of human rights; but the exercise of the rights was traditionally through a representative until the child reached the age of the majority.

There is a clear link between the dignity of the person and its self-governance as its natural ability allows it. We said before that all human beings have dignity and, consequently, they are holders of human rights. Lack of autonomy of the subject does not deprive him of his dignity. However, the human dignity requires being self-governing when the person has natural ability.

The distinction between ownership of the rights and capacity to act, under the new position of the child in Law, recognizes children a progressive capacity to exercise the rights in response to their condition of people in development. The conditions of maturity of the child are not uniform throughout the entire minority. We cannot treat similarly an eight-month old baby or a fourteen year old child. It is necessary to determine what child real possibilities of acting are in response to the achieved maturity degree. It is necessary to determine when the child can

decide for itself, when the child need be helped by others and when others have to decide by him²³.

In particular, personality rights' exercise is exempt of representation (except in the case of the child's life and health protection in medical emergencies). In accordance with the children position in the legal system and with present scientific knowledge, there is not a sharp difference between the protection needs and personal autonomy requirements, and then the best way to ensure children social and legal protection is promoting their autonomy as subjects²⁴.

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

On Child rights' enacting process, the Convention on the Rights of the Child has initiated a genuine upheaval. Since 1989 there has been an important progress in the recognition of child rights, both through the Convention and its protocols, as well as through other international instruments generated by organizations of universal or regional level and State regulations. However, we still need to move forward in the field of their effectiveness so that "should be" of human rights can be transformed in a duty to make implemented and obeyed²⁵. It is necessary to strengthen the foundations of respect for human rights in every legal system and to spread the necessary culture and techniques for their effectiveness.

Now Child rights constitute a requirement to legal policy development and therefore are legally binding. The task is "infinite and endless", as all those devoted to their promotion and defense might have seen. It is not enough a formal recognition of the rights and the imposition of an obligation to public authorities to refrain them. A positive requirement of promotion by creating the legal,

²³ See RUIZ HUIDOBRO DE CARLOS, J. M., 2003, La regulación legal de la capacidad de obrar del menor. Propuestas de lege ferenda, in LÁZARO GONZÁLEZ, I. E., MAYORAL NARROS, I. V., *Jornadas sobre Derecho de los Menores*, Madrid, Universidad Pontificia Comillas, 447-470, and the same author contribution RUIZ HUIDOBRO DE CARLOS, J. M., 2002, in LÁZARO GONZÁLEZ, I. (coord.), *Los menores en el Derecho español*, Madrid, Tecnos, 42-55.

²⁴ Explanatory statement of the Child Legal Protection Act of 1996.

²⁵ GOYARD-FABRE, S., 1994, Los derechos del hombre: orígenes y prospectiva, in SAUCA, J. M. (ed.), *Problemas actuales de los derechos fundamentales*, Madrid, Universidad Carlos III de Madrid, Boletín Oficial del Estado, 44-45.

political, social, economic and cultural conditions to make the free development of child personality real is needed. It is now clear that the issue is not to increase the standards of development of human rights. Together with the obligation to promote genuine understanding of human rights by those who have the responsibility to ensure their respect, is the fact that there's a duty to comply with them accompanied by a penalty for failure in doing so.

CONTENT OF THE EU AGENDA FOR THE RIGHTS OF THE CHILD

As already mentioned, the Commission presented in February 2011 an agenda to develop the European strategy on the rights of the child in the next few years²⁶. The EU Agenda for the Rights of the Child wants to give coherence to the political action of the following years. In order to take into account the child rights perspective in the measures that affect them, the Commission makes the rights of the child an integral part of EU's fundamental rights policy. To act effectively in the implementation and protection of the rights of the child, the Commission has developed mechanisms to monitor the conformity of draft legislative actions with the Charter of Fundamental Rights. It has prepared operational guidance that will enable its departments to examine the impact of any initiative on fundamental rights, including children rights, and to select the option that best takes into consideration the best interests of the child²⁷. The criteria under which actions are judged fall into the following categories: relevance to program, the quality of the proposed project, cost to benefit ratio, European scope and sustainability. The Fundamental Rights "Check-List" contains the following items:

1. What fundamental rights are affected?
2. Are the rights in question absolute rights (which may not be subject to limitations, examples being human dignity and the ban on torture)?

²⁶ COM (2011) 60 final.

²⁷ COMMUNICATION FROM THE COMMISSION. Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union. COM(2010) 573 final.

3. What is the impact of the various policy options under consideration on fundamental rights? Is the impact beneficial (promotion of fundamental rights) or negative (limitation of fundamental rights)?
4. Do the options have both a beneficial and a negative impact, depending on the fundamental rights concerned (for example, a negative impact on freedom of expression and beneficial one on intellectual property)?
5. Would any limitation of fundamental rights be formulated in a clear and predictable manner?
6. Would any limitation of fundamental rights:
 - be necessary to achieve an objective of general interest or to protect the rights and freedoms of others (which)?
 - be proportionate to the desired aim?
 - preserve the essence of the fundamental rights concerned?

The specific measures proposed by the Commission on the agenda are articulated in four fields of activity. The first, on the relationship between the child and justice, comprises measures aimed at making Europe's justice system more child-friendly. The proposed actions in the context of EU's civil and criminal justice policies are the following: adopting, in 2011, a proposal for a Directive on victims' rights raising the level of protection of vulnerable victims, including children; tabling, in 2012, a proposal for a Directive on special safeguards for suspected or accused persons who are vulnerable, including children; revising, by 2013, the EU legislation facilitating the recognition and enforcement of decisions on parental responsibility with a view to ensuring, in the interest of the child, decisions to be recognised and enforced as quickly as possible, including, where appropriate, the establishment of common minimum standards; promoting the use of the Council of Europe Guidelines of 17 November 2010 on child-friendly justice and taking them into account in future legal instruments in the field of civil and criminal justice; supporting and encouraging the development of training

activities for judges and other professionals at European level regarding the optimal participation of children in judicial systems. Then the Commission deals with the protection of particularly vulnerable children (children at risk of poverty, disabled children, children who are victims of sexual exploitation and trafficking, asylum seeking children, unaccompanied or separated children, Roma children, children who have run away from home, missing children, children confronted with cyber-bullying and grooming...). The Commission will contribute to empowering and protecting children when they are vulnerable, notably by: supporting the exchange of best practices and the improvement of training for guardians, public authorities and other actors who are in close contact with unaccompanied children (2011-2014); paying particular attention to children in the context of the EU Framework for National Roma Integration Strategies, which will be adopted in spring 2011 and will notably promote the more efficient use of structural funds for the integration of Roma; strongly encouraging and providing support to all Member States to ensure the swift introduction and full functioning of the 116 000 hotline for missing children and the child alert mechanisms (2011-2012); supporting Member States and other stakeholders in strengthening prevention, empowerment and participation of children to make the most of online technologies and counter cyber-bullying behaviour, exposure to harmful content, and other online risks namely through the Safer Internet programme and cooperation with the industry through self-regulatory initiatives (2009-2014). The third of the areas proposed by the Commission on the agenda is the external action of the European Union. In this sphere the EU wants to have a strong single voice in external matters when the relations of the child are concerned in relations with third countries. Violence against children, child labour, children in armed conflicts or child sex tourism are some of the aspects mentioned in the Agenda. The EU undertakes to continue the implementation of the 2007 EU Guidelines on the Protection and Promotion of the Rights of the Child that focus on combating all forms of violence against children. The EU undertakes also the mission of evaluating the implementation of the Guidelines. The EU wants to implement the EU Guidelines on Children and Armed Conflicts based on the 2010 Revised

Implementation Strategy. To end, the Commission recognizes that full recognition of the rights of the child means that “children must be given a chance to voice their opinions and participate in the making of decisions that affect them. Participation of children in the development and implementation of actions and policies that affect them demand better and more effective information about their rights to be ensured. The Commission makes itself set up, in the course of 2011, a single entry point on EUROPA with information for children on the EU and on the rights of the child. This single entry point will provide easy access to information that can be understood by children of different age groups and can be used by parents and teachers to find information and teaching materials. The Commission wants to invite other EU institutions to join this initiative.

This Agenda establishes policies which can't be dealt with by EU's institutions alone. It is because of this that the Commission calls on the Member States to renew the commitment to step up efforts in protecting and promoting the rights of children.

CRITICAL COMMENTS TO THE AGENDA PRESENTED IN FEBRUARY, 2011

It didn't take long for initial reactions to the Commission's communication to come. Children's Rights Alliance Chief Executive, Jillian van Turnhout, said: “We are delighted with the EU Commission's announcement today, which is the culmination of a significant amount of work in many locations, including Ireland. I am very excited by the publication of this Agenda, the first of its kind in the EU. It means that both the EU institutions and member states, including our new Government, will undertake very real work that will make a difference to the lives of children and their families. Promises today will ensure that children will be better supported when accessing the justice system, that further work will be undertaken to protect vulnerable children, such as those have been trafficked or sexually exploited, and a European wide focus on child poverty will be

maintained. These are just some of the element of the work promised today, so I'm very excited – and proud.”

The Child Rights Action Group (CRAG)²⁸ has reacted quickly to this agenda of the Commission. Their intention is to look forward to a constructive on-going dialogue with the European Commission and to contribute to strengthening the capacity of institutions to address child rights issues. Although CRAG considers that the Communication which contains the agenda is an important milestone in EU efforts to mainstream children's rights in EU policies, in view of this group of NGOs the Commission has lacked sufficient ambition to reflect the requirements of the Stockholm Program in the actions envisaged. The proposed EU Agenda appears to be a compilation of actions, but these do not respond to an overall vision or strategy within a clear priorities' framework. The CRAG believes the agenda lacks ambition and that there's a risk the instruments will end up being symbolic. To prevent this from happening, the Group urges the Commission to build on this EU Agenda and aim towards an ambitious, comprehensive child rights strategy offering a true reflection of the EU's reinforced commitment to children. A strategy on children's rights should set out the underlying principles on which all the Directorates-General can be built and it must apply to all children, including undocumented migrant children. On this basis, the Group urges the Commission to develop a work program with more concrete measures and to enable compliance with them allowing greater control.

Maria Herczog, member of the United Nations Committee on the Rights of the Child, considers that “this agenda unfortunately reflects the EU's very piece-meal approach to children's rights. It's a compilation of on-going actions rather than a coherent vision. I would ultimately like the UNCRC to be integrated into the legal framework of the EU –similar to what has been achieved with the UN Convention

²⁸ It is an informal group of child rights NGOs in which several organizations take part and specifically the following organizations endorse a text in response to the Commission: Eurochild, European Federation for Street Children, European Youth Forum, Platform for International Cooperation on Undocumented Migrants (PICUM), Plan Europe, Terre des Hommes International Federation, Save the Children, SOS Children Villages International, World Vision, Worldwide Association of Girl Guide & Girls Scouts-Europe Region.

on the rights of people with disabilities - but we seem to be a long-way from that goal. Also the over-riding emphasis on child protection misses the two other very important groups of rights set out in the UNCRC: provision and participation". Jana Hainsworth –Secretary General of Eurochild- also said that the Agenda misses the chance to set an overarching vision on how the UN Convention on the Rights of the Child can be effectively implemented across EU policies in a constant way²⁹. In the same direction, Salvatore Parata, Head of European Office Terre Des Hommes International Federation, said that the Agenda has important concrete actions, but that he would have expected a real comprehensive strategy on the rights of the child, as announced by the same European Commission five years ago³⁰.

FINAL REFLECTION

We are indeed witnessing a movement towards the development of regulatory policies of implementation of the rights of the child in Europe. A new conception of the position of the child in society is being noted clearly in major pronouncements of the Commission and with certain shyness in the adoption of concrete measures. In any case it's a hopeful movement that will need the boost of all those who can offer a positive participation.

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²⁹ The statements of both can be read in www.eurochild.org
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