REDC 77 (2020) 987-1046, ISSN: 0034-9372

PROTECTION OF CHILDREN'S RIGHTS IN THE INTERNATIONAL COMMUNITY AND IN THE CATHOLIC CHURCH: A COMPARATIVE ANALYSIS*

PROTECCIÓN DE LOS DERECHOS DE LOS NIÑOS EN LA COMUNIDAD INTERNACIONAL Y EN LA IGLESIA CATÓLICA: ANÁLISIS COMPARATIVO

ABSTRACT

The aim of the following research is to analyse, according to a comparative approach, the evolution of juridical protection and promotion of children and their rights, including the state of current regulations and their implementation. The first part will take into consideration existing and former international legislation and, in the second part, we will consider the reforms put forward by the juridical system of the Catholic Church, particularly those recently promulgated by Pope Francis. Both sections will draw attention to the regulations aimed at protecting children from any kind of sexual abuse and exploitation.

Keywords: Children's rights, child protection, child exploitation, safeguard, international law, canon law.

RESUMEN

El presente estudio asume la perspectiva de derecho comparado para analizar la evolución de la normativa respecto a la tutela y promoción de los derechos de los niños, hasta llegar a la situación actual. En la primera parte se toma en consideración la normativa internacional sobre promoción y protección de los sujetos menores de edad; en la segunda, se presenta el progreso y las reformas llevadas a cabo en el ordenamiento de la Iglesia católica, hasta las más recientes emanadas por el Papa Francisco. En ambas secciones se otorga especial importancia a las cuestiones relacionadas con la necesidad de una mayor protección del niño contra toda forma de abuso y explotación sexual.

* The following text, with several updates and bibliographical references, refers to a public lecture delivered at Syracuse University in New York City on 14 February 2020.

Palabras clave: Derechos del menor, protección del niño, explotación infantil, derecho internacional, derecho canónico.

I. Introduction

It is well-known that across the world, in 2019, we commemorated the 30th anniversary of the United Nations Convention on the Rights of the Child[1] (hereinafter referred to as the CRC). The invitation from the international community to celebrate this anniversary of the children's rights *magna carta* was accepted by many institutions—not only those in the public sector, but universities and academic centres as well—who held institutional meetings and dedicated events. Debates and symposia have also taken place within the academic world but, most of the time, these analyses have been limited in scope to the current state of child and adolescent protections, focusing their examination of child protection regulations on a single State or on the legislative reforms which were adopted following the ratification of the Treaty in specific Countries.

Unfortunately, this recurrence did not arouse significant interest in the Ecclesial world, even if some important and innovative legislative reforms —which aim to protect children and the most vulnerable people— have been promulgated at a universal Church level in recent years[2]. Despite its lack of close connection to the aforementioned anniversary, in February 2019, in Vatican City, a symposium entitled *«The Protection of Minors in the Church»* took place and gathered together representatives from episcopal conferences and religious congregations from different continents, along with experts in the field of child protection[3]. In all the interventions and speeches pronounced during this symposium, it was apparent that the Church's commitment to the fight against the plague of sexual abuse of children remains central, in terms

1 The most correct term to use is *child* or *children*, however in some cases the word *minor* may be used to avoid repetitiveness. Due to the latter's dual meaning in English, the use of this term can carry a connotation which diminishes the value of children and childhood, and as such it is avoided by many proponents of children's rights.

2 Intentionally we will not mention but only briefly refer to regulations related to the domestic jurisdictions of single States, and the reforms implemented by episcopal conferences since it is not part of the scope of our analysis, as the name of this paper implies.

3 During the speech that concluded the meeting we are referring to, Pope Francis repeated what he already said during the Annual Address to the Roman Curia on 21 December 2018: *«I would reaffirm that the Church will spare no effort to do all that is necessary to bring to justice whosoever has committed such crimes. The Church will never seek to hush up or not take seriously any cases»*. To see the translation of the relevant addresses in other languages, see http://www.vatican.va/resources/index_it.htm#INCONTRO_LA_PROTEZIONE_DEI_MINORI_NELLA_CHIESA [accessed 20 July 2020].

of both the Church's evangelising mission and in legislative action planned for particular Churches. This commitment is also reflected in some juridical reforms that were implemented following this event. We will refer to these reforms throughout our analysis.

This paper seeks to provide an overview on the evolution of efforts made by the international community and the Catholic Church to guarantee the protection of children. The foundational consideration, as a matter of urgency for all of us, is the full implementation of the rights of children, which takes into account the complex and multifaceted nature of childhood, and the consequential necessitation of an interdisciplinary approach to research[4]. Today, more than ever, we are in a time of rapid and sudden changes which impact each one of us indiscriminately —including, of course, the youngest and least-protected subjects of our societies.

As I have already highlighted in other research[5], the best approach to children's rights is to prioritise a transversal understanding of some core legislative reforms for child protection, eliciting the affinities more than the discordances which exist in all legal systems —in our case, international and canonical— which recognise key universal and fundamental principles as the barycentre of their juridical makeup. Our attention in this analysis shall focus particularly on the protection of children against exploitation and sexual abuse. For this reason, great importance will be given to references and analyses of international and canonical legislation, which clearly demonstrate the commitment to eradicate, or at least reduce, these grievous phenomena[6]. However, before attending to the analysis of these aspects, it seems advantageous to explain, even if only in summary, the historical developments which brought about the drafting of regulations which aim to advance both the protection of children and the promotion of their rights, and to combat the phenomenon of sexual abuse at an international level. In the latter part of this

4 See MACLEOD, C. M., Are Children's Rights Important?, in: BRAKE, E.; FERGUSON, L. (eds.), Philosophical Foundations of Children's and Family Law, Oxford: OUP, 2018, 191 (footnote 1).

5 See RIONDINO, M., Il superiore interesse del minore nell'ordinamento della Chiesa e degli Stati, in: CpR, 100, 2019, 271-295; ID., Il primato giuridico e morale del concetto di *interesse del minore*, in: BORRELLI, M. T.; NARDELLI, M. (eds.), Prima i Piccoli. La Convenzione sui diritti del fanciullo e il protagonismo dei ragazzi, Roma: AVE, 2014, 9-45; ID., L'evoluzione del concetto di «interesse del minore» nella cultura giuridica europea, in: AA. VV., *Civitas et Justitia*. La filiazione nella cultura giuridica europea, Città del Vaticano: Lateran University Press, 2008, 389-411.

6 The increase of this phenomenon, particularly in Europe, became apparent to the Council of Europe, and necessitated the urgent launch of the «ONE in FIVE Campaign», designed to stop sexual violence against children. For further details, see the research put forward by Lalor and McElvaney, available at: https://www.coe.int/t/dg3/children/1in5/Source/PublicationSexualViolence/Lalor-McElvaney.pdf [accessed 27 July 2020].

paper, when conducting an analysis of the existing norms in canon law, it will be essential to refer to the Magisterium. The Magisterium is considered an integral part of the juridical system of the Church which, as we know, is not limited to positive and codified law.

II. Historical overview of the rights of the child in society

Laudable contributions, especially by media during recent decades[7], have certainly produced a greater awareness of the state of childhood all over the world and of efforts towards a real implementation of children's rights —even where the results of such efforts have not always been positive. However, it is important to mention that sometimes mere rhetoric on human rights, in many secular legal systems, has been substituted for a substantial and dogmatic drafting of these concepts[8]. Several children's rights scholars have, over many years, produced scientific contributions to illustrate that the attribution of proper rights to minors undeniably provides effective legal and moral protection during their childhood and adolescence[9]. Additionally, there

7 It is important to emphasise that the appreciation of the Church for the media started during the conciliar period, especially in the Decree INTER MIRIFICA, in: AAS, 56, 1964, 145-157. In fact, in point 1 it is written: «*Among the wonderful technological discoveries which men of talent, especially in the present era, have made with God's help, the Church welcomes and promotes with special interest those which have a most direct relation to men's minds and which have uncovered new avenues of communicating most readily news, views and teachings of every sort. The most important of these inventions are those media which, such as the press, movies, radio, television and the like, can, of their very nature, reach and influence, not only individuals, but the very masses and the whole of human society, and thus can rightly be called the media of social communication*». For the English version, see the Decree on the Media of Social Communication INTER MIRIFICA, in: The Documents of Vatican II, Sydney: St Pauls Publications, 2009, 199-206. It is interesting to underline that already, some years before, Pius XII defined these «*technical inventions*» as «*gifts of God*» in the Encyclical Letter MIRANDA PRORSUS, in: AAS, 49, 1957, 765. For the English translation, see http://www.vatican.va/content/pius-xii/en/encyclicals/documents/hf_p-xii_enc_08091957_miranda-prorsus.html [accessed 20 July 2020]. For further details, see TANNER, N., The Church and the World, New York–Mahwah: Paulist Press, 2005, 104-118. In relation to the value of media in the recent Magisterium, see the Message of Pope Francis for the 53rd World Communication Day, «We are members one of another» (Eph 4:25). From social network communities to the human community, available at: http://www.vatican.va/content/francesco/en/messages/communications/documents/papa-francesco_20190124_messaggio-comunicazioni-sociali.html [accessed 20 July 2020]. In relation to the risk that an improper use of media involves, especially among young people and adolescents, Pope Francis said, in the aforementioned message: «*Statistics show that among young people one in four is involved in episodes of cyberbullying*».

8 See SUMMER, L. W., The Moral Foundation of Rights, Oxford: OUP, 1990, 1.

9 See, for example, FREEMAN, M., Why It Remains Important to Take Children's Rights Seriously, in: International Journal of Children's Rights, 15, 2007, 5-23; TOBIN, J., Justifying Children's Rights, in: International Journal of Children's Rights, 21, 2013, 395-441; GUGGENHEIM, M., What's Wrong with Children's Rights, Cambridge: Harvard University Press, 2005, 1-16; SENIGAGLIA, R., The best interest of the child tra persona e contratto, in: Diritto delle successioni e della famiglia, 3, 2019, 803-825; FERRANDO,

are contributions and reflections from sociologists of law who have especially deepened the relationship between the rights of the child and society[10].

However, as many of us are very aware, childhood finds itself as the subject of many contradictory influences, especially —even if not exclusively— in particular Countries or regions of the world. The invitation formulated at the end of the 1970s to take *«seriously the rights»*[11] becomes today of extraordinary relevance, especially in relation to children. Unfortunately, the protection of the innocent, by definition, is not always a priority for States and public institutions. As mere examples, we recall some issues present in our world, such as: conditions connected with child abuse; the moral, material and labour exploitation of many children; the psychological abandonment of children within their own families, and; the pedagogical and educational insufficiencies of many educational institutions of all orders and levels. We shall add to this the problem of the invisibility of millions of migrant children, who often reach a country unaccompanied and then are subject to marginalisation in their destination country; cast aside, even to the point—whether intentional or not—of deviance and delinquency. The number of cases in which children's rights are clearly denied are increasing, making it difficult to speak about an improvement of justice. Justice should give priority to whom, by nature, needs more protection. As a famous Italian jurist said[12], it is not easy to imagine nor

---

G., Diritti e interesse del minore tra principi e clausole generali, in: Politica del diritto, 29, 1998, 167-176; FORTIN, J., Children's Rights and Developing Law, 3rd ed., Cambridge: Cambridge University Press, 2009, 33-77; SAULLE, M. R., I diritti del minore nell'ordinamento internazionale, in: ID. (ed.), La Convenzione dei diritti del minore e l'ordinamento italiano, Napoli: ESI, 1994, 11-27; DAVID, P., Implementing the Rights of the Child: Six Reasons Why the Human Rights of Children Remain a Costant Challenge, in: International Review of Education, 48, 2002, 259-263; EEKELAAR, J., The emergence of Children's Rights, in: Oxford Journal of Legal Studies, 6, 1986, 161-182; FERGUSON, L., Not Merely Rights for Children but Children's Rights: The Theory Gap and the Assumption of the Importance of Children's Rights, in: International Journal of Children's Rights, 21, 2013, 177-208; VERHELLEN, E., Convention on the Rights of the Child. Background, motivations, strategies, main themes, 4th ed., Garant: Antwerpen, 2006, 11-18; LIEFAARD, T.; SLOT NIELSEN, J., 25 Years CRC: Reflecting on Successes, Failures and the Future, in IDD. (eds.), The United Nations Convention on the Rights of the Child, Leiden: Brill Nijhoff, 2017, 1-13; HIERRO SÁNCHEZ-PESCADOR, L. L., ¿Tienen los Niños Derechos?, in: Revista de Educación, 294, 1991, 221-233. For an interesting overview on the background of children's rights, particularly in the two decades preceding the CRC, see MINOW, M., What Ever Happened to Children's Rights, in: Minnesota Law Review, 80, 1995, 267-298.

10 For more details, see KING, M., The Sociology of Childhood as Scientific Communication: Observations from a social systems perspective, in: Childhood, 14, 2007, 193-213; POCAR, V.; RONFANI, P., La famiglia e il diritto, 2nd ed., Roma–Bari: Laterza, 2005, 157-173; RONFANI, P. (ed.), I diritti del minore. Cultura giuridica e rappresentazioni sociali, Milano: Guerini, 1995. For further information on the relation between family and childhood, according to a sociological perspective focusing on the independence of the child, see ALANEN, L., Rethinking Childhood, in: Acta Sociologica, 31, 1998, 53-67.

11 As put forward by DWORKIN, R., Taking Rights Seriously, Cambridge: Harvard University Press, 1977.

12 See STELLA, F., La giustizia e le ingiustizie, Bologna: il Mulino, 2006, 221.

to implement an idea of Justice if it cannot protect those who are the most fragile and undefended. These latter are often forgotten, disadvantaged and sometimes even abused.

Across the centuries, religious belief, including that of the Catholic faithful, has played a fundamental and positive interventional role in these types of situations, helping individuals and communities who were in difficult circumstances. The evangelic charity and charisma of several ecclesiastical institutions has often been demonstrated most clearly in the field of education, and particularly in the provision of opportunities for to those who could not otherwise afford an education[13], since even access to a primary education has not always been easy nor automatic.

The twentieth century was, according to the definition of many researchers, the century of the child[14], and was fundamental for the growing awareness and recognition of the child as an autonomous subject of their rights and duties. Thanks to this increasing recognition, we overcame the archaic conceptualisation of the child as totally subordinate to their family —whether their biological family or foster family[15]— according to the provision of given juridical norms at the time.

Almost fifty years ago, it was said that children's rights —intended as independent from adult rights— can be considered in some ways like a wayward «*slogan*» in search of a definition[16]. However, it is also undeniable that international law, especially in recent decades, has recognised and given a dogmatic structure to the independent status of the child and, in this way, has tried to mitigate the unique dangers that children face. We shall add to this

13 For an historical overview, particularly on the XVII and XVIII centuries, see DELGADO, B., Historia de la infancia, Barcelona: Ariel, 1998, 165-205. See also DEMAUSE, L., The evaluation of childhood, in ID. (ed.), The History of Childhood, New York: Harper TorchBooks, 1975, 1-73.

14 This is evident even from the title of this well-known text written by KEY, E., The Century of the Child, New York: Putnam's Sons, 1909.

15 It is interesting to note that in the XVII century, despite the fact that children were generally considered the property of their parents, philosophers like John Locke would affirm that parents must assume a guide role toward their children. According to the English philosopher, the main duty of the parents, was to take care of their children, this appears clear in Chapter VI of the famous work *Two Treatises of Government*, published in 1689. Indeed, it is interesting to observe that in the Second Treatise of Government, Locke already used the expression «*parental power*» and not «*paternal power*» (TT, 2.52). For further details, see TUCKNESS, A., Locke on education and the rights of parents, in: Oxford Review of Education, 36, 2010, 627-638. As regards to the influence of J. J. Rousseau on the idea of education and on the autonomy of the minor, see FANLO CORTÉS, I., Bambini e diritti, Torino: Giappichelli, 2008, 15-29. Still relevant are the reflections put forward in WORSFOLD, V. L., A Philosophical Justification for Children's Rights, in: Harvard Educational Review, 44, 1974, 142-157.

16 See RODHAM, H., Children Under the Law, in: Harvard Educational Review, 43, 1973, 487.

the fact that the psychological theorisation of the development of children has favoured an awareness of the particular and specific needs of children[17].

For the purposes of our analysis, which we will soon demonstrate, we shall divide the twentieth century —that is, the century rightly called the century of childhood[18]— into three fundamental periods.

1. *The «discovery» of children's rights*

The first period starts with the commencement of the Third Hague Conference, 18 June 1900, which culminated in 1902 with the adoption of the first international agreement on child protection. This initial period spans until the end of World War Two. The greatest contribution to children's rights during this time resulted from the activities implemented by the *International Labour Organization* (ILO), established in 1919. Since its foundation by the League of Nations, this very first international organisation has focused on the problem of child labour[19] in relation to the protection of minors against exploitation and abuse. A clear example of this commitment can be found in Convention No. 5, open to ratification by the States in 1919, which set 14 years as the minimum age for employment in industrial labour. In 1937, with the application of Convention No. 59, the minimum age was eventually set at 15 years[20].

17 See BRANNEN, J., Reconsidering Children and Childhood: Sociological and Policy Perspectives, in: SILVA E.; SMART C. (eds.), The New Family?, London: Sage, 1999, 143-145.

18 The greatest contribution on this topic has been given by the French historian Ph. Ariès. In his main work, which was translated in many languages, he analyses the development of childhood (and partially also of adolescence) and illustrates that the idea we have today of infancy, *«did not exist in medieval society»* (p. 125), as in: Centuries of Childhood, London: Penguin Books, 1960. For a critical approach to this idea and for further details, see SHAHAR, S., Childhood in the Middle Ages, London: Routledge, 1990; see also CUNNINGHAM, H., Children and Childhood in Western Society since 1500, London: Longman, 1995.

19 The expression *child labour* has been used here for the first time and in its intention, like the current meaning, in Great Britain in XX century. However, this is not to negate that there were efforts made prior to the XX century to address the dangers of child labour, such as Great Britain's *Factory Act of 1833*, which made provisions (particularly regarding minimum age and education requirements) for children employed in the textile industry. For more details, see HUMBERT, F., The Challenge of Child Labour in International Law, Cambridge: CUP, 2009, 27; see also CRUICKSHANK, M., Factory children and compulsory education: The short-time system in the textile areas of north-west England 1833-64, in: The Vocational Aspect of Education, 30, 1978, 111-117; CUNNINGHAM, H., The Employment and Unemployment of Children in England, in: Past and Present, 126, 1990, 115-150; NARDINELLI, C., Child Labor and the Factory Acts, in: Journal of Economic History, 40, 1980, 739-755. We also recognise that Charles Dickens, with his historical novels such as *Oliver Twist* and *David Copperfield*, played an important role in sensitising society to the effects of industrialisation, and influenced the creation of philanthropic associations engaged in child protection and the defence of children's rights.

20 It is also worth recalling here the Convention No. 6 of 1919 on the access of night work by children, and the Convention No. 7 on minors employed in maritime labour. The greatest merit of the

Among the relevant sources of law for this first phase is the Declaration of the Rights of the Child, approved in Geneva in 1924, commonly known as the *Declaration of Geneva*. It is considered the League of Nations' very first step towards setting out on paper the principle of the protection of children. In it, the child is essentially considered as a weak subject who needs protection from the State, the family and public institutions. This brief international document, constituted of only five points[21], draws particular attention to the material needs of children, especially in terms of the obligations that adults, family and society have toward the child. However, article no. 1 of the *Declaration of Geneva*, states that *«The child must be given the means requisite for its normal development, both materially and spiritually»*. For the first time in an international document which focuses on the protection and, in a wider sense, the promotion of childhood, we can find a spiritual dimension deemed as fundamental for a harmonious and holistic development of the personality. The primary shortcoming of the Declaration of Geneva, which was not binding for the States, was its predominantly paternalistic perspective. This is in contrast with the idea that the child is legitimately entitled to specific and independent rights, correlated with their condition as a growing subject. It could be deduced that the main intention of the Declaration is to point out adults' obligations towards children—a noble intention, especially if we consider the time in which this source of international law was drafted and approved. However, it remains incomplete and limited to an aid-based approach to infancy, childhood and adolescence.

ILO Conventions is the minimum standards set in connection primarily with age, in order to limit the exploitation of children, recognising also its close correlation with school dropouts, especially during primary or elementary school. For more details on the evolution of Child Labour legislations, see AKHTAR, R. C.; NYAMUTATA, C., International Child Law, 4th ed., London: Routledge, 2020, 275-304; see also RAY, R.; LANCASTER, G., Efectos del trabajo infantil en la escolaridad. Estudio plurinacional, in: Revista Internacional del Trabajo, 124, 2005, 209-232; SMOLIN, D. M., Strategic Choices in the International Campaign against Child Labour, in: Human Rights Quarterly, 22, 2000, 942-987.

21 These are the five points that constitute the *Geneva Declaration of the Rights of the Child*: 1) The child must be given the means requisite for its normal development, both materially and spiritually; 2) The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured; 3) The child must be the first to receive relief in times of distress; 4) The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation; 5) The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men. For an overview on this international document, see DROUX, J., L'internationalisation de la protection de l'enfance: acteurs, concurrences et projets transnationaux (1900-1925), in: Critique Internationale, 52, 2011, 17-33.

2. *The child as an object of the law*

The second period, which spans almost forty years, starts directly after the Universal Declaration of Human Rights (UDHR), issued in 1948, and ends before the promulgation of the CRC. Before continuing, it is important to note a particular feature of the UDHR process. Surprisingly, if not worryingly, the instrument that the United Nations used to document dramatic and painful post-war experiences, does not dedicate an independent section for children and for their protection in society. Furthermore, article no. 16, which gives a definition of the family as *«the natural and fundamental group unit of society»*, provides only a weak reference to the protection of all members of the family, which is implicitly inclusive of children, in compliance to the principle of non-discrimination, set in article no. 2 of the UDHR.

The Declaration on the Rights of the Child also belongs to this second phase. It was approved by the General Assembly of the United Nations in Geneva on 20 November 1959 and is aptly deemed a *«conceptual parent»* of the CRC[22]. It is constituted by ten articles and is not binding for the States Parties[23]; its intention was to complete and enrich the general principles contained in the Declaration of Geneva. There is no doubt that this document demonstrates a perceivable awareness of some fundamental and inalienable rights to which each child is entitled, and which should receive national and international protection. These principles would later be recalled in the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) on 16 December 1966. Here, according to the main principle of non-discrimination, article no. 24, §1 states: *«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»*.

Article no. 9 of the Declaration on the Rights of the Child also deals with the protection of children against any type of exploitation, especially sexual exploitation. It completes and deepens, especially in its legal wording, the content of the fourth principle of the Declaration of Geneva. The general

22 As defined in VAN BUEREN, G., The International Law on the Rights of the Child, The Hague: Martinus Njjhoff-Kluwer Law International, 1998, 14.

23 For further analysis on the 1959 Declaration, see MOODY, Z., The United Nations Declaration on the Rights of the Child (1959): Genesis, transformation and dissemination of a treaty (re)constituting a transnational cause, in: Prospects, 45, 2015, 15-29. For some references regarding the rationale for deeming *the best interest of the child* as a *paramount consideration*¸ see GOLDSTEIN, J.; FRUED, A.; SOLNIT, A. J., Beyond the Best Interest of the Child, New York: The Free Press, 1973, 105-111.

expression *«every form of exploitation»* becomes here, *«The child shall be protected against all forms of neglect, cruelty and exploitation»*. This demonstrates a greater awareness of the close connection existing between abandonment and neglect—physical or psychological—and the vulnerability of the possible victim. This occurs even in international law, which at this stage was not particularly sensitised to this topic.

Finally, the element that brings together both Declarations (1924 and 1959) is the conceptualisation of the child as an object of the law and not simply a legal subject, and the fact that they are both international acts, not binding for the signatory States. To have a proper legal theorisation of the child as a legal subject, we must wait until the promulgation of the CRC.

Another milestone concerning the protection of childhood was reached in 1973 by the ILO, with the Convention No. 138 on minimum age. It is a body of law which asserted, from the very first articles, its aim: to favour and promote the psychological and physical development of children. Even if the law primarily covers the protection of children whom are engaged in labour, there are interesting references, but not explicit, to the *interest of the child*, especially in relation to their right to education[24]. The Convention states that a child may start working only after the completion of compulsory schooling and, in any case, not before they reach the age of fifteen. During the 1960s and 1970s, many reforms were also made to laws which regulated schooling, especially in Europe. In most instances, the aim was to increase the years of attendance during primary or compulsory school, and create school curricula which better responded to a child's need for growth and vocational training.

A long procedure to extend the CRC also took place during this second phase. This began in 1978 when the Polish Government proposed the adoption of a Convention on the Rights of the Child. This was in view of the International Year of the Child, which was announced by the General Assembly of the United Nations in 1979, in recognition of the twentieth anniversary of the 1959 Declaration on the Rights of the Child[25]. The influence of thinkers, philanthropists and researchers, such as Janusz Korczak, a Polish paediatri-

24 For a brief overview on this topic, see RIONDINO, M., The 30th anniversary of the Convention on the Rights of the Child and Child Labour exploitation, in: E-Journal of International and Comparative Labour Studies 9, 2020, 91-96; see also CREIGHTON, B., Combating Child Labour: The Role of International Labour Standards, in: Comparative Labour Law Journal, 18, 1997, 362-396.

25 Fur further details, see CANTWELL, N., The Origins, Development and Significance of the United Nations Convention on the Rights of the Child, in: DETRICK S. (ed.), The United Nations Convention on the Rights of the Child: A Guide to the «Travaux Préparatoires», Dordrecht: Martinus Nijhoff Publishers, 1992, 19-30. See also FREEMAN, M., The End of the Century of the Child, in: Current Legal Problems, 58, 2000, 505-558.

cian, have played an undeniably important role in the proposal carried out by Poland, which is considered a pioneering and noble initiative.

For ten years from this proposal there was a working group in charge of the drafting of the new international Treaty. This group solicited the support and contributions of NGOs—which held consultancy status—and States which were accredited by the Economic and Social Council[26]. The final draft of the CRC was ready in 1989 and was unanimously approved by the General Assembly of the United Nations on 20 November later that year; the same date of the thirtieth anniversary of the Declaration on the Rights of the Child. I will address this subject independently, later in our analysis. However, we should consider an important aspect here, especially regarding the connection between the rights of children and their protection against any type of abuse, particularly sexual abuse. In the CRC, as we will see, the *best interest of the child* is intricately linked with the protection of the minor against any form of sexual abuse, in compliance with article no. 34. In the earlier international documents we have mentioned so far, there were some general references to exploitation but no specific provisions for the protection of the minor against sexual abuse. This is a reflection of the increasing awareness during this second phase, especially in secular contexts, of the problem connected with the sexual abuse of minors. In the past, this consideration was not common in legal sociology, nor in the reforms of law adopted by domestic jurisdictions[27]. The phenomenon certainly existed but had not been a priority for judicial authorities[28].

3. *The child as a legal subject*

The third and last phase of this historical overview begins with the approval of the CRC, completed by its three additional protocols[29], and ends

26 See VERHELLEN, E., Convention on the Rights of the Child, op. cit., 70-81.

27 For a sociological perspective on this phenomenon, particularly during this period, see PFHOL, S. J., The «Discovery» of Child Abuse, in: Social Problems, 24, 1977, 310-323.

28 For the history on the discovery of the first documented cases of sexual abuse of minors, following medical reports of suspicious abrasions and wounds, see RADBILL, S. X., A history of child abuse and infanticide, in: HELFER, R. E.; KEMPE, H. C. (eds.), The Battered Child, Chicago: Chicago University Press, 1968, 3-17. For a brief historical overview, see THOMAS, M. P., Child abuse and neglect: historical overview, legal matrix and social perspectives, in: North Carolina Law Review, 50, 1972, 539-543.

29 Respectively: 1) The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted by the UN General Assembly on 25 May 2000 and entered into force on 12 February 2002; 2) The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography, adopted by the UN General Assembly on 25 May 2000 and entered into force on 18 January 2002; and, 3) The Optional Protocol to the Conven-

with the Convention of the Council of Europe on Child Protection Against Sexual Exploitation and Sexual Abuse, to which we will dedicate an autonomous section. Generally referred to as the *Lanzarote Convention*, this more recent international treaty is limited to a precise geographic region but is nonetheless relevant for this analysis. Today, all Member States of the Council of Europe have ratified the Lanzarote Convention; chronologically the first State was Albania in 2008, and the last was Azerbaijan, on 18 December 2019. Recently, some States that are not part of the Council of Europe, like Tunisia, have also ratified this Treaty[30]. The provision of the possibility for non-member countries (of the Council of Europe) to ratify the Convention is connected to a clear objective: to share the intentions of this Treaty and promote an extra-European and transcontinental judicial collaboration, particularly in light of the globalisation of communication media. This latter point is the object of several specific legal provisions contained in the Lanzarote Convention.

To conclude this overview on international legislation, we must refer to the 1999 ILO Convention on the Worst Forms of Child Labour. Of special note is article no. 3 §*b*, which addresses *«the use of children for prostitution and pornography»*. In the CRC, article no. 1, a child is defined as any human being under eighteen years old, with the caveat that this may be lowered by domestic jurisdictions (or law). In contrast, the ILO Convention states that a child is, definitively, any human being who is not yet eighteen; in this way, it does not permit any exception, even in circumstances where the age of majority is obtained before eighteen years in compliance with specific domestic legislations.

During the twenty-year duration of this third phase, there are other international treaties which are not explicitly connected with child protection against sexual abuse but are worth analysing, even if they apply to particular geopolitical contexts. The first is the African Charter on the Rights and Welfare of the Child, promoted by the member states of the African Unity, which later became the African Union. This Charter, within which we can find the concept of *welfare*, was signed in Addis Ababa in 1990[31]. *Well-being* and *welfare* are

tion on the Rights of the Child on a Communications Procedure, adopted by the UN General Assembly on 19 December 2011 and opened for signature in Geneva on 28 February 2012, which remains open for signature at the UN Headquarters in New York.

30 To view the current state of signatures, ratifications and reservations of the Lanzarote Convention, see https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201 [accessed 21 July 2020].

31 The African Charter on the Rights and Welfare of the Child has been ratified by 49 member States, on 30 June 2019. For more information and details, see https://au.int/sites/default/files/treaties/36804-slAFRICAN%20CHARTER%20ON%20THE%20RIGHTS%20AND%20WELFARE%20OF%20THE%20CHILD.pdf [accessed 21 July 2020].

characterised in opposition to distress, including distress of a psychological nature—acknowledging the condition of distress which many child victims of neglect and exploitation are in. *Well-being* must be considered a right to which every single child is entitled, especially in some parts of the African continent, where many minors still live in critical situations. Armed conflict, exploitation, malnutrition and illiteracy are realities still faced by millions of children, impeding their physical and mental development[32]. These considerations are clearly illustrated in the Preamble of the Charter. The States Parties are committed to the eradication, or at least discouragement, of actions that are harmful to the dignity of the child, including those connected to ancestral, cultural or religious, practices. This is predicated clearly in article no. 1 §3.

Moving to the European context, the Charter of Fundamental Rights of the European Union is a key reference document[33]. The Charter was signed in Nice in 2000 and contains values considered common to the European Continent: dignity, freedom, equality and solidarity; ideas which have dominated Western philosophical and ethical thought over the centuries. These values demonstrate the commitment of European States to the promotion and construction of a «*peaceful future*» based on the awareness of its spiritual and moral heritage, per the vision set out in the Preamble. The child, in relation to the protection of their *best interest*[34] and, in fact, to any interest which may conflict with the interests of adults, is the object of article no. 24. It outlines the rights of children to receive protection and care, while also guaranteeing the child's natural right to pursue their legitimate *well-being*—a concept that we can find, as already said, in the 1990 African Charter. This concept is not limited to physical and psychological help, but also pertains to adult's duty to favour, promote and protect a harmonious and holistic development of the child.

32 For further information on the African Charter, see BOUKONGOU, J. D., Le système africain de protection des droits de l'enfant, in: Cahier de la Recherche sur les Droits Fondamentaux, 5, 2007, 97-108; OLINGA, A. D., La Charte africaine sur les droits et le bien-être de l'enfant: essai de présentation, in: Revue de droit de pays d'Afrique, 106, 1996, 53-68. For a comparison between the CRC and the African Charter, see JOHNSON, R., Strengthening the monitoring of and compliance with the rights of the African Charter, in: International Journal of Children's Rights, 23, 2015, 365-390.

33 To consult the official English translation of the Charter of Fundamental Rights of the EU, see: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C2012/326/02&from=EN [accessed 27/7/2020].

34 For further details, see McGLYNN, C., Rights for Children? The Potential Impact of the European Union Charter of Fundamental Rights, in: European Public Law, 8, 2002, 38-400; LOTITO, P. F., Art. 24, in: BIFULCO, R.; CARTABIA, M.; CELOTTO, A. (eds.), L'Europa dei diritti, Bologna: il Mulino, 2001, 185-193.

It is important and helpful to recall that Swiss psychologist Jean Piaget, halfway through last century, identified a fundamental and urgent need to recognise, in an independent way, the importance of the promotion of interests, especially those of children[35]. This to clarify that the capacity of a child shall never and in any way be confused with the capacity of a small adult—that is, with a reduced capacity of thought—but must be considered as an independent capacity, with particular and unique characteristics. Article no. 24 also states that the minor has the right to freely express their opinion, which shall be taken in consideration according to their age and maturity[36]. Finally, it is worth recalling that any action carried out by a public authority or a private institution must consider *the best interest of the child* as a unique criteria. This method shall also be adopted in order to guarantee the right to maintain relationship with both parents in circumstances where the parents do not—or cease to—cohabit, which is increasingly frequent both at a European and transnational level[37]. Also, in this regard, we will see that the juridical system of the Church is particularly sensible to the interests and the protection of children, especially when the marital union is in a pathological phase; that is, during the separation of spouses or nullity of a marriage.

III. The *best interest of the child* as the main pillar of the CRC

Following from this analysis of the sources of international law, during which we tried to illustrate the evolution and the importance of the promotion and protection of childhood, we shall now focus on the underlying concept for any kind of child protection: a child's *best interest*[38]. Family and child leg-

35 This concept emerged in PIAGET, J., The Origins of Intelligence in Children, New York: Norton and Co. Inc., 1952.

36 The right of the child to be listened to, especially during procedures in which they are involved, is fundamental also in the European Convention on the Exercise of Children's Rights, which was opened for signature in Strasbourg on 25 January 1996 and entered into force on 1 July 2000 (particularly in articles nos. 1 and 3). For further details, see PARKINSON, P.; CASHMORE, J., The Voice of a Child in Family Law Disputes, Oxford: OUP, 2008, 9-13.

37 It is interesting to note how some states within the US promulgated legislation which provided for the consideration of the «*happiness and welfare of the children*» in decisions about who would have custody of them following a divorce. Examples of such reforms are those affected in Massachusetts in 1855 and 1857. For further information see DOLGIN, J. L., Why Has the Best Interest Standard Survived?: The Historic and Social Context, in: Children Legal Rights Journal, 16, 1996, 1-10 (particularly 5-6). Further, it is interesting to note that even as early as 1973, there is an example of a study where 29 percent of children «*were living only in one-parent families*», as seen in GOLDSTEIN, J.; FRUED, A.; SOLNIT, A. J., Beyond the Best Interest of the Child, op. cit., 136.

38 For further analysis on this concept, and for bibliographical references, see EEKALAAR, J.; TOBIN, J., Article 3. The best interest of the Child, in: TOBIN, J. (ed.), The UN Convention on the Rights

islation, as well as social regulation in most Western countries, are based on and crystallise this principle[39]. These countries gradually engaged themselves to update their internal legislation on this matter. These processes were, at times, unfortunately very slow.

The CRC —which, as said before, celebrated its thirtieth anniversary last November— obtained the highest number of ratifications (196) out of any international treaty on human rights, despite the abstinence of the United States[40]. The Holy See made some reservations[41], especially on the role that shall be granted to the family in relation to the choice of education and religion[42]. Nonetheless, it was one of the first subjects of international law to sustain and ratify the CRC, which it did so in the name of *the best interest of the child*—a principle that has been fully accepted and exemplified particularly by the Magisterium of the Church for many decades[43].

This analysis would be bereft if it did not stress this important date: 20 November 1989. On this day, as if to commemorate the two hundredth anniversary of the 1789 Declaration of the Rights of Man and of the Citizen, the *magna carta* of child rights was presented for approval at the General Assembly of United Nations. A body of law composed of fifty-four articles and ratified by the majority of Countries, it profoundly transformed both the legal concept as well as the mainstream understanding of the child. This audacious and significant innovation regarding all manner of protections, which encapsulated some pre-existing protections for children, resulted in a significant shift owing to its widespread adoption: children could now enjoy the rightful and elevated status of being an active subject of rights, and no longer a mere, passive object of the law which required general care and/or assistance. The

---

of the Child. A Commentary, Oxford: OUP, 2019, 73-107. See also, PICORNELL-LUCAS, A., La realidad de los derechos de los niños y de las niñas en un mundo en transformación. A 30 años de la Convención, in: Revista Direito e Práxis, 10, 2019, p. 1176-1191.

39 For further details, see McGLYNN, C., Families and the European Union, Cambridge: Cambridge University Press, 2006, 42-77.

40 The last country that ratified the CRC, following a chronological order, is Somalia in 2015. For an analysis of a sample of the reasons why United States have not yet ratified the CRC, even if it became a signatory in 1995, see AKHTAR, R. C.; NYAMUTATA, C., International Child Law, op. cit., 90-93.

41 For details regarding reservations made by States or subjects of international law, see LAMBERTI DA SILVA, D., L'applicazione effettiva della Convenzione sui diritti dell'infanzia e dell'adolescenza negli ordinamenti interni: il problema delle riserve, in: CITARELLA, L; ZANGHÌ, C. (eds.), 20° anniversario della Convenzione delle Nazioni Unite sui diritti del fanciullo. Il diritto d'ascolto del minore, Roma: Teseo Editore, 2009, 39-76.

42 For an analysis on the relationship between religion and the family, with a particular focus on religion and children in Europe, see DOE, N., Law and Religion in Europe: A Comparative Introduction, Oxford: OUP, 2011, 226-233.

43 See RIONDINO, M., Famiglia e Minori. Temi giuridici e canonici, Città del Vaticano: Lateran University Press, 2011, 93-106.

first of its kind to be binding for ratifying States Parties, this Convention specified that every child shall be granted with: a sufficient standard of living which permits a physical, mental, spiritual, moral and social development (article no. 27); the best health conditions possible and the opportunity to benefit from medical and rehabilitation services (article no. 24); protection against any form of economic exploitation (article no. 32) and of sexual exploitation (article no. 34), and; the possibility to access an education and vocational training based on their own capabilities (article no. 28). Moreover, in article no. 3 the CRC states that the criteria of *the best interest of the child* must always be a primary consideration. Public administration shall adopt this clause in the case of warrants and when organising promotion and protection activities and policies.

The role of sources of law is not, as we know, to define concepts. However, international sources of law have played an important role in favouring the commitment of those national legislators and case-law (in many contexts and levels) which tried to incorporate meaningful consideration for the interest of the child within the aims of all family and child law[44]. Many researchers agree that there is an urgent need to arrive at an explicit international definition for the *interest of the child*[45]. Despite this, no legislation or case-law has yet provided a clear definition of this concept based on objective criteria. This is not surprising, given that, in the sources of law that we mentioned, the *interest of the child* is a general clause and, owing to its nature as such, it can be interpreted according to varying contexts and methods of interpretation. However, the lack of regulation at a national level, including the absence of criteria which would limit the interpretative discretion, is concerning. Only Great Britain, with the 1989 Children Act, which was further built upon by the 1996 Family Law Act, constitutes an exception[46]. In fact, in the Preamble of the 1989 Act, under the Title «*Welfare of the child*», it states: «*(1) When a court determines any question with respect to— (a) the upbringing of a child; or (b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration. (2) In any proceedings in which any question with respect to the upbringing*

44 See POCAR, V.; RONFANI P., L'interesse del minore nella legge e nella pratica, Milano: Guerini Scientifica, 1996, 7-11.

45 See, *ex multis*, ALSTON, Ph., The Best Interests Principle: Towards a Reconciliation of the Culture and Human Rights, in: ID. (ed.), The Best Interest of the Child, Oxford: Clarendon Press, 1994, 1-25.

46 For a deep analysis regarding this legislative document, see FREEMAN, M., In the Child's Best Interest? Reading the Children Act Critically, in: Current Legal Problems, 45, 1992, 173-211. The concept of *best interest*, connected with the well-being of the minor, dates back to XIX century. On this matter, see the 1886 *Guardianship of Infants Act*, as reported in RIONDINO, M., Il minore di fronte alla giustizia, in: CpR, LXXXVII, 2006, 159-161. For more details on the evolution of children's legal status, particularly in Great Britain, see CRETNEY, S., Family Law in the Twentieth Century, Oxford: OUP, 2003, 529-693.

of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child».

Finally, we highlight the importance of the four main principles of the CRC: non-discrimination (article no. 2); the *best interest of the child* (article no. 3), present also in many parts of the CRC, such as article nos. 9, 14, 18, 21, 28 and 40; the rights to life, survival and development of the child (article no. 6), and; listening to the opinion of the minor (article no. 12). These principles must guide all actions whose purpose is to protect or promote a child or their rights, no matter his/her background, origin, gender, ethnicity or religion beliefs.

1. *Protection of children against sexual abuse and exploitation in the CRC*

Article no. 34 of the CRC is central for the protection of children who are victims of abuse and exploitation, including sexual abuse. Article no. 19 also deals with exploitation and abuse, inviting all States Parties of the CRC to adopt appropriate legislative measures to protect children against any form of *«injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse»*. This article has been analysed and commented on by the Committee on the Rights of the Child, as evidenced particularly in the drafting of General Comment no. 13, issued in 2011[47]. Furthermore, the CRC, particularly in article no. 35, sets special measures to combat the sale and trafficking of children —phenomena which is inextricably connected with sexual *exploitation*, especially in some areas of the world[48]. A natural corollary of article no. 34 is article no. 39, in which States Parties are invited to adopt appropriate measures to help the physical and psychological recovery of a child who was a victim of any form of negligence, exploitation, or maltreatment. The concept of physical and psychological recovery was almost entirely absent in humanitarian international law before the approval of the CRC. By adding the expression «*social reintegration*» it seeks to generate a legally binding commitment that States Parties must favour a considered reintegration of a child victim of abuse into a social community. Depending on the child's age

47 Committee on the Rights of the Child, General Comment No. 13 (2011): *«The right of the child to freedom from all forms of violence»*, available online: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vFKtnY3RFBX0eVOrGEVYuIm9CsHNwh1HrjED9fVmGn%2BaZ1TGy6vH1Iek6kukGyB%2FFCGBbSOP0uwpKf24vcxkEnv [accessed 22 July 2020]. For further analysis and details, see TOBIN, J.; CASHMORE, J., Art. 19. The Right to Protection against All Forms of Violence, in: The UN Convention, op. cit., 688-692.

48 For an overview on this point, with some data regarding the different Regions around the world, see AKHTAR, R. C.; NYAMUTATA, C., International Child Law, op. cit., 286-296.

and on the conditions of the abuse that took place, it may be more appropriate to speak of integration more than reintegration, because a child may not yet be fully integrated into a social community by virtue of their stage of development. The Lanzarote Convention, as we will refer to later, also deals specifically with the reinsertion, into social community, of minors who were victims of abuse. In this difficult and painful process, the Convention asserts that social services and specialised assistance play a fundamental role.

We will now analyse article no. 34, which is a main pillar of the CRC in relation to sexual abuse. Its aim is to protect the child against any form of sexual abuse, which is a rising phenomenon particularly as a consequence of the globalisation of communication media[49]. The text is complex, but what is immediately apparent is the necessity for collaboration between States Parties to fight against sexual exploitation and therefore sexual abuse. The international community acknowledges that provisions and measures implemented by single States are not sufficient to fight against this phenomenon nor to pursue the alleged perpetrators (i.e. abusers). The wording of the article is considered innovative, particularly in comparison with the provisions of the 1959 Declaration's principle no. 9, in which States are invited to protect the child against any form of *exploitation, negligence and cruelty*. These expressions are intentionally open to a broader interpretation; they highlight the danger of exploitation, especially at work, but do not explicitly mention the sexual sphere. This is, as already said, due to an uneven sensibility at the time in which the Declaration was extended, but is also a reflection of the prevailing need to protect children against the potential risks connected with the working sphere. It is interesting to remember that before the approval of article no. 34 of the CRC, many proposals were made and discussed by the experts of the working group; in the end, the proposal made by Senegal predominated[50]. This possibly indicates a special sensitivity toward the phenomenon of child abuse. This sensitivity is clearly present also in the African Charter (see article no. 27), approved a few months after the entry into force of the CRC.

Another important aspect that emerges when analysing article no. 34 is that there are no definitions given for the expressions «*sexual abuse*» and «*sexual exploitation*», which are often used as synonyms. The difference exists, even if it is not always easy to understand. In *sexual abuse*, the child itself participates in actions, together with an adult who induces the minor, most

49 For more details, see FINKELHOR, D., The Prevention of Childhood Sexual Abuse, in: The Future of Children, 19, 2009, 169-184.

50 See TOBIN, J.; SEOW, F., Art. 34. Protection from Sexual Exploitation and Sexual Abuse, in: The UN Convention, op. cit., 1315-1329.

of the time, without his consent. Moreover, the adult dominates the minor, not only materially but also psychologically. This expression also covers any form of sexual harassment —even if apparently mild— by virtue of the danger it represents for the psychological and physical development of the child. Exploitation, however, encapsulates sexual acts which are committed against the promise of material or economic nature[51].

The States are also invited to *prevent* any form of abuse and exploitation of minors; this expression, which carries a broad meaning, was discussed by the working group[52]. Present in the first draft of article no. 34, the verb *prohibit* would have provided greater juridical strength to the article, however it would have limited the discretion that States maintained regarding the implementation of preventative measures. This decision is contentious because, in true pursuit of the *best interest of the child*, one may consider it essential to use categorical imperatives toward States and Institutions, rather than formulas that remain open to more flexible interpretations, lending themselves to subsequently insufficient practical and implementation phases.

We shall now focus on the three letters of article no. 34, especially on the expression *«inducement or coercion of a child to engage in any unlawful activity»*, in compliance with letter *a*. The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (OPSPP), adopted by the UN General Assembly on 25 May 2000 and entered into force on 18 January 2002, clarified and broadened the legislative provision of the other two letters (*b* and *c*) of article no. 34 of the CRC[53].

By using the expression «*inducement*» and «*coercion*», the Convention is willing to refer to all actions in which an adult tries to persuade a minor to have sexual relations, often abusing their superiority and power, and doing so in an illegal manner. In the sexual sphere, the borderline between induction and obligation is, at times, disputed; the word «*coercion*» intentionally refers not only to a psychological domination but also to a physical dimension. Setting the minimum age in which a child is considered able to consent

51 The *Luxembourg Guidelines* played an important role in guiding public institutions and judicial organisations. To read the full text, with explanations, bibliographic references and an analysis of practical aspects to deal with cases of abuse, see GREIJER, S.; DOEK, J. E., Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse Adopted by the Interagency Working Group in Luxembourg, Luxembourg: ECPAT International, 2016.

52 For more details on the legislative history of article no. 34, and regarding the role of the Netherlands in the preference for using the word *prevent*, see TOBIN, J.; SEOW, F., Art. 34. Protection from Sexual Exploitation and Sexual Abuse, in: The UN Convention, op. cit., 1331-1332.

53 See SANTOS PAIS, M., The protection of children from sexual exploitation. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, in: International Journal of Children's Rights, 18, 2010, 551-566.

in engaging sexual activity is important to define which acts are against the law. However, different cultural sensitivities —as well as juridical, religious, and ethical differences of each nation— play an important role in determining which actions are considered coercive or inducive. As such, the definition of coercion is often not homogeneous across cultures.

As already mentioned, the OPSPP is complementary to the CRC, and it extends and completes the dimension of the protection of children against any type of sexual abuse and exploitation. It is a normative document composed of seventeen articles, drafted in six years, across six reunions (from 1994 until 2000), by a working group located within the Commission on Human Rights and authorised by the Economic and Social Council[54]. Among the most innovative aspects of the Preamble is the concept of «*vulnerability*» —a condition of many potential victims, especially girls— and the expression «*sexual tourism*» which indicated a widespread phenomenon which had been, until that point, absent from international legislation dedicated to the protection of children. There are also detailed definitions concerning what is referred to as «*prostitution of children*»[55]. In article no. 2*b*, linked to financial compensation, it adds «*any other form of consideration*» against sexual favour. By using the term «*sexual activities*» it further, intentionally, expands the expression founded in article no. 34 of the CRC, which says «*sexual practices*». The choice of the word «*activities*», which is also present in the Lanzarote Convention, demonstrates an intention to encapsulate a broader range of acts. Finally, article no. 2*c*, concerning child pornography, is designed to regulate a number of behaviours which had not been captured by the CRC. Prior to this, the definition given to the deplorable phenomenon of «*child pornography*» was not unanimous, especially since the globalisation of communication media[56]. However, it is commendable that the international community established, with greater clarity than ever before, that this phenomenon includes «*any representation, by whatever means, of a child*» which fits within an expansive

54 For a detailed analysis on the six sessions of the working group, see TOBIN, J., The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, in: ID. (ed.), The UN Convention, op. cit., 1717-1726.

55 In this analysis we use terms such as «*prostitution of children*» or «*child pornography*» in accordance with the terminology of the relevant Conventions that we are discussing. However, there is a growing trend towards the use of terms such as *commercial sexual exploitation* or *child abuse material*. The preference for these terms is intended to indicate more clearly the victimisation of children, and reduce comparability or association between the abuse of children and the consenting participation of adults in prostitution or pornography.

56 For more details, see GILLESPIE, A. A., Legal Definitions of Child Pornography, in: Journal of Sexual Aggression, 16, 2010, 19-31; ID., Child Protection on the Internet: Challenges for Criminal Law, in: Child and Family Law Quarterly, 14, 2002, 411-426.

definition of «*sexual*», and also takes into account the purpose or use of this «*representation*». Each single State shall now implement and limit, especially in their domestic jurisdiction, this conduct. It would be preferable if States adopted similar formulas or at least formulas that are homogeneous between them[57].

Finally, article no. 10 §1 completes, once more, the provisions of the CRC, introducing the expression «*child sex tourism*», but does not offer any definition nor benchmark[58]. As already said, this provision invokes the commitment of States Parties to adopt necessary measures and favour bilateral, multilateral and/or regional agreements, to prevent and to impose sanctions against this phenomenon. Clearly these activities are destructive and harmful to the personality and the dignity of the child and are contrary to their *best interest*.

IV. The Lanzarote Convention

Concerning the protection of children against sexual exploitation and abuse, the Lanzarote Convention contains some principles that can be considered as innovative, at least in comparison with formulas which were already existing at an international level. The preparation of this Treaty began following the 2002 Assembly Resolution 1307, and ended on 25 October 2007, in Lanzarote, Spain, when it was opened for signature to the States[59]. This Convention, with its complex articulation and division in XIII Chapters, can be considered as the most advanced instrument for the protection of children against any form of sexual abuse and/or exploitation[60]. For the first time, it

57 For example, in Australia, although definitions of child pornography are similar across states and territories, there is variation in the age at which a person is deemed a child the law. For more details, see CROFTS, Th.; LEE, M., 'Sexting', Children and Child Pornography, in: Sydney Law Review, 35, 2013, 85-106.

58 See FREDETTE, K., International Legislative Efforts to Combat Child Sex Tourism, in: Boston College International & Comparative Law Review, 32, 2009, 1-44.

59 For the official English translation of the Lanzarote Convention, see COUNCIL OF EUROPE CONVENTION ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION AND SEXUAL ABUSE, Strasbourg: Council of Europe Publishing, 2008.

60 For previous documents of the Council of Europe in relation to the fight against cybercrimes, see the 2001 Convention on Cyber Crime (called also Budapest Convention), https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680081561 [accessed 23 July 2020], in which it is defined as: «*The first international treaty on crimes committed via the Internet and other computer networks, dealing particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security*». The principles of cooperation and promotion of bilateral agreements, in order to combat cybercrimes, are present and are the object of a legislative provision. From a chronological point of view, the Second Treaty of the Council of Europe, which deals with protection of victims of

takes into account crimes of a sexual nature that had not been regulated in any prior sources of law. The four primary pillars of the Treaty are: prevention of sexual crimes, protection of victims, persecution of the abusers, and promotion of the child and their rights (in a broader sense, with particular attention to the reintegration of the abused child)[61]. Appropriate legal instruments for collaboration and international cooperation shall be added eventually, as already said, to combat this phenomenon.

Among the many amendments introduced by this Convention, we shall focus on three main aspects, in line with the aim of our reflections. First of all, the presence of the general relational perspective, with a greater attention to practical contents for the protection of the child; then, the deepening of aspects linked with prevention and assistance; and, finally, the introduction of new typology of crimes as *grooming*, such as online solicitation of children for sexual purposes.

The first aspect can be found from the Preamble in the positive indication in which the word «*well-being*» comes before the «*best interest of the child*»; this demonstrates the intention to provide a clearer interpretation of the *best interest*, which was formerly debated and criticised for several years[62], especially after the entry into force of the CRC. It is apparent, even from a superficial reading, that *well-being* is classified as the opposite of the discomfort caused by, and as a consequent of, sexual abuse and exploitation. Often, as many psychological and criminal studies teach us, the abusers have been, themselves, abused or exploited as children[63]. In comparison with the CRC —which emphasises the aspect of *promotion* and is oriented toward the protection and defence of the rights and interests of children— and in comparison with other international deeds which address the prevention, defence and guarantee of

trafficking and with the safeguarding of their rights, is the 2005 Convention on Action against Trafficking in Human Beings, available online: https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008371d [accessed 23 July 2020].

61 See RIONDINO, M., La Convenzione di Lanzarote. Aspetti giuridici e canonici in tema di abuso sui minori, in: Apollinaris, LXXXVI, 2013, 149-176.

62 There are some long-standing critiques on the excessive discretion of the expression *best interest of the child* which remain relevant. Among the authors with significant criticisms and reservations, we shall recall the French jurist J. Carbonnier and the sociologist I. Thery. They both considered this concept as wrapped in a kind of aura of «*magic*». For further details, see the complete analysis put forward by RONFANI, P., L'interesse del minore: dato assiomatico o nozione magica, in: Sociologia del diritto, 24, 1997, 47-95.

63 See HANSON, R. K.,; MORTON, K. E.; HARRIS, A. J., Sexual Offender Recidivism Risk: what we know and what we need to know, in: Annals of the New York Academy of Sciences, 989, 2003, 154-166; DE LEO, G.; PATRIZI, P., Psicologia giuridica, Bologna: il Mulino, 2002, 77-122; GARTNER, R., Relational Aftereffects in Manhood of Boyhood Sexual Abuse, in: Journal of Contemporary Psychotherapy, 29, 1999, 319-353.

rights and interests, the Lanzarote Convention, from its Title, focuses on *protection*. This expression intends to cover all the above-mentioned aspects, even if the focus is on programs and sanctions (particularly in Chapters IV, V, VI), as demonstrated by the articles related to interventions. It is also laudable that the principle of non-discrimination occupies ample space, pursuant to article no. 2, where every possible condition of the victim is recalled, that is: disability, race, sexual orientation, and religion. It is well-known that victims are children whom are often particularly vulnerable, fragile and/or undefended. A further and significant mention can be found in article no. 3. The word «*person*» is used instead of «*subject*» or «*individual*», and a child is defined as «*any person under 18 years of age*». The expression «*human being*» is not used as in article no. 1 of the CRC; this evolution represents an intention to include and emphasise the relational dimension typical of every human being, and especially of children. The European legislator has adopted this choice in order to draw attention to, and invite a legal and social consideration of, the condition of the child, intended as a growing subject who has the right to receive a free and holistic development of their personality.

The second innovative aspect is linked with preventative aspects. Fundamental, in this regard, is article no. 7, entitled «*Preventive intervention programs or measures*» where it is written: «*Each Party shall ensure that persons who fear that they might commit any of the offences established in accordance with this convention may have access, to effective intervention programs or measures to evaluate and prevent the risk of offences*». This article is innovative for its high level of prevention and attention to each person, especially for potential offenders. However, its efficiency is questionable because it requires the voluntary disclosure of potential offenders before committing a crime. In article no. 14, called «*Assistance to victims*», we can read that the Parties shall adopt necessary legal measures to grant the victims with pathways to rehabilitation for their social and psychological recovery in view of their social reintegration. In addition to this, §1 of article no. 14 states that these measures shall, in any case, consider the point of view, the needs and the «*concerns*» of the child. It is interesting to note the use of the term «*concerns*», which appears here for the first time in an international source of law. The result is an invitation to always take into account the opinion of the child, especially where a child does not reside with one or both parents —such as in the case of separation or divorce— due to which children might be victims of parental alienation syndrome (PAS)[64]. As a result of PAS, a child may pronounce false

64 For more details regarding parental alienation syndrome (PAS), see GARDNER, R. A., The empowerment of Children in the development of Parental Alienation Syndrome, in: The American Journal of Forensic Psychology, 20, 2002, 5-29.

accusations of parental or family violence or abuse, even if the child truly believes the violence has occurred[65]. This article and the following articles, especially those in Chapter V, entitled «*Intervention programs or measures*», stipulates the assistance to be given to victims and their parents, including provisions for their moral and psychological needs, with the help of qualified professionals. Article no. 18 is also pertinent: it analyses, in a unique way, the aspects of prevention and assistance. In it, there is an evident conviction that the best form of prevention against the dangers which may encumber children, is for them to have healthy relationships with those who hold «*position[s] of trust*» and «*authority*» over the child, rather than relational patterns in which the superiority of parents and educators devolves into the habitual subjugation of the child to threats and violence. Open and respectful communication with children is the most tangible sign of a constructive and loyal relationship with them. Therefore, the Convention contends that it is urgent and essential to prevent a negative use of these relationships, and considers as criminal the «*abuse of a position of trust, authority and influence on the child, including within the family*» (article no. 18 §1, *b*). In general, and especially in sexual relationships, technological progress does not always correspond to the progress of authentic interpersonal communication. The first and fundamental form of prevention against sexual exploitation and abuse of children is to cure the relations with the adults. This aspect was somewhat absent in the Lanzarote Convention, perhaps because these interpersonal factors were considered more suitable for the arena of psychological research rather than international regulation.

Finally, we shall mention three articles of Chapter VI. The first is article no. 22, entitled «*Corruption of children*», and the following article, entitled «*Solicitation of children for sexual purposes*», commonly referred to as *grooming*. According to the wording of article no. 22, it is a crime to cause a child —that is, a person below the age set according to article no. 18— to assist in, witness or perform sexual abuse or sexual activities. This new legislative update was designed to protect the development of the child's personality and psychological health. The Convention leaves to the interpretation of the Parties the choice to reduce and restrict the possibilities connected with the expression «*causing*», that is, the intentionality of the adult in making the child assist, for sexual purposes, to sexual practices. However, these possibilities cannot include the use of force or psychological coercion, or the expedient of promises, leveraging a difficult economic and social situation of the child. This

65 See CAFFO, E.; CAMERINI, G. B.; FLORIT, G., Criteri di valutazione nell'abuso all'infanzia. Elementi clinici e forensi, Milano: McGraw-Hill, 2004, 31-45.

regulation does not refer only to an active participation of the child in those practices, but even to their viewing or assistance. Article no. 23 deals with a new typology of crime, absent in all previous sources of international law. As already said, in the technological age in which we are living, everyone, including children, can easily access the use of communication media[66]— the strength of which has produced a sudden change in the social and personal condition of people[67], influencing every aspect of individual and collective life. The idea of this article, which is apparent by the wording, is linked with the necessity to punish whoever proposes, intentionally (using electronic means), to meet for sexual purposes. The introduction of this new type of crime was made necessary by the constant and tragic increase of situations in which adults approach minors through the web against the promise of various kind of favours, including those of a financial nature.

V. Historical overview on the rights of the child in the Catholic Church

Concerning the protection of children in the juridical system of the Church, it seems useful to divide the relevant legal and theological sources into three periods as well. We shall say upfront —and we will have the opportunity to repeat this later— that it is difficult to find comprehensive studies and research about the protection of children, particularly within the legal system of the Church. However, there are analyses and studies on specific aspects of child protection and on the promotion of their interests according to Canon Law, such as those which address the right to education or the protection against sexual abuse. These studies are laudable, but they focus only on some aspects of children's rights and, for the most part, they do not carry out an in-depth comparative analysis with other juridical systems[68].

66 On the European orientation aimed at setting a common strategy for the protection of children against an improper use of communication media, see NOTARSTEFANO, C., Orientamenti giuridico – istituzionali dell'Unione europea in tema di diritti dei minori ed uso consapevole di Internet e delle tecnologie on-line, in: DAMMACCO, G. (ed.), Tutela giuridica del minore e uso consapevole di Internet, Bari: Cacucci, 2008, 13-32. See also the recent analysis put forward by CHATZINIKOLAOU, A.; LIEVENS, E., A legal perspective on trust, control and privacy in the context of sexting among children in Europe, in: Journal of Children and Media, 14, 2020, 38-55.

67 See LIVINGSTON, S.; HELSPER, E., Balancing Opportunities and Risks in Teenagers, in: New Media and Society, 12, 2010, 309-329.

68 The only research available thus far that deals with children's rights and with the promotion of their *best interest*, with a comparative perspective, is put forward by McALEESE, M., Children's Rights and Obligations in Canon Law, Leiden: Brill | Nijhoff, 2019.

At the conclusion of the overview of the three time periods which will comprise this reflection, we will then dedicate an autonomous section to the protection of children —especially against any form of sexual abuse— according to the juridical system of the Church implemented by Pope Francis. In order to remain faithful to the comparative objective of this paper, we will avoid speaking about the role of the child and his/her protection at the time of the first Christian communities when Roman law was in force[69]. However, we must make some brief references to the Sacred Scriptures and to the teaching of the Fathers of the Church, in order to have a better understanding of the fundamental role of the subsequent Magisterium on the protection of children which, together with canon law, find their source and origins in the divine law.

In this regard, some passages of the Holy Scriptures may be useful, especially in the New Testament, where Jesus' commands all Christians to be cognizant of the importance of children. The teaching of Vatican II on understanding and interpreting Scripture applies to both the Old Testament and the New Testament[70], especially when dealing with strong expressions that relate to the cultural mentality of the time in which they were drafted. In the Old Testament there are many stories of violence or attempts of violence or abuse toward minors, such as the description in Genesis of attempted sexual violence against Joseph, aged seventeen years, perpetrated by the wife of Potiphar [71].

69 In this regard, we shall specify that Roman Institutions, like *patria potestas*, have changed some aspects of their connotation with the arrival of Christianity and were inherited by the Late Roman Law from the Classic Roman Law. We moved from a purely possessive conceptualisation (in the father-child relationship) to one which more closely reflects the rights deriving directly from the procreation of those same children, i.e. recognising a more human connotation. For more details, see BIONDI, B., Il diritto romano cristinano, vol. III, Milano: Giuffrè, 1954, 38; HELMHOLZ, R. H., The Spirit of Classical Canon Law, Athens GA: The University of Georgia Press, 1996, 17-20. For the implementation of Canon Law in the Western legal tradition, see BERMAN, H. J., The Religious Foundations of Western Law, in: Catholic University Law Review, 24, 1975, 490-508 (particularly 490-494).

70 For the English translation of the Vatican II dogmatic constitution on Divine Revelation, see DEI VERBUM, in: The Documents of Vatican II, op. cit., 77-89 (particularly Chapter no. 3).

71 Gen 39:1-19. We have referred to the Revised Standard Version of the Holy Bible, 2nd Catholic Edition, West Chester PA: Ascension Press, 2018 (hereinafter indicated as RSV), for all biblical quotes. There are other passages which refer to sexual abuses, where sometimes the age of the victim is not specified but the description reveals that they are pubescent or adolescent, such as Ex 22:16-19, under *«Social and Religious Laws»*—the imperative is also significant: *«you shall not afflict… any orphan»* (Ex 22:22). See also Deut 22:28-29, under the rules *«Concerning sexual relations»*, in which there is the description of violence toward a girl, specifying that she did not consent. The use of an expression such as *«seizes her»* is a clear demonstration of that. For an interesting analysis regarding violence against children in Holy Scriptures, see MICHEL, A., Violenza sessuale su bambini e bambine nella Bibbia, in: Concilium, 3, 2004, 74-86.

On the other hand, there are many passages in the New Testament in which the predilection for children, or better for the youngest, coincides with privileged criteria —or paradigm— for entering into the Kingdom. Let us, for instance, consider the frequent reproaches made by Jesus to His disciples, sometimes even employing a strong tone. Among the most famous of these is the reproach in the Gospel of Matthew, where it is written: «*Whoever receives one such child in my name receives me; but whoever causes one of these little ones who believe in me to sin, it would be better for him to have a great millstone fastened round his neck and to be drowned in the deep of the sea*» (18:5-6 RSV). These expressions are used by Jesus to answer the question of His disciples concerning who was the «*greatest in the kingdom of heaven*» (Mt 18:1 RSV). It is significant that the Chapter titled «*True Greatness*» opens by saying that children are the greatest of the Kingdom. In the First Letter to the Corinthians we can find, albeit with some linguistic ambiguities, severe words against any action deemed immoral (1Cor 6:9-10), especially sexual actions. Finally, a clear reference to immoral persons can be found in 1Tim 1:9-10 (RSV). There are many examples of Jesus' predilection for the youngest ones contained in the Gospel of Mark as well, such as in Chapter 10, where Jesus blesses the children and is outraged by His disciples who try, without success, to take Him away from them[72].

For the sake of brevity, we will refer to only two authors in relation to the contributions of the Fathers of the Church. The first is Justin the Martyr, who was the first to talk about the protection of both the child and their innocent from neglect or abuse by adults. The second author, Peter Damian, focuses more on abuses perpetrated by clerics who harass and molest the young.

Justin, in his First Apology, severely condemns practices as the infanticide —which was common during the Roman period, especially against children who were poor, unwanted or with malformations— and the abandonment of children and infants, many of whom either became prostitutes or slaves in order to survive[73]. It is significant that one of the first martyrs of Christianity, who was venerated also by the Orthodox and the Anglican Church,

72 See Mk 10:14-15. The humanity of Jesus and the feelings of the Master often find a collocation in the Gospel of Mark, more than in the other Synoptic Gospels. For further details, see RIGAUX, B., Testimionianza del Vangelo di Marco, Padova: Gregoriana Editrice, 1968, 114.

73 SANCTI JUSTINI, *Apologia I pro Christianis*, Cap. XXVII, in: PG, 6, coll. 370-371. The main purpose of both the works of Justin (First Apology and Second Apology) is to protest against the injustices of his time. For some brief details, see PETERS, G., I Padri della Chiesa [tanslation by L. Vicario], 2nd ed., vol. I, Roma: Borla, 253-259. For the original texts in Ancient Greek of the two Apologies, with the English translation, analysis and comments, see JUSTIN, Philosopher and Martyr. Apologies, (edited by MINNIS, D. and PARVIS, P.), Oxford: OUP, 2009. See also McALEESE, M., Children's Rights and Obligations in Canon Law, op. cit., 44-48. For an overview on the history of protections for children against

focuses on and condemns practices —particularly exploitation by adults for monetary or commercial gain— that are clearly against the dignity of the child. Peter Damian, on the other hand, focuses more on the abuse perpetrated by clerics or monks on young people, and uses the expression «*molest*». He contends that severe punishment, including physical discipline, should be imposed against those who are caught acting in this way. Punitive measures also includes the loss of the tonsure for clerics, according to Damian's book *Liber Gomorrhianus*, written in 1051[74]. In the XI century, at the time in which Peter Damian was writing, there were no special procedural guarantees nor defences for those facing prosecution, as there are today. However, this support of harsh punitive measures indicates that the Church is clearly willing to condemn those crimes which attempt to diminish the dignity of a child, especially those which damage the child's intimate and personal spheres, such as the sexual sphere. These penal responses could be considered the roots of successive interventions put forward by the legitimate Ecclesiastical authority and the canonical legislator[75].

With regard to the Medieval period, it is difficult to identify legislation in the juridical system of the Church which specifically focuses on the child and their protection[76]. The minor was considered only in terms of their relationship to her/his family, which was almost subservient in nature. As an example, we shall recall that in the Fifth Book of the Decretals of Gregory IX, only a truly short Title is dedicated to crimes against a child[77]. However, soon after, the Church gave special attention to the rights of the weakest, of the orphans, of the widows and also of the children, in order to favour a justice which

sexual exploitation in the Church, see DALY, B., Canon Law in Action, Sydney: St Pauls Publications, 2015, 207-211.

74 The expression «*coronum amittat*» is used. See PETRUS DAMIANI, Liber Gomorrhianus, Cap. XV, in: PL, 145, coll. 174-175; for further details, see OLSEN, G. W., Of Sodomites, Effeminates, Hermaphrodites, and Androgynes Sodomy in the Age of Peter Damian, Toronto: Pontifical Institute of Mediaeval Studies, 2011, 203-328; CRAVEN, R., 1,000 Years Later: What can we learn from Saint Peter Damian's Liber Gomorrhianus?, in: Obsculta, 12, 2019, 128-137.

75 Later interventions by Leo X in the 1514 Apostolic Constitution *Supremae Dispositionis,* determined that those who have committed sexual crimes will be punished both by canon law and civil law (i.e. state law). The Dominican Pius V in the 1566 Apostolic Constitution *Cum primum* (§11) expresses himself in a similar way. For more and precise details on the chronological evolution regarding this matter, see GNANADHASAN, V. M.., I *graviora delicta* riservati alla Congregazione per la Dottrina della Fede, Roma, 2011, 216-223.

76 For further details, see GOLDBERG, J., The Legal Persona of the Child in Gratian's Decretum, in: Bulletin of Medieval Canon Law, 24, 2000, 10-53; METZ, R., L'enfant dans le droit canonique médiéval, in: Recueils de la Société Jean Bodin, 36, 1976, 9-96.

77 For more details, see HELMHOLZ, R. H., Children's Rights and the Canon Law: Law and Practice in Later Medieval England, in: The Jurist, 67, 2007, 40-41;

would be permeated with more charity than the severe justice of the States[78]. To understand this development and the Church's decision to put under its jurisdiction those who are experiencing difficult situations and/or are vulnerable subjects, it is helpful to recall some passages of the Holy Scriptures, for example, Psalm 10:18 (RSV), where it is written: *«to do justice to the fatherless and the oppressed»*.

Following this important but brief historical reference to Holy Scriptures, some writings of the Fathers of the Church and to the juridical system of the Church in Medieval times, we will now describe the three periods into which we will divide the evolution of this legal system with regards to children and their rights. We will then conclude with a description of the legislative updates promulgated more recently by Pope Francis, particularly concerning the protection of children against sexual abuse and exploitation.

1. *The family's primary role in child protection*

The first period could be collocated at the end of the XIX century, with the enactment of the Encyclical Letter *Arcanum Divinae Sapientiae*[79] by Leo XIII in 1880. This is the first magisterial document entirely dedicated to marriage and family. This phase will include the entry into force of the 1917 Code of Canon Law (hereinafter *Codex*), and will conclude precisely after the enactment of the Encyclical Letter *Divini illius Magistri*, by Pius XI in 1929[80]. It is not surprising that the first explicit references to the protection of the rights and interests of the child, in a broad sense, are contained in a document dedicated to marriage. The Church has always considered the role of the child as primarily situated within a Christian family. In the *Arcanum Divinae Sapientiae*, Leo XIII describes a family in which the wife is no longer subordinate to her husband, but is rather a companion of the man (no. 11). With regards to the children, the Roman Pontiff underlines the educational role of the family to produce good Christians and good citizens (no. 12), and exhorts Christian faithful to consider the severe impact that instability in the conjugal union can have, not only on the harmony between the spouses, but also the physical

78 See GAUDEMET, J., Storia del diritto canonico. *Ecclesia et civitas*, Cinisello Balsamo: San Paolo, 1998, 219-220. For an overview on the modes to implement justice to *miserabiles personae*, particularly in the European context, see HELMHOLZ, R. H., The Spirit of Classical Canon Law, op. cit., 116-144. On the influence of canon law on state jurisdictions, especially in the European continent, see HONNOLD, J., The Life of Law, New York: The Free Press of Glencoe, 1964, 15-17.

79 LEO PP. XIII, Epistola Encyclica *Arcanum Divinae Sapeintiae*, in: AAS, XII, 1879/1880, 385-402.

80 PIUS PP. XI, Litterae Encyclicae *Divini illius Magistri*, in: AAS, XXII, 1930, 49-86.

and moral well-being of the children. If we reflect on the context and time in which the Encyclical was written, it could be characterised as prophetic in relation to future regulations that would be promulgated by the Church. As we will indicate later, some elements of this parent-child relationship —and of the central educational role of the family— were taken into account during the process of preparation of the 1983 Code of Canon Law (hereinafter CIC), especially in the magisterial sources of Vatican II Council[81].

We will now turn our attention to the first Code, where the Legislator did not focus on the protection of children or of their interests. However, there are various reasons for this. Firstly, as already stated, at that time of this historical period, the role of the child was still intricately connected with their subordination to their family. Notwithstanding this, the *Codex* contains some essential content regarding the child, and recognises their limited autonomy and their need for protection, for which the family is primarily responsible. Moreover, the *Codex* outlines some protective measures for children which can also be find in other legal systems, including both Common Law and Civil Law[82].

Among the most significant aspects of the first codification, pertaining to the protection of children, is the delineation of the stage of *minority* into three phases which are each allocated their own specifications and rights. *Minority* is defined as the stage of life for all people who have not yet reached the age of majority, which was set at twenty-one years, per the provisions provided by the majority of States at that time. In canon 88 of the second Book of the *Codex*, some regulations determine the division of the three phases according to the age of children. The first phase of *minority* is dedicated to the

81 For more details, see ZUANAZZI, I., L'*ordinatio ad educationem prolis* del matrimonio canonico, Torino: Giappichelli, 2012, 97.

82 Regarding the comparison, particularly with the US legal system, see MARTIN, Th. O., Minors in Canon Law, in: Marquette Law Review, 49, 1965, 87-107. For an analysis of the process that leads to the promulgation of the *Codex*, particularly with regards to children within the family, see FALCHI, F., La «filiazione» nel processo di formazione del Codice del 1917, in: AA.VV., *Civitas et Justitia*. La filiazione, op. cit., 237-267. We will not analyse the hierarchy of the purposes of marriage in the *Codex*, which was abolished in the 1983 formulation of the Code of Canon Law. With regards to procreation and the education of children, which is intended as the first and fundamental purpose of the marriage, to safeguard the existence of the society, see GIACCHI, O., Il consenso nel matrimonio canonico, 3rd ed., Milano: Giuffrè, 1973, 28-29. Regarding the «*bonum prolis*», intended as natural specification and determination of the «*procreatio*», see GASPARRI, P., *Tractatus canonicus de matrimonio*, vol. I, Paris, 1904, 6-7, in which we can find the idea that is later established in the *Codex*. Considering that it is a religious legal system, I think we must reflect on the first and most important form of protection toward the youngest, permitted to the canonical legislator. In canon 746 §2, we can read: «*Si infans caput emiserit et periculum mortis immineat, baptizetur in capite; nec postea, si vivus evaseri, est iterum sub conditione baptizandus*». The legislative provision for the baptism of a child who has crowned during labour—but is not yet fully delivered—if her/his life is in danger, is a clear example of this special protection that the Church is willing to guarantee to the undefended, almost like a mother, especially when they are in danger.

infans —defined as those who are less than seven years— who the *Codex* presumes do not have use of reason. The second phase pertains to males between seven and fourteen years, and females between seven and twelve years old. These children are referred to as *impubes*, and for them there is both a presumption that they do have use of reason and a recognition of their entitlement to receive care and protection from their parents or legal guardians. Finally, males whose age is between fourteen and twenty-one years, and females aged between twelve and twenty-one years, are referred to as *pubers*. With the development of the CIC, these phases will become two, as we will see later. The *Codex* specifies that the Christian faithful who has reached the age of majority has the full exercise of their rights, whereas the *minor* is dependent on their parents, according to canon 89. The exception to this is in the recognition of some rights which may be exercised by *impubes*, such as the ability to autonomously request the sacrament of baptism. This exception is unsurprising because the Church has always paid special attention to safeguarding particular rights which it deems to be personal, especially those connected with access to certain sacraments[83]. The provisions contained in this canon shall be interpreted in conjunction with canon 12, which sets that purely ecclesiastical law is not binding for *«baptised children who have the use of reason but are under seven years of age, unless the law explicitly rules otherwise»*[84].

Many passages of the 1917 Code deal with the special protection of children, especially in the educational sphere. This is congruent with the attention that the Church has given to this aspect of human development across the centuries. Canon 1113 is a clear example of this, in which the provision of not only a religious and moral education, but also a physical and civil education —naturally, in accordance with the specific capabilities of the minor— is described as a most serious obligation. This passage is particularly important because it contains a clear solution from the Legislator for the protection of the *well-being* or welfare of every child. As we will highlight, the CIC subsequently uses expressions which emphasise that the education of children is the ministerial task of parents, which is intricately linked with their role and function within the family. Canon 1113 of the *Codex* shall be read and interpreted in conjunction with canon 1372 §2, which outlines the parents' specific obligation to educate their children in a Christian way[85]. Finally, a marginal

83 See MARTIN, Th. O., Minors in Canon Law, op. cit., 88.

84 For more details, see CICOGNANI, A. G., Canon Law [translation by J. M. O'Hara and F. J. Brennan], 2nd ed., Westminster MD: The Newman Press, 1949, 565.

85 Once more, the family has a fundamental role and is intended as the first educational agency. It is not unintentional that the first canon, under the Book III, Title XXII, dedicated to the Schools,

mention of the child can be found in how the text deals with the pathological dimension of the Christian marriage—which is, as we know, subject to weaknesses and fragilities, often apparent in errors committed. I am especially referring to canon 1132, which sets that during a separation, children shall be educated by the innocent spouse in compliance with the Catholic teachings[86]. In this regard, we cannot consider the legal provision necessarily sufficient to grant, for instance, the *best interest of the child*. However, the effort made by the Legislator to grant the Ordinary with the ability to decide differently with regards to the education of the children, according to the good of the child, shows intentional consideration of the child and their rights. Once more, this expression is a clear reminder of the interests of children, even if they remain connected to the religious and/or moral domain[87]. On this matter, as our analysis will show, the CIC has made further progress.

There are brief references to the protection of the child within the framework of procedural and penal law. The most significant of these is canon 1648, which is contained in the Book IV of the *Codex*, entitled *De processibus*, and is entirely dedicated to the rights that the child —or the subject who is unable to use reason— may exercise during a canonical trial. It provides that a minor who has reached the age of fourteen can engage and respond in legal proceedings; that is, the consensus of the parents is not needed in the case of spiritual proceedings or proceedings connected to the spiritual sphere. It also stipulates that, if the rights and the interests of children are in conflict with those of their parents or guardians, the ecclesiastical judge shall appoint a curator, according to canon 1648 §2. It is apparent that provisions for the protection of the interests of the child within the Church legal system anticipate many subsequent international regulations which, especially in recent decades, grant importance to the task of listening to the child[88].

Finally, we shall focus on the penal sphere, which has been profoundly changed with the entry into force of the CIC. It is well-known that legal systems —both Common Law and Civil Law— have always dedicated special

---

emphasises the uniqueness of the family with regards to the education of children (canon 1372 §2).

86 On the separation of married people, see WOYWOOD, S., The New Canon Law. A Commentary and Summary of the New Code of Canon Law, Columbia SC: St. Pius X Press Inc., 1918, 227-231.

87 For more details, see JEMOLO, A. C., Il matrimonio nel diritto canonico, Milano: Francesco Vallardi Editore, 1941, 325-331; MARTIN, Th. O, Minors in Canon Law, op. cit., 99-100.

88 One example is the aforementioned 1996 European Convention on the Exercise of Children's Rights. In article no. 3, it is written: «*A child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted, and shall be entitled to request, the following rights: a) to receive all relevant information; b) to be consulted and express his or her views; c) to be informed of the possible consequences of compliance with these views and the possible consequences of any decision*».

attention to subjects who have not yet reached the age of majority (that is, *favor iuris*), especially if they are victims or perpetrators of crimes[89]. Canon 2204 establishes that *infans* are not subject to penalties, regardless of the nature of the delict. In cases where delicts are punishable with *pene latae sententiae*, exemption can only be granted where the perpetrator is a *puber*. Also, in cases where a child cooperates in a delict, all punishments shall be proportionately reduced if the youngest participant is among those who committed the delict[90]. Canon 2359, under the section, *«De delictis contra vitam, libertatem, proprietatem, bonam famam ac bonos mores»*, provides special protection for a minor who has not yet reached the age of sixteen and who is a victim of abuse perpetrated by a cleric, be they a diocesan or a member of a religious order or congregation. This canon deals with the different ways in which a delict is committed, which is further proof of the special protection granted to children. This element will be alluded to in successive legislation, such as the Instruction *Crimen sollecitationis*, which we will turn our attention to next. Given the above, we can contend that, with consideration for international legislation which follows a similar trend: the canonical legislator is preemptive of the international regulations of this same period, for the promotion of infancy and childhood, within the limits of the confessional provisions.

The third source that we will analyse for this first period is the *De modo procedendi in causis sollecitationis*[91] (also called *Crimen sollecitationis*) by the Holy Office, which was approved *in forma specifica* by Pope Pius XI in 1962, and was not made public for decades. It is a complex juridical text, divided into three different Parts[92]. It is important to specify that the primary purpose of this document is not the protection of children against sexual actions perpetrated by clerics, but a broader normative provision concerning the crime of

89 Particularly since the XIX century; for some details in this regard, see HARNO, A. J., Some Significant Developments in the Criminal Law and Procedure in the Last Century, in: Journal of Criminal Law, Criminology, and Police Science, 42, 1951, 427-467 (particularly 428-429).

90 For a detailed analysis see, once again, MARTIN, Th. O, Minors in Canon Law, op. cit., 102-103; see also SOLE, I., De delictis et poenis. Praelectionis in Lib. V Codicis Iuris Canonici, Romae: Typis Pontificiis in Instituto Pii IX, 1920, 24-25 and 335-336; WERNZ, F. X., Ius decretalium. Ius poenale Eccles. Catholicae, tom. VI, Romae Prati: Giachetti, 1913, n. 20.

91 An English version of the aforementioned Instruction is available online: http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html [accessed 24 July 2020]. It is written at the beginning of the *Crimen Sollecitationis* that this document has to be *«Kept carefully in the Secret Archive of the Curia for internal use. Not to be published or augmented with commentaries»*.

92 The first Part was entitled *Preliminaria* and was composed of fourteen numbers; the second Part was divided into five Titles with several procedural norms, and the third Part, entitled *Appendix*, contained twenty formulas to be used during the entire trial. For more details on this Instruction, see DALY, B., The Instruction *Crimen Sollicitationis* on the Crime of Solicitation: Confusion or Cover-up of Paedophilia?, in: The Canonist, 7, 2016, 10-30 (particularly 14-19).

sollecitatio ad turpia, which updates and builds upon the pre-existing regulation on this matter[93]. No. 73 defines any action or attempt perpetrated by a cleric against an *impuber* as a terrible crime. In conjunction with canon 88 §2, we understand that this encapsulates *any* action perpetrated or attempted against a child who has not yet reached the age of fourteen, if male, and twelve, if female. The objective gravity of the incriminating action is sustained regardless of whether the action is of a homosexual or heterosexual nature[94].

To conclude this first period, a last, brief reference to the protection of children, especially in relation to educational matters, can be found in a document of the Magisterium called *Divini illius Magistri*. Notwithstanding the lack of specific references to the rights of children or their protection, this magisterial source contains interesting and innovative references to education and, consequently, to the related rights that shall be granted to all children. Education, according to the Pontiff, shall be intended as a social action which facilitates a mature integration of the child into both the Ecclesial and the Social Community. Furthermore, Pius XI stressed in many passages—as did his predecessors—that the Christian family has a unique and irreplaceable role in both education and in the freedom of the choice of school, including confessional schools[95]. Among the most significant passages concerning the right to education is nos. 44-46 of the Encyclica, which asserts that States

93 Particularly the apostolic constitution *Sacramentum poenitentiae* (1741), as well as the three Instructions issued by the Holy Office in 1866, 1890 and 1897. For further details in this regard, see GENTILE, C., I *delicta graviora contra mores*, Roma: Aracne, 2018, 19-24; LLOBELL, J., I delitti riservati alla Congregazione per la dottrina della fede, in: Gruppo Italiano Docenti di Diritto Canonico (ed.), Le sanzioni nella Chiesa, Milano: Glossa, 1997, 237-278.

94 For an accurate analysis in this regard, see YANGUAS, A., De crimine pessimo e de Competentia S. Officii Relate Ad Illud, in: REDC, 1, 1946, 427-439. Moreover, canon 2359 does not foresee, for this type of crime, a distinction concerning the gender. Among the authors, some make a distinction between sexual and homosexual action; between them, see PIGHIN, B. F., Diritto penale canonico, Venezia: Marcianum Press, 2008, 478-480.

95 At this regard also Pius XI draws the attention (see numbers 36 and 37 of the aforementioned Encyclica) on a US Supreme Court decision: the Oregon School Cases, June 1, 1925. «*It must be borne in mind also that the obligation of the family to bring up children, includes not only religious and moral education, but physical and civic education as well, principally in so far as it touches upon religion and morality. This incontestable right of the family has at various times been recognized by nations anxious to respect the natural law in their civil enactments. Thus, to give one recent example, the Supreme Court of the United States of America, in a decision on an important controversy, declared that it is not in the competence of the State to fix any uniform standard of education by forcing children to receive instruction exclusively in public schools, and it bases its decision on the natural law: the child is not the mere creature of the State; those who nurture him and direct his destiny have the right coupled with the high duty, to educate him and prepare him for the fulfilment of his obligations*». This quotation is taken from the English version of the *Divini illius Magistri*, available on line: http://www.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_31121929_divini-illius-magistri.html [accessed 24 July 2020].

must protect the right of the family to provide a Christian education to their children, thus also granting children the right to receive a Christian education within the family.

2. *The Vatican II Council and the promotion of children's rights*

The second period of this overview mostly focuses on the regulations contained in the CIC. It begins in 1962, a few months before the official opening of Vatican II Council, with the drafting of the second version of the *Crimen sollecitationis*. This Instruction is similar to the previous one, but it adds a new article concerning the administrative procedures that shall be carried out in a case of the abuse of a child, perpetrated by a religious priest. Moreover, it adds a long *Appendix* which includes, among other things, the wording of the oath concerning the secret of the Holy Office when handling those cases[96]. It is important to note that this Instruction, similar to that which was promulgated in 1922, constituted a penal law —albeit of a particular procedural nature— for the entire Church (Latin and Oriental). As for the 1922 Instruction, even if the direct purpose of this source of law is not the protection of children, the fact that the universal legislator included the crime of sexual abuse of a child shows that the delict is considered as seriously as the *sollecitatio ad turpia*[97]. In circumstances where a cleric is found guilty, nos. 61-65 prescribe that heavy penalties would be applied, such as a reduction to the lay state, which is described in canon 2359 §2 and canon 2368 §1 of the *Codex*.

Turning now to Vatican II —which, as we know, was characterised by an invitation to the entire Church to discern the «*signs of the times*»— we can observe many references to the protection of children, especially to promotion of their personality in educational and social contexts. For the sake of brevity, I will refer to only two conciliar documents. Firstly, we will consider the 1965 Conciliar Declaration *Gravissimum Educationis*, followed by analysis of the Conciliar Decree *Apostolicam Actuositatem*, promulgated by Paul VI in that same year. In both of these conciliar documents, the Church demonstrates a greater openness and awareness of the wider world[98] —a trait which became characteristic of Vatican II.

96 For more details, see BEAL, J. P., The 1962 Instruction *Crimen sollicitationis:* Caught red-handed or handed a red herring?, in: Studia Canonica, 41, 2007, 199-236.

97 See MULLANEY, M., *Graviora delicta*: The Duty to Report Clerical Sexual Abuse to the Congregation for the Doctrine of the Faith, in: Irish Theological Quarterly, 68, 2003, 291-295.

98 See POHLSCHNEIDER, J., Declaration on Christian education, in: VORGRIMLER H. (ed.), Commentary on the Documents of Vatican II, vol. 4, New York: Herder and Herder, 1969, 13.

Two passages of the *Gravissimum Educationis* are important for further understanding. In the first passage, we can read: *«All men* [sic] *of every race, condition and age, since they enjoy the dignity of a human being, have an inalienable right to an education that is in keeping with their ultimate goal, their ability, their sex, and the culture and tradition of their country, and also in harmony with their fraternal association with other peoples in the fostering of true unity and peace on earth… Therefore children and young people must be helped… to develop harmoniously their physical, moral and intellectual endowments so that they may gradually acquire a mature sense of responsibility in striving endlessly to form their own lives properly and in pursuing true freedom as they surmount the vicissitudes of life with courage and constancy… Moreover, they should be so trained to take their part in social life that properly instructed in the necessary and opportune skills they can become actively involved in various community organizations* [sic]*, open to discourse with others and willing to do their best to promote the common good»* (no. 1). The second passage focuses more on the duties of parents toward their children, where it is written: *«Since parents have given children their life, they are bound by the most serious obligation to educate their offspring and therefore they must be recognized* [sic] *as the primary and principal educators»* (no. 3), which clearly reflects the contention of Pius XI in the *Divini illius Magistri*. Both these aspects are later juridically transposed in the new Code. If read together, there is a clear progression when compared to the previous Magisterium of the Church for two reasons. Firstly, because it highlights that every person —not only those who are baptised or are Christians— are the custodians of the right to education. It's clear that the Conciliar Fathers want to stress and recall the connection with the aforementioned UDHR[99], which established the inalienable right of each person, and especially of children, to receive an education whose aim is a mature and responsible integration into society[100]. The document's focus on the common good is reflected in the stipulation that it is the State's duty to guarantee access to education. This corresponds to the parallel right of the child to receive an education and thus to develop all the aspects of their personality, not neglecting those aspects connected with social and ethical values. Finally, the right to receive a religious and moral

99 See TORFS, R., Healthy Rivalry. Human Rights in the Church, Leuven: Peeters Press, 1993, 7-22.

100 For further details, see RIONDINO, M., The right to education: a fundamental and universal right, in: Jus, LXIII, 2016, 287-300.

education shall be granted by the family, intended as the first and irreplaceable school of virtues[101].

The second magisterial source is the conciliar decree *Apostolicam actuositatem*, whose expressions are not too different if compared with the *Gravissimum educationis* with regards to the right of education. However, as is evident from the Title, it focuses on the active contributions of lay Christians, including parents, to the mission of the Church and provision of education to their offspring. It is interesting that no. 11 of the *Apostolicam Actuositatem* considers the adoption of a child as a significant manifestation of the charity of the apostolate of the laity, ranking it first among the activities or deeds of the family. In no. 28 it is written that the formation of the apostolate, to its fullest form, requires both a theoretic education and an holistic training. The right of the parents to freely chose the education for their children is referred to once again. Thus, this shall occur without any constraint or impositions by third parties or by public institutions. This right is inalienable for children whom shall receive guidance from their youngest age. No. 30 is also particularly interesting because it stresses that the parents have the duty to educate their children in relation to the responsibilities that they will have to assume in the future. Finally, among the recurring themes, we can find the idea of *neighbourhood*. It is well known that this theme can be found in many international documents, not least in the aforementioned UDHR or the 2000 European Charter of Fundamental Rights.

Following in chronological order, we can find the post-synodal Apostolic Exhortation *Familiaris Consortio*, promulgated by John Paul II after the 1980 Synod of the Family. Since its focus is the family, it is natural that the fruit of the labour of this Synod's fathers is a magisterial document which deals with the protection of children and of their rights within the family. No. 26 addresses this issue with particular attention. In it, the Pontiff invites families and public institutions to promote a broader protection of minors, especially those who, for various reasons, are in need of greater protection —such as children with disabilities, those who live in difficult situations or those who

101 For more details, see McALEESE, M., Children's Rights and Obligations in Canon Law, op. cit., 80-92; DE ANGELIS, F., L'educazione del minore e la libertà religiosa, Città del Vaticano: LUP, 2018, 65-73; RIONDINO, M., L'interesse del minore come legittimazione e limite dell'ordinamento in materia religiosa, in: FALCHI G.L.; IACCARINO A. (eds.), Legittimazione e limiti degli ordinameni giuridici, Città del Vaticano: LUP, 2012, 623-633; see also CERDÀ DONAT, M. T., Educación católica y sociedad civil, in: Anuario de Derecho Canónico, 5, 2016, 165-187; GARCIA VILARDELL, M. R., La libertad de creencias del menor y las potestades educativas paternas: la cuestíon del derecho de los padres a la formación religiosa y moral de sus hijos, in: REDC, LXVI, 2009, 331-351; DEGIORGI, G., I minori nella legislazione della Chiesa, Venezia: Marcianum Press, 2015, 129-144.

are marginalised. This exhortation could be perceived as a foreshadowing of reinforced protections for children according to their particular conditions and needs. Further to this, as a corollary of the famous passage in no. 48 of the 1965 conciliar Pastoral Constitution, *Gaudium et Spes*, John Paul II underlines the precious and irreplaceable contribution that children can offer in the promotion of a communitarian model within the very first cell of the society —that is, the family. We could contend that the real strength of the family coincides with the profound communion of its members[102], notwithstanding the different roles and functions within it. In *Familiaris Consortio*, the Pontiff states, in no. 36, that an essential duty of the parents is to provide an education. He proceeds to announce, in no. 46, the commitment of the Church in preparing a Charter of the Rights of the Family, which was then promulgated by the Holy See in October 1983. The idea of the promotion and protection of the interests of children is present throughout this Charter, thus demonstrating, once more, the Church's regard for the essential role that children and their rights have within the family and society.

We shall intentionally include CIC legislation on the protection of children in this second period. However, we shall dedicate an independent section to this normative source, in accordance with its importance, which is emphasised by John Paul II, who defined the Code as *«the last document of the Vatican II Council» [my translation]*[103]. This statement is based both on the clear idea of collegiality that can be found throughout the CIC, and on the idea that the conciliar purpose —which is to illuminate life and guide the mission of the Church— is manifested in the 1983 Code.

3. *A) Children's Rights in the CIC*

Before dealing with the protection of minors and their rights in the 1983 Code, it is important to provide a brief clarification. As we know, the institution of the family —and the subsequent rights and duties of its members— is not only defined as an object of analysis and of juridical regulation by the private sector of law. In fact, the Church and the juridical traditions of many States do not consider the family as an institution which belongs exclusively to private law. The family could be conceptualised as a *bridge* between the

102 For more details see, once again, ZUANAZZI, I., L'*ordinatio ad educationem prolis* del matrimonio canonico, op. cit., 143-160.

103 For the Italian version of the speech delivered by John Paul II at the Pontifical Gregorian University in Rome, see https://w2.vatican.va/content/john-paul-ii/it/speeches/1983/november/documents/hf_jp-ii_spe_19831121_diritto-canonico.html [accessed 24 July 2020].

person and society, or better, between the person and the State —similarly to Cicero's intention when he wisely defined the family as *«principium urbis et quasi seminarium rei publicae»*[104]. However, the CIC does not dedicate an independent section to the institution of the family and to the protection of minors. Prior to the promulgation of the CIC, the President of the Commission in charge of the reform of the upcoming Code, Cardinal Pericle Felici, was asked, by members of the selected group in charge of the drafting of the CIC, to prepare a part —though not necessarily an entire book— of the Code which would include regulations for the protection of the family and, in particular, of children. The Cardinal declined, contending that, according to the general structure of the new codification, its purpose was not to deal with family law[105]. Among the main reason in support of this decision is the fact that, historically, according to traditional teaching, the Church —and therefore also its juridical system— focused more on the *matrimonio in fieri* than on the *matrimonio in facto esse*.

Thus, in the CIC there are no sections dedicated to the protection of children, though there are some canons and references contained throughout all Books, excepting Book V on the Temporal Goods. However, some further developments have been made in comparison with the *Codex*[106]. For instance, according to canon 219, protections concerning the choice of the state of life, which is granted to every faithful, is a right to which no interference may be tolerated. The formulation under examination shows that the *ius connubii*, which is among the rights set out for each Christian faithful, shall be granted both in circumstances where one shows a will to marry —and therefore has the freedom to choose a partner— and also in circumstances where one wills not to marry. The same applies for the choice to join the priesthood, or in a situation where a Christian faithful declares their wish to become a member of an Institute of Consecrated Life or of a Society of Apostolic Life[107]. The right

104 De Officiis, I §54.

105 Hereinafter the words of Pericle Felici: *«non congruit neque indoli neque systematicae ordinationi Codicis»*, as quoted in VITALI, E., Riflessioni sui rapporti familiari nell'esperienza giuridica ecclesiale, in: RAAD, E. (ed.), Système juridique canonique et rapports entre les ordonnancements juridique, Beyrouth: Publications Université La Sagesse, 2008, 485.

106 However, some authors have highlighted that even if legal references to the protection of minors are present in canon law, the current regulations are not as organic as they are in other sectors of Church Law. See CASTILLO LARA, R., La condizione e lo statuto giuridico del minore nell'ordinamento della Chiesa, in: Salesianum, 52, 1990, 257-275. For further details, see FOSTER, M. S., The promotion on the canonical rights of children, in: CLSA Proceedings, 59, 1997, 163-203.

107 According to canon 643, the minimum age to be validly admitted to the novitiate in an Institute of Consecrated Life is seventeen years old; one year more than in the previous Code. As we will highlight for matrimonial law, a change in the minimum age required is appropriate, at least until the age of eighteen years.

set out in canon 219 can thus be placed among the rights connected with the very personal sphere of each individual.

A further evolution was brought about by the legislative provision of canon 98, which adds a divine law that is absent in the previous codification. Children under the age of 18 remain subject to their parents or guardians, except for the rights that, according to the divine law, can be exercised autonomously —for instance, asking to receive the sacrament of baptism after the age of seven[108]. It is important to emphasise that the consideration of both parents as responsible for their children is a consequence of the fact that they both gave life to the child. Equality between the spouses is implicit, but here it is not the main reason for attributing this responsibility to both parents[109]. The institution of adoption is also governed by Book I, which is dedicated to General Norms (see canon 110). The CIC does not provide any definition or clarification of this longstanding Roman institution, but it does set some principles of interpretation of this matter[110]. This canon shall be read in conjunction with canon 22, concerning the canonisation of civil law[111]. It is apparent that, with regards to adoption, the juridical system of the Church has not provided its own norms and for this reason it defers to civil legislations. Canon 110 considers a child as adopted regardless of whether they have been adopted by two persons or by only one person. This provision demonstrates, once again, the prevalence of the *best interest of the child* over the strict interpretation of the traditional Christian idea of the family and of the juridical regulation within the Church[112].

108 For more details, also regarding the two phases (*minor* and *infans*), see McALEESE, M., Children's Rights and Obligations in Canon Law, op. cit., 110-119; DEGIORGI, G., I minori nella legislazione della Chiesa, op. cit., 175-183.

109 See DALLA TORRE, G., Diritto alla vita e diritto dei minori nell'ordinamento canonico, in AA.VV., Tutela della famiglia e diritto dei minori nel Codice di Diritto Canonico, Città del Vaticano: LEV, 2000, 61-75 (particularly 69).

110 See INGOGLIA, A., *Adoptati ut filii habentur*, Roma: Aracne, 2017, 9.

111 In the case of adoption, the canonisation of civil law occurs with the implementation of a legal act by the civil law, which produces a juridical situation—and the consequent juridical effects—also present in a canonical context. For more details, see CIPROTTI, P., Le «leggi civili» nel nuovo Codice di Diritto Canonico, in: AA. VV., Il nuovo Codice di Diritto Canonico, Roma: Libreria Editrice della Pontificia Università Lateranense, 1983, 533.

112 Even in international law, the paramount consideration throughout the adoption process, regarding *the best interest of the child*, is crystallised in article no. 21 of the CRC. After the promulgation of the CRC, the most important international source of law in relation to adoption is *The Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption*, issued in 1993. In article no. 1, the criteria for *the best interest of the child* is laid out. For further details, see BARTHOLET, E., International Adoption: A Way Forward, in: New York Law School Law Review, 55, 2011, 687-699.

We shall now turn to the educational dimension and, more precisely, to the right of the child to receive an education from their parents[113]. This disposition can be found in canon 226 §2 of the CIC, in which there are explicit references to the conciliar teaching concerning the education of children. Both the expressions «*most serious obligation*» and «*rights* [of the parents] *to educate* [the children]» are the basis and the key to understanding the provision of the Code concerning duties and rights of lay Christian faithful. In this canon, the Legislator clearly chooses to grant children with the right to receive a Christian education from their parents. It is not by chance that it emphasises the duties of the parents toward their children; it clarifies the personal right of children to obtain this right from both the spouses who have this obligation, by virtue, as already noted, of the fact that they gave life to these children. We could say that the duty to take care of children and their education belongs to the holistic dimension of responsibility connected with the role of the parents. The educational obligations of the parents are again recalled, naturally, in Book III of the Code, particularly with regards to Catholic education, as outlined in canons 793 and 795[114]. The former of these two canons reaffirms the concept of duty-right, and adds that parents —and «*whoever takes their place*»— must comply with it. It is intentional that this function is attributed not only to biological parents but also to those who are acting on behalf of them, in compliance with the law. In this way it is willing to further reinforce the right that substitutional parental figures also have with public institutions and, at the same time, their duty toward children whom have an inalienable and irreplaceable right. An additional consideration can be located in canon 795, which contains the idea of an integrated —and not only Christian-oriented— education, which must be granted to the child[115]. The Legislator explicitly refers to an holistic and harmonious development of the personality of the child, and connects the acquisition of values, through the educational process, to a constructive and responsible integration into both the ecclesial and broader social community.

Furthermore, with regards to matrimonial law, the child is granted proper rights. For instance, according to canon 1083 §1, the child has the freedom to

113 For a further analysis concerning this evolution in comparison with the *Codex*, see ALBERTI CASELLATI, M. E., L'educazione dei figli nell'ordinamento canonico, Padova: CEDAM, 1990, 35-137.

114 See MORRISEY, F. G., The Rights of Parents in the Education of Their Children, in: Studia Canonica, 23, 1989, 429-444; GEROSA, L., Canon Law, London and New York: Continuum International Publishing, 2002, 93-95.

115 For more details, see HUELS, J. M., The Teaching Office of the Catholic Church, Ottawa: Saint Paul University, 2017, 184-185. The author stresses that, in the Eastern Code of Canon Law (hereinafter CCEO), we can find a similar disposition but with «*greater detail*» regarding, for example, the broader sense of justice (canon 629, CCEO).

decide to marry when they reach the age of sixteen, if male, and fourteen, if female, which is the age of valid consent for the sacrament[116]. This provision is similar, and almost equal, to the provision contained in canon 1067 §1 of the *Codex*. One of the explanations for this regulation —in particular for the excessively young age established as one among the individual diriment impediments— is the fact that Canon Law applies universally, and it must take into consideration all regions and cultures in which it may be common for teenagers to contract marriages[117]. At the same time, the second paragraph provides a caveat that the Bishops' conference may decide a higher age for both male and female. However, and notwithstanding the respect to all geographic areas, we could contend that it would be felicitous to review this provision, particularly with an aim to provide greater protection for children during adolescence —a critical phase of development— during these unprecedented and challenging times.

A second interesting provision concerns *bonum prolis*, one of the purposes of marriage. Both canon 1013 of the *Codex* and canon 1055 of the CIC refers to the generation and education of children, but only in the new Code does *bonum coniugum* become of equal importance. This greater integration between *bonum prolis* and *bonum coniugum* allows us to argue that the first and most important means of education by the parents is the constructive cultivation of their relationship, avoiding fractures and degenerations of their bond, since this could inevitably put the interests of the child at risk[118].

In the framework of the pathological dimension of cohabitation, the Legislator refers to the protection of children and, in the CIC, employs a new and unique expression. Canon 1152 §1 uses, for the first time, the term *good of the family* (that is, *bonum familiae*) as a criteria of interpretation which must be applied as a guiding principle for the good of all the members of the family, thus, including children. Providing juridical regulation for the institution of separation while the Bond remains (that is, *manente vinculo*) establishes

116 For more details in this regard, see DEGIORGI, G., I minori nella legislazione della Chiesa, op. cit., 223-228.

117 It is important to recall that even across the European continent, because of the influence of other religions and beliefs, there was a practice to marry young and to consider the marriage valid at a young age. In this regard it is interesting to refer to the decision (Arnold *against* Earle) pronounced by Sir George Lee, Judge of the Ecclesiastical Court of UK, which reflects the law in force at that time in the UK, which permitted marriage at 14, if male, and 12, if female. For further details, see PHILLIMORE, J., Reports of Cases argue and determined in the Court of Canterbury containing the Judgements of the Right Hon. Sir George Lee, vol. II, London: Saunders and Benning, 1832, 529-531.

118 On this same topic, for more details, see RIONDINO, M., *Bonum coniugum* e giuridicità nel matrimonio canonico, in: Il diritto di famiglia e delle persone, XXXVIII, 2009, 2048-291 (particluarly 2067-2073).

bonum familiae as the overriding interest and the most important criteria, both in circumstances where cohabitation continues, or where there is separation of the spouses[119]. The canonical legislator considers various factors and circumstances in which separation may be the best course of action in order to carry out the *most serious obligations* assigned to the parents. These considerations include: the pathological dimension of a marriage, even at the time when the marriage was validly contracted and celebrated; situations in which it is impossible to continue cohabitation, and; circumstances in which cohabitation is uncertain due to a crisis[120]. For this reason, canon 1695 prescribes the commitment of the Ordinary or of the Judge, using all pastoral methods available, to reach a reconciliation between the spouses whom are about to interrupt their cohabitation —even if this rupture is validly based on one of the titles set by canon law[121]. It is well-known that adultery is among the motivations of a legitimate separation. However, the Legislator —recalling the aforementioned *good of the family*, and consequently also the *best interests of children*— can recommend to the spouse who is victim of adultery (*earnestly recommended*, according to canon 1152 §1) to forgive the other and to avoid interrupting cohabitation. It is one of the circumstances in which a superior consideration —in this case, the *interests of the children*— prevails over a strict interpretation of justice which would otherwise legitimately authorise the interruption of cohabitation. At the same time, the spiritual and material *well-being* of the child is a valid reason for the opposite solution, thus for waving the obligation of cohabitation in order to prevent unnecessary suffering caused by a difficult environment within the family. In circumstances where cohabitation is temporarily interrupted, the rights of the children remain unchanged, as does the obligation of their parents to take care of the children during and after separation[122]. Similarly, a further reference to the good of the child, at least in an implicit form[123], can be found in the 2005 *Dignitas Con-*

119 See INGOGLIA, A., La separazione coniugale in diritto canonico, Milano: Giuffré, 2004, 15 ff.; see also ST. LUIS SANCHEZ, A., Separations of Spouses *Propria Auctoritate* and the Nature of Ecclesiastical Intervention, in: Studia Canonica, 48, 2014, 493-530.

120 See RIONDINO, M., La tutela dei minori nell'ordinamento canonico, in: DAMMACCO, G. (ed.), La Chiesa tra economia e famiglia, Bari: Cacucci, 2015, 181-193.

121 See ARROBA CONDE, M. J., Diritto processuale canonico, 7th ed., Roma: Ediurcla, 2020, 672-673.

122 See GHERRO, S., Diritto Canonico. II. – Diritto matrimoniale, 3rd ed., Padova: Cedam, 2012, 340-347; see also BEAL, J. P., Canon 1154, in: BEAL, J. P.; CORIDEN, J. A.; GREEN, Th. J. (eds.), New Commentary on the Code of Canon Law, New York – Mahwah NJ, 2000, 1377-1378; FOSTER, M. F., Divorce and remarriage: what about the children?, in: Studia Canonica, 31, 1997, 147-191.

123 See ARROBA CONDE, M. J., Significado eclesial de la *Dignitas Connubii*, in: Cuadernos Canónicos Valentinos, 2008, 7-23; see also PEÑA GARCIA, C., La instruccíon *Dignitas Connubii* y su repercusíon en las causas canónicas de nulidad matrimonial, in: Estudios Eclesiásticos, 80, 2005, 645-701.

nubii. In article no. 3 §3, there is mention of the civil effects of marriage and subsequent parental obligations regarding the maintenance and education of their offspring, which remain in place in cases of separation or another interruption of the civil effects of a marriage. This regulation is particularly valid in States where there is a Concordat with the Catholic Church or specific bilateral agreements regarding parental or marriage obligations.

The canonical legislator is also sensitised to the role of the child and to the protection of their personality, particularly during decision-making process regarding nullity of marriage. Canon 1446 §2 sets that the judge may, either themselves or with the aid of other authoritative figures, urge and assist the parties to find a common agreement regarding the care and education of their children. This may occur at the judge's discretion, any number of times, at any stage or level of the proceedings, and whenever they perceive a possibility of a resolution which is particularly favourable for the children[124]. Furthermore it sets that, where a marriage is declared null, the spouses will be informed of their «*moral and civil*» duties toward the other party and toward the children, with an explicit mention regarding the right of maintenance and education to which the children are entitled (canon 1689 CIC). The experience of some Protestant Churches, particularly in Northern Europe, is also significant to our analysis. The most pertinent example is Denmark, where it is required that a Pastor must attempt to facilitate conciliation or mediation before the spouses may proceed to the State Court to request a cessation of the civil effects of the marriage[125]. Family mediation is known to be an empowering resource which shall be used in cases of marital crisis and dissolution of matrimonial ties. In recent decades this has been the subject of many legal reforms and has been brought to the attention of many legislators, particularly in Common Law countries[126].

Finally, in relation to the nullity of a marriage, it is clear that the duty of the parents toward their children, to take care of their moral and material needs, does not cease. Even if the matrimonial union ceases following the decision of nullity, the minor maintains the right to receive all the aid neces-

124 For further details, see RIONDINO, M., La «Mediazione» come decisione condivisa, in: Apollinaris, LXXXIV, 2011, 607-631 (particularly 621-622); ROSEMAN, D., Mediation in the Church, in: Studia Canonica, 47, 2013, 145-181.

125 For more details, see LONG, G., Ordinamenti giuridici delle chiese protestanti, Bologna: il Mulino, 2008, 136-137.

126 See ROBERTS, M., Mediation in Family Disputes, 4th ed., Farnham: Ashgate, 2014, 31-94.

sary for their harmonious growth and development, notwithstanding this new difficult phase which affects the entire family[127].

Moving now to penal law, the child benefits from a particular *favor iuris* —in a similar manner to the provisions in the *Codex*— whether the child is the perpetrator of an offence or the victim. Canon 1323 §1 of the CIC states that the child is not imputable for an offence committed before they have reached the age of sixteen. This provision is different in the CCEO, where the minimum age of penal responsibility is 14 years, according to canon 1413 §1. Raising the threshold of criminal responsibility (by two years in comparison with the *Codex*) is a reflection of the view that, in circumstances where the person engaging in penal behaviour is a growing subject, the system shall not react with real sanctions but rather with measures that are adequate for the reparation of any damage caused and for encouraging the responsibility of the child. The CIC, in canon 1324 §1, no. 4, also sets that the punishment for a child who is older than sixteen years and is the perpetrator of a crime, shall be mitigated or commuted with a penance. The pastoral character of the Church —and, subsequently, of canon law— emerges even in the process of fulfilling its most painful role; that is, the application of sanctions. Charity and benevolence prevail over a mere compensative response to the penal offence, regardless of the nature of the offence committed by a child[128]. With regards to a child who is the victim of a crime, an important reference is canon 1395 §2, which establishes that the abuse of a minor younger than sixteen years, perpetrated by a cleric, is a penal offence. The maximum penalty for this type of crime —which is always characterised by its intentional nature— foresees the dismissal from the clerical state[129]. Basically, this norm reproduces the law contained in the *Codex*, with a single —but inconsequential— difference: it is contained in Title V, Book VI, under the section *Offences against special delicts*. In the *Codex*, the same legal provision appeared in Title XIV, Book V, under the section entitled *De delictis contra vitam, libertatem, proprietatem, bonam famam ac bonos mores* (canon 2359 §2). As we will see in our next stage of analysis, the age of the child, as well as the terms for the prescription of the crime against him/her, have been modified after the entry into force of

127 In this regard, see AMOSSOU, G. L. E., Le droit de l'enfant au développement harmonieux et intégral et sa tutelle dans le procès canonique de nullité matrimoniale, Città del Vaticano: LUP, 2017, 347-372.

128 For more details, see RIONDINO, M., Function and application of the penalty in the Code of Canon Law, in: Jus Online, 5, 2020, 143-183 (particularly 161-173).

129 See PROVOST, J. H., Some Canonical Considerations Relative to Clerical Sexual Misconduct, in: The Jurist, 52, 1992, 615-641; MORRISEY, F. G., Procedures to be Applied in Case of Alleged Sexual Miscondict by a Priest, in: Studia Canonica, 26, 1992, 39-73.

the m.p. *Sacramentorum Sanctitatis Tutela* del 2001[130] (hereinafter SST) and the successive reform made by Benedict XVI, which took place in 2010.

4. *The protection of children and the discovery of child sexual abuse*

The third period of this evolution of the protection of the rights of children in the Church's juridical system begins with the *Charter of the Rights of the Family*[131], which was presented in 1983 by the Holy See to all people, institutions and public authorities involved in the mission of family. From its Introduction, it specifies that its aim is not to be a theological reflection on family, but to reaffirm the fundamental rights of the family based on the Magisterium and on the secular Tradition of the Church. This document was intentionally promoted both outside and inside the Church, that the rights of the family and of all its members may be respected, protected, and promoted in every sphere[132]. Explicit references to the protection of children and the promotion of their interests can be found in article no. 3, letter *c*, which outlines the right of the family to receive all necessary assistance from society to ensure the education of children. Article no. 4, letters *d*, *e*, *f*, and *g,* focus on a group of rights that shall be granted to all children, independent of whether they are born in or out of wedlock. For instance, among these is the protection of a child's growth, their holistic development, and their rights concerning their educational framework —that is, at least a basic education, with reference also to article no. 5, letters *a* and *b*, particularly regarding moral and ethical development. There is also a special mention concerning children with disabilities, found in article no. 4, letter *g*. This is not a mere general statement concerning the rights and protections that shall also be granted to them, but its purpose is to highlight that they must find, both at school and within their families, an adequate environment for growth and for an holistic development of their personality. On closer analysis, this aspect coincides with an invitation for the States to adopt reinforced legal measures for those who need greater protections by virtue of their vulnerable condition. Finally, article no. 10, letter *a*, makes reference to the economic sphere, where it is claimed that the family has a right to access —through paid employment or other means, such as State contributions— a minimum (or basic) salary which enables all its

130 In: AAS, 93, 2001, 737-739.

131 The Charter was translated in several languages. For the English translation, see PONTIFICAL COUNCIL FOR THE FAMILY, Charter of the Rights of the Family, Città del Vaticano: LEV, 2013.

132 For further details, see MARTIN, D., La Carta dei diritti della Famiglia; le sue origini e la sua originalità, in: BERTONE, T.; SEVERGNINI, A. (eds.), La Famiglia e i suoi diritti nella comunità civile e religiosa, Roma: Libreria Editrice Vaticana – Libreria Editrice Lateranense, 1987, 105.

members, and thus also the children, to have a harmonious life and to pursue a real measure of «*well-being*».

The second document we will consider for this third period focuses more on the protection of children from sexual abuse —a topic which was subject to review in the juridical system of the Church, particularly from a procedural law perspective, by the ecclesiastical authorities since the first half of the nineties[133]. In 1994, John Paul II granted some derogations to the USA Episcopal Conference (hereinafter USCCB) for a duration of five years, following some painful episodes of sexual abuse of children, perpetrated by clerics, which notoriously came to light in North America[134]. The objects of the derogations were: the age of the victims, which was raised to eighteen years, in derogation to canon 1395 §2, and; the terms for the prescription of the criminal action, which were doubled in comparison with the legislative provision contained in canon 1362 §1, thus becoming ten years. In 1998, John Paul II extended the aforementioned derogations for a period of ten years[135].

The new regulations on the crimes reserved for the Congregation for the Doctrine of the Faith (hereinafter CDF) were issued on 30 April 2001 with the apostolic letter *in motu proprio* «*Sacramentorum Sanctitatis Tutela*». It is of note that these regulations are valid both for the Latin Church and for the Oriental Church. This is the most significant reform of the penal sphere after the promulgation of the CIC. Thus, among the crimes reserved for the CDF there are also those *contra mores*, which coincide with the conduct perpetrated *«by a cleric against the Sixth Commandment of the Decalogue with a minor below*

133 An increase in awareness of the phenomenon of sexual abuse brought about greater attention to the integrity of members of the priesthood and to some guidelines that clerics and members of religious orders must observe. As a result, in 1999, the Committee of the Australian Catholic Bishops Conference and the Australian Conference of Leaders of Religious Institutes published a document whose purpose was to support and further develop this awareness and vigilance. For the text of the document, entitled *Integrity in Ministry*, see https://www.catholic.org.au/documents/516-catholic-church-s-development-of-principles-and-standards-1/file_[accessed 24 July 2020].

134 See WEBER, M., The Roman Catholic Church and the Sexual Abuse of Minors by Priests and Religious in the United States and Canada: What Have We Learned? Where Are We Going?, in: HANSON, K. R.; PFÄFFLIN, F.; LÜTZ, M. (eds.), Sexual Abuse in the Catholic Church, Città del Vaticano: LEV, 2004, 186-195. For an historical overview regarding the commitment of the USCCB, see BYRNES, Th. A., Catholic Bishops and Sexual Abuse: Power, Constraint, and Institutional Context, in: Journal of Church & State, 62, 2020, 5-25 (particularly 14-18); ALESANDRO, J. A., Removal from the Clerical State for the Sexual Abuse of Minors, in: Studia Canonica, 47, 2013, 295-339. For a brief overview regarding sexual abuse in America during the nineties, and the response of the Catholic Church, see SCORZA, T. J., The Church and the Explosion of Clerical Sexual Abuse Litigation in America, in: Ius Ecclesiae, 7, 1995, 741-749.

135 For more details, see DOYLE, T. P., The Canonical Rights of Priests Accused of Sexual Abuse, in: Studia Canonica, 24, 1998, 335-356; GREEN, Th. J., Clerical Sexual Abuse of Minors: Some Canonical Reflections, in: The Jurist, 63, 2003, 371-372; WOESTMAN, W. H., Ecclesiastical Sanctions and the Penal Process, 2nd ed., Ottawa: Saint Paul University, 2003, 148-149.

the age of 18 years». Moreover, it outlines that these lawsuits shall be subject to the *pontifical secret*, and that the term of prescription, raised to ten years for the *more grave delicts*, must be calculated from the eighteenth birthday of the child where a crime of sexual abuse has been committed[136]. In fact, the m.p. SST profoundly modifies the pre-existing regulations of the Code. In particular, it raises the age of the victim from sixteen to eighteen, according to an intention to align Canon Law with the juridical system of many States, but also in order to provide greater protections for children who may be easily manipulated and at greater risk of becoming victims of abuse, including abuse of authority, perpetrated by adults. It does not mention the matter of a child's consent for sexual intercourse, therefore indicating that all kinds of sexual intercourse with a minor —not only those which involve the use of the force— are covered[137].

Following this reform, many subsequent Episcopal Conferences have issued related guidelines, essential norms or Charters —the application of which are limited to particular geographic or ecclesiastical regions. An example of this is the commitment of the USCCB, who, in 2002, published both the *Charter for the Protection of Children and Young People* and the *Essential Norms*. The aim of the Charter was to provide a comprehensive set of procedures to be followed in cases of allegations of child sexual abuse perpetrated by Catholic clerics[138]. The former of the two documents is more general and

136 For an extensive analysis, see FERME, B. E., *Graviora Delicta*: the apostolic letter M.P. *Sacramentorum Sanctitatis Tutela*, in: SUCHECHI, Z. (ed.), Il processo penale canonico, Roma: LUP, 2003, 365-382; BORRAS, A., Droit canonique, abus sexuels et délits réservés, in: Vie Consacrée, 75, 2003, 76-99; AZNAR GIL, F. R., Delictos de los clérigos contra el sexto mandamiento, Salamanca: Universidad Pontificia de Salamanca, 2005, *passim*; MORRISEY, F. G., The Application of Penal Law in Cases of Sexual Abuse of Minors, in: Eastern Legal Thought, 2, 2003, 82-102; OLIVER, R. W., *Sacramentorum Sanctitatis Tutela:* Overview and Implementation of the Norms Concerning the «More Grave Delictis» Reserved to the Congregation for the Doctrine of the Faith, in: CLSA Proceedings, 65, 2003, 151-172.

137 In some juridical systems, as it is well known, the age of consent for sexual intercourse is younger than eighteen. However, the m.p. SST does not make any differentiation and consider it as a crime, independently of whether the minor gave his/her consent. In this regard, the idea to calibrate the sanction on the basis of the age of the victim and/or the level of consent demonstrated by the minor is unconvincing, as put forward by PIGHIN, B. F., Diritto penale canonico, 2nd ed., Venezia: Marcianum Press, 2014, 503-504. The same applies to the words of professor Llobell, who, in reference to the *Essential Norms* (published in 2002), wrote: «*It doesn't seem correct to treat an isolated incident of a cleric with a girl—a girl who is maybe psychologically and physically mature, but not 18—as equal to a clearly paedophilic and homosexual act. Especially where, in the former case, of the mature girl, she has given her consent or even provoked the behaviour; and where the cleric has regretted this fall for many years*» (my translation from the Italian). For the full original text, see LLOBELL, J., Contemperamento tra gli interessi lesi e i diritti dell'imputato: il diritto all'equo processo, in: CITO, D. (ed.), Processo penale e tutela dei diritti nell'ordinamento canonico, Milano: Giuffrè, 2005, 98-99.

138 To consult the *Charter* and the *Essential Norms*, see WOESTMAN, W. H., Ecclesiastical Sanctions, op. cit., 340-354. For an analysis on the Norms, see ÖRSY, L. Bishops' Norms: Commentary and

theoretical, taking into consideration this serious phenomenon and promoting measures whose purpose is the greater protection of children, particularly those involved in Catholic institutions. The second document has a clearly procedural nature. Both the sources show how the USCCB has undertaken to improve the efficiency and speed of these procedures and to provide answers for this regrettable situation perpetrated by some clerics, especially in some States of North America. Despite this, it was commonly held that the American Catholic Church's response to the problem of abuse of children was insufficient, unduly delayed, and ultimately was a failure of the Church and its framework for the protection of children against sexual abuse[139].

Before ending the third phase of this historical overview, we shall focus our analysis on the reform of the m.p. SST, which was promulgated in 2010[140], and which had become necessary following further reports of sexual abuses perpetrated by clerics, concentrated in some parts of the globe. Concerning the changes introduced by Benedict XVI, we will focus here exclusively on those reforms which are most relevant for our purposes. First, we shall note that the text is detailed and complex, and it is made of thirty-one articles divided into two Parts: *Substantial Norms* and *Procedural Norms*. The m.p. SST reaffirms that the *delicta graviora* concern crimes perpetrated during the celebration of the sacraments as well as crimes against customs. It also lists the types of delicts and divides them into four groups: firstly, the four illicit behaviours against the sanctity of the Most Holy Sacrament; then the three types of delicts against the holiness of the sacrament of penance; followed by the only typified delict against the sacrament of the order—that is, the attempt to ordain a woman—and; to conclude, in article no. 6, the *more grave delicts* against morality, which is worth further consideration in our analysis. According to this norm, the sexual abuse of a child by a delict can be considered a type of double delict. The first type is the crime against the sixth commandment of the Decalogue, committed by a cleric with a person who has not yet reached the age of eighteen years, which is raised by two years from sixteen years in the CIC. The second typology of delicts is the acquisition, possession

---

Evaluation, in: Boston College Law Review, 44, 2002, 998-1030. For a detailed analysis, see JENKINS, R. E., The Charter and Norms Two Years Later: Towards a Resolution of Recent Canonical Dilemmas, in: CLSA Proceedings, 66, 2004, 115-136.

139 See the accurate study with a juridical and sociological analysis on how the US dealt with the phenomenon of sexual abuse, put forward by DOYLE, Th. P.; RUBINO, St. C., Catholic Clergy Sexual Abuse Meets Civil Law, in: Fordham Urban Law Journal, 31, 2004, 549-616. On the importance of moral accountability within the Christian community, especially in light of many cases of child sexual abuse, see POPE, S., Accountability and Sexual Abuse in the United States: Lesson for the Universal Church, in: Irish Theological Quarterly, 69, 2004, 73-88.

140 In: AAS, 102, 2010, 419-434.

or distribution of child abuse images —which either represent children under fourteen years old, or in which children have an active role— for a lecherous purpose (that is, «*sexual gratification*»)[141]. This update was deemed necessary by the Church, who is increasingly attentive to both beneficial and improper means of social communication and their use, and the CDF, who wanted to improve and complete the 2001 norms[142].

Concerning these two types of behaviour, it is important to specify some relevant inclusions and definitions. Firstly, with regard to the age of the subject with whom a cleric has a sexual relationship, the m.p. equalises a minor with a person who normally lacks a use of reason (article no. 6, §1, no. 1). Consequently, this increases the number of subjects who might be classified as a victim of this type of crime and, at the same time, it broadens the legal text of the previous m.p. of John Paul II. It is important to understand that, in compliance with this norm, the victim doesn't have to be completely deprived of the use of the reason to be equalised with a minor, but it is sufficient that she/he has been recognised as unable to use it normally. Concerning the second type of crime —that is, the acquisition, possession or dissemination of child pornography material— the m.p. clarifies that these behaviours include those which occur «*in any way and with any kind of instrument*» (article no. 6, §1, no. 2). Thus, in this case it also broadens the possibilities with which the perpetrator can acquire those images or videos in which the subjects, whether they be active or passive, are under the age of fourteen[143]. This legal provision introduces a completely new type of crime in the history of canonical legislation.

It is important to note that, even after the issuing of the m.p. SST (2001), it was common practice within the CDF to consider the activity of down-

141 See RENKEN, J. A., The Penal Law of the Roman Catholic Church, Ottawa: Saint Paul University, 2015, 337-347.

142 See MILANI, D., Gli abusi sui minori: elementi di responsabilità canonica, in: MARCHEI, N.; MILANI, D.; PASQUALI CERIOLI, J. (eds.), Davanti a Dio e davanti agli uomini. La responsabilità fra diritto della Chiesa e diritto dello Stato, Bologna: il Mulino, 2014, 123-142 (particularly 125-126). For an analysis of the update put forward by the m.p. SST and also for several details on the definition of sexual abuse, see GÓMEZ MARTÍN, E., El delito contra el sexto mandamiento del Decálogo cometido por unu relioso con un menor, in: REDC, 69, 2012, 163-224; READ, G., The Holy See and the Handling of Child Abuse Cases, in: CLSGBI Newsletter, 162, 2010, 22-26. For different ideas regarding responsibilities in a case of sexual abuse of a minor, according to the Italian juridical system and US legislations, see the interesting research put forward by MADERA, A., Clerical Sexual Abuse and Church's Civil Responsibility: A Comparative Analysis of the American and Italian Case Law, in: Journal of Church & State, 62, 2020, 59-85.

143 See PAPALE, C., I delitti contro la morale, in: AA. VV., Questioni attuali di diritti penale canonico, Città del Vaticano: LEV, 2012, 55-65.

loading child pornography material as a crime against customs[144]. After the introduction *ex novo* of this type of delict, the *Norms* became more complete and more focused on the protection of children and of their psychological and physical dignity, as the overall commitment of the judicial system of the Church demonstrates[145].

Another interesting aspect is linked to the terms of prescription (i.e. statute of limitations): as many are well aware, canonical delicts are generally prescribed after three years, in compliance with canon 1362 §1. Some types of crimes are excepted, such as: the two types contained in Title VI of Book VI on crimes against human life and freedom (canons 1397 and 1398); the attempt of marriage by a cleric, in compliance with canon 1394 §1; the type, also contained in Title V on crimes against special obligations, which considers the cleric who lives in cohabitation (canon 1395 §1), and; the cleric who commits other crimes against the sixth precept of the Decalogue (§2). Article no. 7 of the *Norms* provides that, notwithstanding the CDF's possibility to derogate the terms of prescription, the criminal action of the delict in object will extinguish in twenty years: thus increasing what was set in the m.p. of John Paul II, where the prescription was set after ten years. Furthermore, another innovation regards the calculation of the prescription: the time shall be calculated from the day in which the child celebrates their eighteenth birthday, and not from the day the crime was committed. Finally, the intentional media coverage and especially the choice to publish, in several languages, the *Norms* online, demonstrates the Church's desire to be transparent and to avoid escaping a problem which is currently particularly insidious for the Church, and to promote full and open knowledge of the juridical system of the Church with regards to sexual abuse of minors[146].

144 See SCICLUNA, C. J., Procedura e prassi presso la Congregazione per la Dottrina della Fede riguardo ai *Delicta Graviora*, in: CITO, D. (ed.), Processo penale e tutela dei diritti nell'ordinamento canonico, op. cit., 279-288 (particularly 282-283); see also GREEN, Th. J., CDF Circular Letter on Episcopal Conference Guidelines for Cases of Clerical Sexual Abuse of Minors: Some Initial Observations, in: The Jurist, 73, 2013, 151-179.

145 See AZNAR GIL, F. R., El delito contra el sexto mandamiento del decálogo cometido por un clérigo con un menor de edad, in: REDC, 70, 2013, 481-511; CITO, D., Las nuovas normas sobre los «*delicta graviora*», in: Ius canonicum, 51, 2010, 629-658; GREEN, Th. J., *Sacramentorum Sanctitatis Tutela:* Reflections on the Revised May 2010 Norms on More Serious Delicts, in: The Jurist, 71, 2011, 120-158; RENKEN, J. A., *Normae de gravioribus delictis:* 2010 Revised Version. Text and Commentary, in: Studies in Church Law, 6, 2010, 51-116.

146 See, once again, RIONDINO, M., La Convenzione di Lanzarote. Aspetti giuridici e canonici in tema di abuso, op. cit., 170-172.

VI. Pope Francis and the reinforcement of protections for children

From the very beginning of his pontificate, Pope Francis, fulfilling and reinforcing the legacy of his predecessors, has given particular attention to the protection of children and the promotion of their interests in all spheres: from the right to education, to growth and development within a family, to the protection of the minor against any form of sexual abuse and exploitation. This intention was apparent from his first public interventions during, for example, the Italian day against paedophilia[147]. Another issue became apparent during several of Pope Francis' meetings with victims of abuse: the perception, in some cases, that the Church was unable to sufficiently support them during the difficult path of recovery that followed the abuses[148].

The Pontifical Commission for the Protections of Minors (hereinafter PCTM) represents the immediate consequence of this commitment, with an intention to promote the *best interest of the child* for every single child. It was instituted by Pope Bergoglio with a Chirograph given on 22 March 2014[149], having been previously announced in December 2013 as a proposal by the Council of Cardinals[150]. The choice to establish a Commission is explained in the first lines of the Chirograph: it is in response to the evangelical mission, according to which the holistic development of every person, and particularly of every child, is fundamental. It is a source of law which clearly shows the Church's commitment to greater protection and promotion of the rights of children[151], based on similar international experiences such as the establishment of the Committee on the Rights of the Child, based in Geneva, according to article no. 43 of the CRC.

PCTM is in charge of making proposals—including proposals directed to the Roman Pontiff—with the purpose of ensuring the genuine protection of not only children but also *vulnerable* adults. This expression, «*vulnerable*

147 FRANCISCUS PP., *Regina Coeli*, in: L'Osservatore Romano, CLIII/104, 2013, 8.

148 See ZOLLNER, H., The Spiritual Wounds of Sexual Abuse, in: AA.VV., Safeguarding, Hong Kong: UCAN Services Ltd., 2018, 48-58; PAPROCKI, Th. J., Confronting the Myths and Realities of Clerical Sexual Abuse of Minors in the Catholic Church, in: Studia Canonica, 53, 2019, 603-625.

149 The English version of the Chirograph given by Pope Francis is available on line: http://w2.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140322_chirografo-pontificia-commissione-tutela-minori.html [accessed 25 July 2020].

150 For an overview regarding the evolution of the different steps, from the announcement till the draft of PCTM, see RENKEN, J. A., The Penal Law of the Roman Catholic Church, op. cit., 347-358.

151 The most immediate reference is to the Committee on the Rights of the Child, whose institution is governed by article 43 of the CRC. Even if the functions are not the same of those in PCTM, their role in monitoring the current conduction of infancy across the world can be considered, in part, the same for both the bodies.

adults» is used for the first time here and, as we will see, will be used again in the m.p. *Vos Estis Lux Mundi*. PCTM's intention here is to prevent a repetition of past mistakes, both at a universal Church level as well as within particular Churches. Among the most notable aspects of the work of PCTM is the efforts and specific functions of the commission and its members. According to article no. 4, it has been established that PCTM shall operate in close collaboration with the Congregation for the Doctrine of Faith and with all particular Churches. A clear demonstration of the universal and missionary nature of the Church can be found in the composition of PCTM: experts from different continents, varying contexts and with specific and significant experience in the area of child protection and safeguarding[152].

We shall now turn to one of the most significant events which took place during the pontificate of Pope Francis. It is not directly connected with the protection of children against different forms of sexual abuse, however, it provides an important broader reflection on the promotion of rights and the protection of society's youngest. We refer to, of course, the two synods on the Family. The first took place in an extraordinary form in 2014, and the following, in an ordinary form, in 2015, with the consequent issuing of the post-synodal apostolic exhortation *Amoris Laetitia*[153], known in English as «*The Joy of Love*». Among the most significant aspects of this exhortation include, for example, those connected with the increased commitment of the Church to further recognise the family —and consequently all its members— as an active subject of evangelisation, as it appears in no. 2 of the *Relatio finalis*[154]. Neither of the two synodal assemblies dedicated an independent section to the education of children, nor did the convened assembly. Despite this fact, *Amoris Laetitia* included an entire chapter, from nos. 259 to 290, dedicated to this topic. From nos. 274 to 279, it gives particular attention to the fundamental educational dimension of the «*first school of sociality*», whose aim is especially to promote the needs and the protection of the youngest, taking care of their legitimate interests and their harmonious and holistic growth.

It is worth mentioning the m.p. *As a loving mother* of June 4, 2016, which has greater allusions to the protection of children. In this m.p., Pope Francis reaffirms some juridical and moral principles proper to the Magisterium

152 For a brief overview, see RIONDINO, M., La Pontificia Commissione per la Tutela dei Minori, in: Monitor Ecclesiasticus, CXXX, 2015, 303-306; see also McALEESE, M., Children's Rights and Obligations in Canon Law, op. cit., 29-30.

153 In: AAS, CVIII, 2016, 311-446.

154 For further details, see the analysis put forward by ARROBA CONDE, M. J., La experiencia sinodal y la reciente reforma procesal en el motu proprio *Mitis Iudex Dominus Iesus*, in: Anuario de derecho canónico, 5, 2016, 165-191.

and to the legislation of the Church. Following his reaffirmation, through this source of law, of the love that the Church nurtures towards everyone, especially towards those who are more vulnerable and defenceless, The Pontiff crystallises some juridical concepts that consequently assume a more precise legal meaning. It is well-known that the protection and care of children is the responsibility of every single Christian faithful. This commitment, however, plays a particularly fundamental role for those who hold greater responsibilities within an ecclesial community. In fact, article no. 1 envisages that the diocesan bishop can be legitimately removed in circumstances where he has committed serious injuries through negligence, be they to the detriment of a natural person or of the entire community. The same article (§3) states that in a case of the abuse of children and vulnerable adults, it is enough if the lack of diligence is *grave*—and not *very grave*, per the other kind of canonical delicts (according to §2). In order for this lack of diligence to be established, however, it must be demonstrated that the Ordinary has very seriously neglected to fulfil the due diligence «*demanded by his pastoral office*», although it is not necessary to demonstrate that this occurred following a serious moral fault on his part. The body delegated to undertake this procedure is the relevant dicastery of the Roman Curia with competence in this matter. Therefore, the aforementioned m.p. of Pope Bergoglio intends to strengthen the criteria of the procedure which shall be followed in the event of serious negligence committed by a Bishop, including negligence which is related to cases of abuse against children. The respective gravity may require the bishop's removal from his office; a hypothesis that is also consistent with what is already contemplated in canon 193 of the CIC[155].

From a chronological point of view, the final legal source on which we will focus is m.p. *Vos estis lux mundi*[156], known in English as «*You are the light of the world*», issued by Pope Francis on 7 May 2019, on the obligations to report cases of sexual abuse committed by Catholic priests. One of the main purposes of this m.p. is to promote better coordination between the particular Churches and the Holy See, particularly regarding the measures that shall be adopted to pursue sexual crimes committed by clerics[157]. Among the most interesting provisions contained in this complex and detailed canonical text, composed of two Titles and nineteen articles, is where the Pontiff reinforces

155 See ARROBA CONDE, M. J.; RIONDINO, M., Introduction to Canon Law, Milano: Mondadori, 2019, 181-182.

156 In: Communicationes, 51, 2019, 23-33.

157 See RENKEN, J. A., *Vos estis lux mundi*. The Evolution of the Church's Response to Sexual Abuse and its Cover-up after the Vatican Summit, in: Studia Canonica, 53, 2019, 627-658; ASTIGUETA, D. G., Lectura de *Vos Estis Lux Mundi*, in: Scientia Canonica, 2, 2019, 21-53.

the measures that shall be taken against those who commit sexual abuse against either a minor or, in compliance with article no. 1, §2 letter *b*, against a *vulnerable person*. The definition of this term includes any person in a condition of infirmity, or of physical or psychological infirmity, or deprived of his/her personal freedom which would limit, even occasionally, their capacities and prevent her/him from resisting the offence. In compliance with what had already been established by the Chirograph which instituted PCTM, we use the expression «*vulnerable person*», to highlight the dimension of prevarication —even if temporary— of the personal freedom in which a faithful victim of any abuse (not necessarily sexual abuse) might find themselves. Any vulnerable person is thus treated as a minor, proportionate to the level and development of his/her capabilities. Unfortunately, a greater attention to actions which would prevent the occurrence of abuse within the Church is lacking in the canonical reflections at this stage[158].

Article no. 2 of the m.p. also declares that, «*stable and easily accessible systems*» shall be instituted in each diocese within a year from the entry into force of the current regulation—that is, from 1 June 2020. The role of these systems is to collect reports of alleged abuses committed by clerics and by members of any institute of consecrated life. Article no. 3, entitled «*Reporting*», is particularly important. It states that, with the exception of the cases provided in canons 1548 §2 CIC, any and each time that either a cleric, a member of an institute of consecrated life or a member of a society of apostolic life learns—or has a good reason to suspect—that one of the facts covered by article no. 1 of the m.p. has been committed, he must immediately report these facts to either the Ordinary where those facts took place or to another Ordinary, pursuant to canon 134 CIC and 984 CCEO, with the exception of what is provided in §3 of this article. Furthermore, it provides that whoever is aware of the abuse of a child or a vulnerable person, or of the possession, exhibition and dissemination of child pornography material, shall fulfil a report to the competent authorities (§2). This article shall be read in conjunction with article no. 4 §1, which clarifies that submitting such a report does not constitute a violation of office confidentiality. Finally, article no. 5 of Title I, entitled «*Care for persons*», lists some actions whose purpose is to support and provide spiritual, social, psychological, and therapeutic assistance to victims and their families. This support for families of the victims is recognised in the social sciences as

158 For more analysis in this regard, see MURILLO, J. A., Abuso sexual, de conciencia y de poder: una nueva definición, in: Estudios Ecclesiásticos, 95, 2020, 415-440.

one of the most important aspects of rehabilitation[159]. The implementation of these actions is necessary for a re-birth, following the painful wounds which have seriously compromised the dignity and development of the child.

Title II, which has an exclusively procedural nature, is entitled «*Provision concerning bishops and their equivalents*» and sets some regulations for Cardinals, Patriarchs, Bishops, and Papal Legates as well as clerics who are in charge of pastorally guiding a particular Church, and supreme moderators of institutes of consecrated life or societies of apostolic life (of pontifical right). Article no. 12 §7, under the Title «*Carrying out the investigation*», reaffirms the general principle of law which sets the presumption of innocence that shall be granted to the person who is under investigation. It might seem unnecessary to bring attention to a principle which is considered by each judicial system as a conquest of civilisation[160]. However, experience teaches us —as we have seen even recently, and often through painful events— that rapid and superficial judicial decisions may have unjustly defamatory consequences, damaging forever the good reputation of a person, and this in clear contrast with canon 220 of the CIC.

Concerning the rapidity with which the investigations shall be done, article no. 14 states that they must be concluded within ninety days, unless otherwise indicated, according to article no. 10 §2. Finally, the m.p. provides for the possibility for Ecclesial Provinces, Episcopal Conferences, Synods of the Bishops and the Council of the Hierarchs (for the Eastern Churches) to institute a special «*fund*», pursuant to article no. 16 §1.

Another important aspect of the reforms made by Pope Francis is contained in the *Rescript*, which relates to the abolition of the pontifical secret concerning reports, trials and decisions in connection with article no. 1 of the m.p. *Vos estis lux mundi*, and with article no. 6 of the m.p. SST. Furthermore, the *Rescript* set out that the exclusion of the pontifical secret shall apply also in a case where those acts have been committed in combination with other criminal conduct[161]. From now on, those proceedings will remain under the ordinary professional secret with the corresponding normal obligations pursuant to canon 471 §2. Therefore, when the normal professional secret is established for the proceedings concerning crimes of sexual abuse com-

159 See CAMPOS MARTÍNEZ, F. J., Comentario a la Carta Apostólica en forma de Motu Proprio Sumo Pontífice Francisco *Vos Estis Lux Mundi*, in: REDC, 76, 2019, 829-850.

160 See also the article 11 §1 of the UDHR which states: «*Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial during which he has had all the guarantees necessary for his defence*».

161 For the English version, see https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2019/12/17/1010/02063.html#inglese [accessed 25 July 2020]

mitted by members of an institute of consecrated life —but not clerics— the new provision is applied. The same can be said for the concealment of that conduct during the investigations and in relation to proceedings for a case of child pornography, according to article no. 6. Finally, with the provision concerning the compatibility between the professional secret and the performance of the obligations set by state laws, including the obligation to report to authorities and to implement the executive resolutions of the judicial civil authorities, the new legislation is coherent with the pre-existing provisions, which were already mandatory[162]. Our final reference to the second *Rescript* of 17 December 2019, on the changes to the «*Normae de gravioribus delictis*», is in relation to article no. 1, which raises the age of the subject represented in pornographic images from 14 to 18. Therefore, any cleric who, for his sexual gratification, acquires, owns or distributes images or video in which children are represented, satisfies the conditions of the *delicta graviora*. Raising the age of the victims is a response to the need to protect a greater number of minors, regardless of whether they are children or adolescents, in pursuit of the primary objective—that is, to provide a safe environment for every child.

VII. Conclusion

Having now reached the end of these reflections, we shall draw some brief conclusions in alignment with the comparative perspective that we established at the beginning.

Firstly, it is clear that a real and tangible development has occurred, both within the international community and the juridical system of the Church, concerning the promotion and the protection of the rights of children, especially during recent decades. The unanimous approval of the CRC by the States, and the Holy See's ratification in 1990, is further compelling proof of this. It is important to recall that the Holy See was among the first subjects of international law who ratified the CRC after having participated, through its delegates, in the drafting of the international treaty. In natural alignment with the universal mission of the Church, the Holy See accompanied the ratification with some reservations. For example, regarding the technical definition and understanding of article no. 6 —which is related to every child's inherent right to life— it is unsurprising that, during the 1998 negotiations, the Holy See reiterated that the life of a child starts from the moment of conception and

162 For further details, see ARROBA CONDE, M. J., Commento all'Istruzione *Sulla riservatezza delle cause*, in: Monitor Ecclesiasticus, CXXXIV, 2019, 199-207.

not from the moment of birth. Furthermore, reservations were made concerning family planning and the contents of article no. 24 §2, *f*, due to the contrast between this portion of the CRC and the teaching and Magisterium of the Church. Another aspect highlighted in the Holy See's reservations concerned the primary and inalienable right of every parent to provide for the education of their children, particularly in the field of religious education and beliefs (see articles nos. 13, 14, 28).

It is also significant that the Committee on the Rights of the Child warmly welcomed the «*Concluding observations on the second periodic report of the Holy See*»[163], on 25 February 2014. However, the Committee lamented the Holy See's delay in providing this requested report. The Committee responded on various fronts, inviting the Holy See to reconsider the reservations it made, and expressing concern regarding the cases of abuse of children which occurred inside ecclesiastical institutions or educational entities connected with the Church. At the same time, the Committee recognised and praised the desire demonstrated by the Holy See to be always transparent on this point, not least through the many juridical reforms made in the preceding years. It is important to recognise that in recent decades, reforms to Church Law have become more frequent, and their aim is not only to manifest a tangible commitment to the *best interest of the child*, but also to pursue those who seriously compromise the health and the development of either a child or a vulnerable person.

However, there are still many shortcomings concerning the Church's prevention of sexual crimes, especially pertaining to measures for the early protection and intervention against those behaviours which, even if they do not constitute a crime of sexual abuse, could lead to this type of crime[164]. Furthermore, particularly following a crime for which the imposition of an expiatory penalty is foreseen, there is a need for both a juridical reflection and an elaboration on those instruments whose purpose is to help the perpetrator to review the criminal conduct that they previously engaged in. However, this shall occur without prejudice to the reformation of the offender, which is a purpose —even if not the only purpose— of every sanction, as established in canon 1341 of the CIC. This might be achieved, for example, through practices which identify valid and customised instruments of restorative justice[165].

163 To view the original version of the text, see https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5 [accessed 25 July 2020].

164 For more details, see EUSEBI, L. Pena canonica e tutela del minore, in: AA.VV., Il diritto canonico nella missione della Chiesa, Città del Vaticano: LEV, 2020, 198-199.

165 With regards to the importance of the dimensions it considers fundamental, the practices of restorative justice and of mediation in Canon Law, particularly in penal matters, see RIONDINO, M.,

Furthermore, it does not seem coherent that the crime of sexual abuse perpetrated against a child can be found only among the offences against special obligations, according to canon 1395 §2. It may have been more correct to follow the example of the *Codex*, which puts this offence among the delicts against life and freedom. Therefore, inserting this terrible offence among the crimes contained in canon 1397 of the current Code of Canon Law would do more justice to the many victims, and would be more logical for the purpose of protecting and defending the dignity and safety of a child. We hope that the upcoming reform of Book VI of the CIC will take this into consideration.

Moreover, the evolutions which occurred over the last four decades are oriented toward a clear conceptualisation of the child as a subject whom is entitled to personal rights. They have also focused on the measures that are necessary for both States and the Church to overcome and address the problem of the kind of invisibility which children, for too long, were subjected to. The juridical and moral obligation to assign a greater importance to the *interests of children* shall not any longer be confused with a kind of metaphysics of innocence, nor with a perspective which primarily considers the child or the vulnerable person as inherently weak. Their perceived weakness shall now be interpreted foremost as a compelling and explicit duty on the part of authorities, prompting the further creation and use of tools which are designed to promote their development and harmonious growth, and grant them a level of *well-being* which is at least equal to that which is granted to adults. I used the term «*equal*» because it is evident that even the minimum level of *well-being* is not experienced even by the average person, but this is particularly the case for minors. Finally, we would support the argument that this shortcoming could be addressed by the provision of a dogmatic and structured elaboration of a dedicated and autonomous section on children's rights in the CIC, through future reforms or updates to the juridical system of the Church. However, noting that this would clearly be an arduous undertaking according to the general structure of the CIC, a broader section on family law —with specific provisions regarding children— would at least be a step in the right direction.

Recalling an expression pronounced by Oliver Wendell Holmes Jr., I fully agree that «*Theory is the most important part of the dogma of the law*»[166]. Our analysis illustrates that both the provisions promulgated by the international

Giustizia riparativa e mediazione nel diritto penale canonico, Città del Vaticano: LUP, 2011, particularly 145-187.

166 HOLMES, O. W. Jr., The Path of the Law, in: Harvard Law Review, 110, 1997, 1008. This is the reprinted version of the original article, published in: Harvard Law Review, 10, 1897.

community and the juridical system of the Church are undergirded by strong theory, and can thus be considered as a model for the theoretic dimension of children's rights. The core tenets of the resulting children's rights theory have broad implications for application in other spheres of justice—not only for a technical perspective, but also in terms of the underlying ethical and meta-juridical values.

The three periods of evolution for the representation of children's rights in law, which have been the object of our analysis, have now concluded. Looking forward, we now enter, ideally, into a fourth period which may perhaps be less theoretical —but not less interesting— than the previous ones, given that it will affect the present time as well as the future of humanity itself. Both the Church and the States must give their best during this emerging period. If not, the consequences will be a miserable failure of the theory we have established this far —the cost of which will be born primarily, once again, by the youngest and most vulnerable ones.

Michele Riondino

Professor of Canon Law and International Children's Rights
Director, Canon Law Centre (Australian Catholic University)