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Lowering the Voting Age from Children's Rights Perspective.

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*I would like to dedicate this thesis to the memory of Henryk Goldszmit,
also known as Janusz Korczak.*



*Janusz Korczak with children in the courtyard of the orphanage, 92 Krochmalna Street, Warsaw, early 1930s.
(Photo source: Polish Press Agency)*

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Executive Summary

Key words: *children's rights, empowerment, participation, children's suffrage, age limits*

This thesis attempts to explore how a children's rights perspective can create a space to challenge adolescents' exclusion from voting processes and how to approach the protection-based arguments against adolescents' suffrage. In the process, this paper analyses various theoretical and legal constructs that are inevitably connected with adolescent suffrage. Therefore, it raises questions about the relationship between lowering the voting age and theories of children's empowerment, children's citizenship, children's participation, and the issue of age limits generally. It should be noted that the paper uses phrases "lowering the voting age", "children's suffrage" or "adolescent's suffrage" interchangeably to express the idea of lowering the voting age to 14 years. This recommended age limit is based on the various legal age limits that are exceptions to the age of majority defined by the UNCRC and those used in other fields related to children's activities, for instance work or criminal responsibility.

In approaching these questions, the first chapter presents a theoretical overview of the empowering approaches to children's rights, beginning with an analysis of Janusz Korczak's work. It then turns to the presence of children's suffrage within children's empowerment movements to illustrate the close link between lowering the voting age and the realization of children's rights more broadly. The second chapter addresses the child as a citizen and focuses on the nature of citizenship and the rights that are derived from it. The third chapter addresses the concept of children's participation inspired by rights and freedoms guaranteed in the UNCRC and their relevance in regard to adolescent suffrage. The final chapter illustrates the issue of age limits within the children's rights framework, the implications of their inconsistency, and argues that lowering the voting age is a missing link within the legal construct of age limits.

The paper presents arguments in favor of children's suffrage. Firstly, by showing empowering theories related to children's rights it argues that lowering the voting age would be a next step in order to advance the legal, social and political situations of children because they would gain power and be able to use it in their interests. Secondly, allowing children to vote would enable them to fully enjoy their citizenship. Lowering the voting age would expedite the position of the child as a rights holder and a citizen by allow adolescents to enjoy privileges of full citizenship. That is closely connected to the situation of other groups of citizens who were excluded from voting in the past and may still not have the right to vote in some countries: woman and those to whom felony disenfranchisement applies. The bigger coalition between children's advocates and movements against felony disenfranchisement could also present interesting and, maybe more visible, initiatives. Thirdly, the right to vote should be a natural implication of children's participation and freedom of association, bearing in mind that minors already have the right to join political parties. Lastly, the minimum voting age should be lowered in order to be consistent with other age limits that are much lower than 18 years old and that allow children to legally work, join labor unions, and be held criminally accountable.

Overview of Main Findings

The future development of the UNCRC should include strengthening civil and political rights without avoiding the issue of children's suffrage. The right to vote would be one of the most empowered actions the child would be able to undertake, because it would give the young person the power to decide who the future legislator in her or his country will be and who will create the law that will affect the child's life

Moreover, while considering children's citizenship in light of children's suffrage, an important issue has been highlighted: that children are and should be considered full citizens, regardless their disenfranchisement. They are entitled to several rights closely connected to citizenship and yet, notwithstanding the fact right to vote is very much related to citizenship, it is not its only component, as many authors has proven. Nevertheless, lowering the voting age would expedite the position of the child as a rights holder and a citizen by allowing adolescents to enjoy privileges of full citizenship. That is closely connected to the situation of other groups of citizens excluded from voting previously and in some countries, still: women and those who to whom felony disenfranchisement applies.

Regarding the concept of children's participation, many authors have noticed that there are various dimension of it due to the vagueness of the term "participation" itself. Bearing in mind that participation of children can be ensured through different means and realized to different extents, children's suffrage achieved by lowering the voting age would enable children to participate in a direct, political way. History has shown how often adolescents have been actively engaged in civil society movements, reforms, revolutions and uprisings. They can join political parties but they still cannot vote. Therefore, using idealistic young people to be a symbol of political actions without inviting them to join the process of creation of political realities through voting constitutes a tokenistic approach to children that can even indicate exploitation of children's images, time and energy. Thus, lowering the voting age is an essential step forward realizing the full participation of children that would include them fully into community life. Young people would therefore become societal participants who are legitimated by their eligibility to express their voices in voting processes.

Lastly, examples of inconsistent and exceptional age limits prove that there is not a unified definition of the child that covers all occurrences within a child's life. Depending on the circumstances, laws allow for one to distinguish between the child as underage one sphere while in the other, the minor is treated alongside adults. Thus, the minimum voting age should be lowered in order to be consistent with other age limits that are much lower than 18 years old and that allows children to legally work, join labor unions, and be held criminally accountable.

To conclude, the idea of lowering the voting age is first and foremost a matter of children's rights. It should not be treated as a political weapon used just before elections but instead, it should be considered very thoroughly, with regard to adequate implementation and civic education to make it valuable and effective, following the CRC Committee's suggestions in its aforementioned Concluding Observations. The idea of the voting age being set at 14 years has great potential. However, it should be addressed in a comprehensive and consistent manner with providing necessary education all the retaining an appreciation for the child as rights holder. Then, the lowering of the voting age could profoundly benefit the lives of young people and would make their voices not only heard, but also, in the literal and metaphorical sense, count.

Introduction.

Janusz Korczak. The Inspiration

“Children are not soldiers, they do not defend their homeland, though they suffer along with it. There is no need to court their opinion, for they cannot vote: they do not threaten, demand, or speak. They are weak, small, poor, and dependent until they become citizens. Lenient, coarse, or brutal treatment – but always disrespect. A tiny tot, just a kid – a future person, not one right now. Not real until later.”¹

Those words, expressing a bitter realization of the fragile status of children, were written in 1928 by Henryk Goldszmit, better known by his pen name, Janusz Korczak.² Identifying as both Polish and Jewish, as a children’s rights pioneer Dr. Korczak left a ground-breaking legacy of exceptional quality that remains very relevant today.

Janusz Korczak, also known as ‘Old Doctor’, was a physician educated in Warsaw, Berlin and Paris and specialized in pediatrics. Born into an affluent, assimilated Jewish family in Poland, Korczak was always particularly sensitive to the sorrowful and challenging reality of less privileged children shaped by social injustice, inequality, economic exclusion, racial discrimination. As a result, he engaged in social work and enriched his professional endeavors by writing books for and about children. He saw and treated children as equal to adults and recognized their rights, their wisdom, and their need for independence. Apart from his regular work as the director of an orphanage, a doctor, and an expert witness, Korczak undertook several other initiatives to raise awareness about the empowerment of the child. One of them was the creation of a newspaper made by and for children, called ‘Little Review’ (‘Maly Przegląd’), that was attached to the ‘adult’ version of that newspaper. The first issue was published in 1926. He also became a beloved radio personality with his broadcasting in Polish Radio where he discussed all issues related to children. Unfortunately, due to the difficult political climate caused by rising anti-Semitism, Korczak’s broadcast was cancelled in 1936. Nevertheless, his determination helped him to return to Polish Radio in 1938, shortly before the outbreak of World War II.³

The Old Doctor served children until the end of his life. During the liquidation of the Warsaw Ghetto in 1942, he refused to accept help from his non-Jewish friends when they offered to support his escape from the ghetto to the safer, Aryan part of the city. He could not imagine leaving ‘his’ children from the orphanage in order to flee Nazi-occupied Poland. His coworkers, including his close friend Stefania Wilczyńska, decided likewise. On the hot, sunny day of 5 August 1942, Korczak was marched through the city for almost four hours under Nazi supervision alongside the orphanage staff and all children in order to reach Umschlagplatz, where they were forced to join other Polish Jews on their way to the Treblinka extermination camp. While the exact date of Korczak’s death is not certain, in 2015 the district court in Lublin recognized 7 August 1942 as the presumed date.⁴ A hundred years after Korczak’s birth, the Polish Parliament proclaimed 1978 the Year of Janusz Korczak. In the same year, possibly strategically, Poland proposed a draft of the United Nations Convention on the Rights of the Child.⁵

¹ J. Korczak, *A child’s right to respect*, 2017 (published originally in 1928), 14.

² Encyclopaedia Judaica, Ed. M. Berenbaum, F. Skolnik, vol. 12, 2007, 305-306.

³ J. Olczak-Ronikier, *Janusz Korczak. Próba biografii (Janusz Korczak. An attempt at a biography, in Polish)*, 2011.

⁴ J. Olczak-Ronikier, *Janusz Korczak. Próba biografii (Janusz Korczak. An attempt at a biography, in Polish)*, 2011, 422-433.

⁵ *Legislative history of the Convention on the Rights of the Child*, Office of the United Nations High Commissioner for Human Rights, 31, 2007.

Born and raised in Poland myself, I have been familiar with the story of Janusz Korczak since the beginning of my life. His myth and message have always been vividly present and I had read several of his books, including *King Matt the First*, *King Matt on Deserted Island*, and *Bankruptcy of Little Jack*. My family and teachers had told stories about him and I pictured him as a good, nice, older man, loved and cherished by the orphaned children he cared for. I imagined him telling them fairytales, tending their wounds, and, most importantly, listening to young people's problems with mindfulness, respect, and genuine engagement. I knew the tragic, heroic story of his death embodied a deeply moving, noble act of self-sacrifice. I imagined he wanted to make sure that his children would not die alone, surrounded only by silent, cold walls of a gas chamber and blankly observed by soulless Nazis in their polished uniforms. The Old Doctor wanted to be with his children until the end.

Thus, the name Korczak became for me the synonym for unconditional love for and understanding of children. However, as I was growing up, I became more appreciative of and inspired by his innovative and unique ideas. Undoubtedly ahead of his time. Korczak's efforts to educate society about the rights and views of minors were frequently dismissed as too controversial and too progressive.

Everyday, the Old Doctor's wise, compassionate eyes with a spark of childlike curiosity looked at me from the framed picture hanging on the bright yellow wall of my primary school's corridor in Sieradz, a little town in central Poland. After many years, his eyes looked at me again during the first lecture on international children's rights at Leiden Law School in the Netherlands, far away from our common homeland. As I looked at the photograph I knew so well, I felt grateful, touched and honored to be able to start this program. The spirit of Janusz Korczak's work has helped me grow throughout a wonderful and challenging journey of studying international children's rights. My thesis is a culmination of this valuable experience, and the beginning of a new chapter in my life, where, inspired by Korczak's intellectual heritage, I hope to contribute to children's empowerment and to the general improvement of their lives.

Adolescent's Right to Vote: Problem Statement and Research Question

While reflecting on Janusz Korczak's work, one might wonder what the Old Doctor would consider an important cause for children in modern society. Aside from the most prevalent and difficult problems afflicting children as a result of the refugee crisis, sexual and economic exploitation, poverty, social exclusion, it is conceivable that Korczak would strongly advocate for enhancing children's empowerment by extending voting rights to adolescents. The Old Doctor's ideas were quite unpopular and extraordinary for his time; today he would likely be involved in controversial contemporary campaigns. This thought was an inspiration for considering the topic of this thesis. It is my contention that lowering the voting age could be the next step forward to full empowerment of children, and idea I think Janusz Korczak would support.

The United Nations Convention on the Rights of the Child (UNCRC) considered the most important areas of human's activities through the underlying, modern lense of the child as a right holder. Undoubtedly, the UNCRC was a milestone in empowering children and profoundly contributed to a paradigm shift by questioning the predominant, welfare-oriented narrative surrounding society's youngest group. The Convention's treaty body, the Committee on the Rights of the Child, elaborated on children's freedoms in its General Comments, namely the rights to work, freedom of association, freedom of expression, information, and participation. Although most State Parties are willing to comply with the UNCRC's provisions, they have sovereign discretion to introduce greater or lesser

child empowerment in their domestic systems. As a result, the majority of countries consider adolescents to be unable to exercise the right to vote and set their voting age limits to 18 years (and sometimes even higher). However, some countries (Austria and Malta) have lowered voting age to 16 years and in Germany sixteen-year-olds adolescents can vote in municipal elections. Moreover, several states allow seventeen-year-olds to vote (see Appendix).⁶ Until the 1970s in Europe, the most common voting age requirement was 21 years; Czechoslovakia (now the separate countries of Czech Republic and Slovakia) was the first country in the world to lower the voting age to 18 years.⁷

The UNCRC does not mention the right to vote. The question therefore becomes why and how the issue of children's suffrage and lowering the voting age can be justified and analysed from children's rights perspective. Article 25 of the International Covenant on Civil and Political Rights is worth mentioning and can undeniably serve as a reference point:

"Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

*(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors (...)."*⁸

The provision cited above acknowledges the right to vote for every citizen "without unreasonable restrictions". Can the total exclusion of children from the voting process be considered an "unreasonable restriction"? Furthermore, Article 2 of International Covenant on Civil and Political Rights obliges State Parties to "respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, *without distinction of any kind.*" The article continues with an open catalogue of potential discriminatory factors (inter alia: race, colour, sex, language). Age is not explicitly mentioned. Nevertheless, the non-exhaustive character of the list might allow for its expansion and broader interpretation.

Thus, the abovementioned standpoint of the International Covenant on Civil and Political Rights and the silence of the UNCRC about the inclusion of adolescents as the potential group of voters seem to be an invitation to contemplate: "What if, children between the age of 14 and 18 could vote? How can this idea be argued from children's rights perspective?". If children cannot influence the choice of future legislators who create laws affecting them directly and indirectly, how can the children's rights system be represented as progressive and empowering? On the other hand, if children are citizens, why can they not vote? Why do other rights and freedoms guaranteed in children's rights framework prevail over children's civil and political rights? What arguments would validly support children's right to vote?

This thesis attempts to explore how a children's rights perspective can create a space to challenge adolescents' exclusion from voting process and how to approach the protection-based arguments against adolescents' suffrage. In the process, this paper analyses various theoretical and legal constructs that are inevitably connected with the adolescent suffrage. Therefore, it raises question about the relationship between lowering the voting age and theories of children's empowerment, children's citizenship, children's participation, and the issue of age limits generally. It should be noted

⁶ *How does the voting age vary worldwide*, available at: <https://www.statista.com/chart/4424/how-does-the-voting-age-vary-worldwide/>

⁷ Should 16 year olds be allowed to vote, available at: <https://www.debatingeurope.eu/2015/05/14/should-16-year-olds-be-allowed-to-vote/#.Wz6OWtqzafX>,

⁸ Art. 25, United Nations International Covenant on Civil and Political Rights, 1966.

that the paper uses phrases “lowering the voting age”, “children’s suffrage” or “adolescent’s suffrage” interchangeably to express the idea of lowering the voting age to 14 years. This recommended age limit is based on the various legal age limits that are exceptions to the age of majority defined by the UNCRC and those used in other fields related to children’s activities, for instance work or criminal responsibility (see Chapter 4 on age limits).

In approaching these questions, the first chapter presents a theoretical overview of the empowering approaches to children’s rights, beginning with an analysis of Janusz Korczak’s work. It then turns to the presence of children’s suffrage within children’s empowerment movements to illustrate the close link between lowering the voting age and the realization of children’s rights more broadly. The second chapter addresses the child as a citizen and focuses on the nature of citizenship and the rights that are derived from it. The third chapter addresses the concept of children’s participation inspired by rights and freedoms guaranteed in the UNCRC and their relevance in regard to adolescents’ suffrage. The final chapter illustrates the issue of age limits within the children’s rights framework, the implications of their inconsistency and argues that lowering the voting age is a missing link within the legal construct of age limits.

Chapter 1

Empowering Approach to Children's Rights. Theoretical Overview

This chapter considers the concept of empowerment in children's rights that has been created through strenuous efforts to change the dominant doctrine of child protectionism. These core children's empowerment ideas provide the starting point for further evaluation of attempts to include lowering the voting age as a next step in the development of forward-looking theories around children's rights. This overview shows that the children's rights are prone to changes and therefore, lowering the voting age can have an important place in the future narrative leading towards ensuring democracy for all and realizing all rights of children.

1.1. Janusz Korczak's Impact on the Concept of a Child as a Rights Holder

*"There are no Children. There are People."*⁹

The perception of the place for children within family and society has evolved through the years. In Roman law, the child was considered the property of the father, under *patria potestas*, power of the father. Justinian's Institutes states: "Our children, begotten in lawful marriage, are in our power."¹⁰ In the 17th century, Thomas Hobbes wrote that the child is in "absolute subjection" to parents, who can arbitrarily decide the life and death of the child.¹¹ John Stuart Mills reserved sovereignty "over himself, over his body and mind" exclusively for adult members of society.¹² Children, according to Mill, "must be protected against their own actions as well as against external injury."¹³ As McGillivray noted, "under the will or agency theory of rights expounded by Hobbes, Locke and Mill, rights flow from rationality, autonomy and power. Lacking these, children cannot be rights-bearers."¹⁴

The protectionist concept of a child as a being entirely dependent on the parents' will, who does not have rights, and who requires constant protection has been deconstructed by thinkers like Janusz Korczak. He crossed the boundaries previously set around the idea of the child in the social, economic, political and legal context. As a proponent of egalitarian treatment of children, he blurred the line between children and adults as beings that used to belong to totally different universes.

In every institution he ran, Korczak arranged children's Peer Tribunal ("Sąd Koleżeński"¹⁵) in which judges and members of councils were appointed by regular elections. To the amazement of his coworkers, Old Doctor proposed that all adults in the organization would also be under children's court's jurisdiction. By establishing equal standing, he realized his convictions about children's equality to adults. Aside from the Peer Tribunal, Korczak created also children's councils¹⁶. He therefore included children through fair and full participation without tokenizing and empty slogans.

⁹ J. Korczak, *How to love a child (Jak kochać dziecko, in Polish)*, 2013, 20.

¹⁰ *IX The Power of Parents*, Justinian, Institutes (535: 270).

¹¹ T. Hobbes, *The Elements of Law, Natural and Politic*, 1650, 4, 8.

¹² "We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood". J.S. Mill, *On Liberty*, 1859, 10.

¹³ J.S. Mill, *On Liberty*, 1859, 10.

¹⁴ A. McGillivray, *Children's Rights, Paternal Power and Fiduciary Duty: From Roman law to the Supreme Court of Canada*, in: *International Journal of Children's Rights*, vol. 19, 2011, 23.

¹⁵ J. Korczak, *Pisma wybrane II*, 1978, (Selected works, in Polish), 78.

¹⁶ *Ibid.*

Despite his professional background as a pediatrician and educator rather than a philosopher or a lawyer, in his publications Korczak presented a comprehensive theoretical concept of the child as a rights holder. He resisted the commonly accepted presumption that every child is less intellectually capable than any, randomly chosen, adult. On the contrary, he recognized that values traditionally attached to people who had reached the age of majority and particularly those of advanced age, such as dignity, maturity and rationality, can also be found in children.¹⁷ Furthermore, he claimed that there are times when children have more wisdom than their guardians but instead of being recognized for it, they are suppressed and underestimated during the confrontation with the less clever adult.¹⁸ Shortly before his tragic death, as he cared for the orphaned, hungry, sick and scared children of the Warsaw ghetto, Korczak observed in his memoir that in addition to these difficulties, the “children are spiritually hungry.”¹⁹ Through this observation, he emphasized that children, like adults, have needs beyond food and shelter, because they are still humans with their souls hungry for intellectual nourishment.²⁰

Korczak used comparative methods from linguistics to show that different approaches toward children can be distinguished on the basis of the vocabulary applied to the youngest members of the society. To give an example, he focused on the Polish word ‘wychowywać’ meaning to ‘raise’ or ‘bring up’ (children). However, the literal meaning of the Polish ‘wychowywać’ is closely related to the words ‘to protect’ or ‘to hide’ and that, according to Korczak, clearly and directly expresses the society’s predominant protective behavior towards minors. He refers to equivalent words in other languages: ‘wospitywajet’ in Russian (literally ‘to nourish’), ‘élever’ in French (‘to elevate’) or ‘educare’ in Italian (‘to educate’²¹). All these terms relate to the process of raising children, with an emphasis on ensuring the intellectual development of the child and his or her physical and mental growth. By exploring these linguistic differences, Korczak discovered patterns within various societies with respect to children and their image. He concluded with regret that this protection-based approach toward children, so visible even in Polish nomenclature, had emerged as a result of constant invasions of Poland by foreign armies. Therefore, Korczak assumed, protection from danger and poverty rather than empowerment and education, became the primary parental task and determined the perception of the child, as being a vulnerable and weak individual, in constant need for care, without independent mind, problems and desires.²² Korczak was fully aware that the empowerment approach toward children would not be realized if there was no legal framework that would legitimize it. Thus, in his book *The Child’s Right to Respect*, Korczak emerged as an outspoken and opinionated proponent of a legal instrument that would portray the child as a fully entitled and acknowledged rights holder. At that time, the only existing international instrument on children’s rights was the Geneva Declaration, created after World War I in 1924. The motivation for the Declaration was the high cost of the war, borne primarily by civilians and children.²³ Eglantyne Jebb, the main architect of the League of Nations’ Geneva Declaration and founder of Save the Children, wrote in a letter to her friend and close co-worker Suzanne Ferrière: “I believe that we should claim rights for the children and labour for their universal recognition.”²⁴ Notwithstanding Jebb’s eagerness to include children as rights holders and, by

¹⁷ Korczak wrote about his professional experience as a pediatrician: “The hospital showed me how children are able to die in a dignified, mature and rational way.” J. Korczak, *The Ghetto Diary*, 2012 (originally written in 1942), 173. Translated from Polish by the author.

¹⁸ “Children are not fools, there are no more idiots among them than among adults. Bedecked in the crimson robes of age, how often we thoughtlessly, uncritically impose impossible demands. Often reasoning children stand amazed at our malicious, geriatric, sneering stupidity.” J. Korczak, *The Child’s Right to Respect*, 2017 (published originally in 1928), 31.

¹⁹ J. Korczak, *The Ghetto Diary*, 2012 (originally written in 1942), 221-222. Translated from Polish by the author.

²⁰ J. Korczak, *The Ghetto Diary*, 2012 (originally written in 1942), 221-222. Translated from Polish by the author.

²¹ J. Korczak, *The Ghetto Diary*, 2012 (written originally in 1942), 207-208.

²² J. Korczak, *The Ghetto Diary*, 2012 (written originally in 1942), 207-208.

²³ Z. Moody, *The United Nations Declaration of the Rights of the Child (1959): Genesis, transformation and dissemination of a treaty (re)constituting a transnational cause*, in: *Prospects*, vol.45, 2015, 18.

²⁴ The whole fragment of her statement says: “The moment appears to have come when we can no longer expect to large relief actions. If we wish nevertheless to go on working for children the only way to do it seems to be to

extension, to oblige states to secure children's rights and entitlements,²⁵ the final text was declaratory, not binding, and therefore could not guarantee rights or impose obligations on state parties. As Kerber-Ganse noted, because there was no ratification requirement of Geneva Declaration, children's rights were not yet formally endorsed by governments. Moreover, the short document emphasized children's vulnerabilities and did not provide any empowering measures.²⁶ The message that can be derived from the 1924 Declaration is "children must be taken care of", which is undoubtedly true but certainly not sufficient.²⁷ That approach can be explained by taking into consideration postwar reality and fledgling, very early stage of children's rights' development. However, the Geneva Declaration clearly did not fulfil Korczak's expectations. He criticized it pungently: "The lawmakers in Geneva confused obligations and rights. The tone of the Declaration is one of persuasion, not in insistence: it is an appeal to goodwill, a request for kindness."²⁸ He also proposed his own declaration of children's rights, based on the theme of respect. He proclaimed „child's right to respect for their lack of knowledge"²⁹, "right to respect for the work of acquiring knowledge"³⁰, "right to respect for failures and tears"³¹, "right to respect for children's possessions and their budgets"³², "for the secrets and doubts of the hard work of growing"³³, „for the current hour"³⁴, "for today and each individual moment"³⁵ and "children's right to be what they are"³⁶. Korczak's proposed children's rights were very descriptive, broad and open to interpretation, but they do have clear, legal provision which is the right to respect that can be also understood as a right to dignity. Both respect and dignity are explicitly mentioned by the United Nations Universal Declaration of Human Rights as fundamental values for human rights.³⁷ In discussing the right to respect of children's possessions and their budgets, it should be noted that Korczak highlighted economic dependency as one of the reasons for an unhealthy power balance between adults and children. He noted that "because children are poor and trapped in material dependency, the relationship of adults to children is unjust."³⁸

Without a doubt, Korczak's equality-based approach to minors, revolutionary at that time, helped to push the whole theoretical framework of children's rights forward. His empowering approach to children later served as an inspiration for the recognition of the child as a rights holder and had a big impact on the legal position of children in a modern world.

1.2. Children's Suffrage in the Light of the Empowering Approach to Children

„We do not allow children to organize. Disdainful, untrusting, and reluctant, we do not provide the necessary care: we cannot manage

evoke cooperative efforts of the nations to safeguard their own children on constructive rather than on charitable lines. I believe that we should claim rights for the children and labour for their universal recognition." C. Mulley, *The Woman Who Saved the Children*, 2009, 304.

²⁵ W. Kerber-Ganse, *Eglantyne Jebb – A Pioneer of the Convention on the Rights of the Child*, in: *International Journal of Children's Rights*, vol. 23, 2015, 278.

²⁶ W. Kerber-Ganse, *Eglantyne Jebb – A Pioneer of the Convention on the Rights of the Child*, in: *International Journal of Children's Rights*, vol. 23, 2015, 279.

²⁷ Geneva Declaration of the Rights of the Child, League of Nations, 1924.

²⁸ J. Korczak, *The Child's Right to Respect*, 2017 (published originally in 1928), 28.

²⁹ J. Korczak, *The Child's Right to Respect*, 2017 (published originally in 1928), 31-33.

³⁰ J. Korczak, *The Child's Right to Respect*, 2017 (published originally in 1928), 31-33.

³¹ J. Korczak, *The Child's Right to Respect*, 2017 (published originally in 1928), 31-33.

³² J. Korczak, *The Child's Right to Respect*, 2017 (published originally in 1928), 31-33.

³³ J. Korczak, *The Child's Right to Respect*, 2017 (published originally in 1928), 31-33.

³⁴ J. Korczak, *The Child's Right to Respect*, 2017 (published originally in 1928), 31-33.

³⁵ J. Korczak, *The Child's Right to Respect*, 2017 (published originally in 1928), 31-33.

³⁶ J. Korczak, *The Child's Right to Respect*, 2017 (published originally in 1928), 35.

³⁷ *Preamble and art. 1, 22, 23, 26 and 29*, United Nations Universal Declaration of Human Rights, 1948.

³⁸ J. Korczak, *The Child's Right to Respect*, 2017 (published originally in 1928), 12.

*without the assistance of experts, and the experts are the children.*³⁹

After World War II, there was a big paradigm shift concerning women and children. Because many men were in war, dead or in captivity, women and children were forced to step out and replace missing people. Thus, they became involved in resistance movements and uprisings and were present in professions that before the war were usually dominated by men; the dynamics around traditional gender roles was permanently changed. Lemkin invented the name for the most horrendous of all crimes, genocide, and the civil rights movement in the United States showed that there was no place for racial discrimination. Feminists claimed more freedoms for women and challenged the status quo. Over forty years after World War II ended, the world was finally ready for full recognition of children's rights and the adoption of the most ratified international treaty ever, the United Nations Convention on the Rights of the Child. The next section traces the journey of children's rights theory through the postwar years, with an emphasis on strong, empowering ideas that support the concept of lowering the voting age and the inclusion of children in the voting process as a natural stage in the development of our modern civilization, in the spirit of equality, human rights and non-discrimination. This evolution demonstrates that the children's rights area is prone to changes and therefore, lowering the voting age can have an important place in the future narrative about children rights holders.

1.2.1. Right to Vote for All. Radical View on Children's Suffrage

In his book *Escape from Childhood* in which he presented a new perspective on childhood as a social concept, Holt pointed out to the right to vote as one of the most essential that children should enjoy. The book was published in the United States in 1974, three years after the 26th Amendment to the Constitution had been ratified and established youth franchise. Since 1971, all American citizens eighteen years of age or older were entitled to cast a vote in political elections. Before that, a significant majority of states set the minimum voting age at twenty-one years. The conscription of male persons eighteen years of age and older served as a compelling argument for the extension of the franchise. This argument was quickly incorporated into a catchy slogan for the campaign: "old enough to fight, old enough to vote."⁴⁰ Holt wanted to go further and supported the abolishment of all age limits on voting.⁴¹ He argued that a child, living as a dependent, should not be excluded from the voting process only because his or her age when adults in the position of the dependent are able to vote.⁴² For Holt, voting was "a matter of justice"⁴³; he believed members of society should have influence over the law that they must obey through the opportunity to choose the legislators. Holt saw educational value in political participation and considered it unlawful to deprive certain citizens of the opportunity to directly engage in the voting process and to learn from that experience. In an extension of Holt's concerns, the long-term outcomes of current political decisions will affect youth in their later life, despite their exclusion from having any current influence over them.⁴⁴ He also challenged the common argument that wisdom, knowledge and intelligence are necessary features that render people

³⁹ J. Korczak, *The Child's Right to Respect*, 2017 (published originally in 1928), 26.

⁴⁰ C. McCutcheon, *Congress A to Z*, 2014, 629-300.

⁴¹ Holt writes: "Though we will most probably lower the voting age a year or two at a time, ultimately, I want the right to vote for people of any age. No one should be left out". J. Holt, *Escape from Childhood*, 1974, 155.

⁴² J. Holt, *Escape from Childhood*, 1974, 155.

⁴³ J. Holt, *Escape from Childhood*, 1974, 156.

⁴⁴ This argument has been evoked after Brexit referendum in 2016, where young people that could not vote were disappointed with the result: United Kingdom leaving the European Union. This decision was made in majority by older part of the society but as teenagers pointed out, the youngest people will pay a price for that within the next few years. It should be noted that majority of young people between 18 and 25 years of age voted in favor of staying in EU. Before the referendum, there were initiatives to lower the voting age to 16 years old, but they did not succeed. More at: *Young people gather at Parliament in protest at not being given EU referendum vote*, available at: <https://www.independent.co.uk/news/uk/home-news/brexit-eu-referendum-latest-protest-young-people-parliament-vote-a7101701.html>

competent to vote. This narrative was used to oppose extending the franchise to younger people as a societal group understood to lack these values. Holt noted the large number of ignorant adult voters without relevant wisdom who are nonetheless allowed to vote. Furthermore, even if children were less smart than adults, it should not be the reason for their exclusion from the democratic process of elections.⁴⁵ Holt wanted to give everyone the opportunity to actively participate in the political process, to ensure their access to information, and to “hope for the best”.⁴⁶

Despite the fact that Holt's book was a work of the liberation movement in the 1970s and cannot be underestimated as a relevant contribution to children's rights, Freeman cautioned that it should be reevaluated and cannot be interpreted years later as a flagship publication for children's rights theory. The narrative of children's rights has changed significantly through the recent years.⁴⁷ However, some arguments presented by Holt are still relevant, in particular those on the topic of the right to vote in an empowerment approach. Freeman mentioned that the ‘competence argument’ has been willingly used by many and used even as a weapon not only in regard to child's right to vote but against children's rights in general. Like Holt, he addressed the argument by pointing out the inconsistency concerning criteria for being eligible to have a right to vote. He observed that the majority of adults are not able to assess reality and make decisions based on it in a fully rational way. Therefore, it is a paradox that those who are 16 years old are not able to vote because “their lack of competence”⁴⁸ whereas those of 18 years and older are no longer held accountable for their ability to vote competently.⁴⁹

1.2.2. From Women's to Children's Suffrage

One of the intellectual pathways to explaining the relevance for children's suffrage is the comparison between children's empowerment with the previous women's empowerment movement and finding analogies that can help in creating plausible arguments. In analyzing women's fight for inclusion to the voting process, Wall referred to three main arguments that have been alternately brought up at that time. The first stated that women are equal to men and therefore they should enjoy the same rights, including right to vote. The second, on the other hand, was based on the difference between women and men with the assumption that female perspective including in political decisions, will be beneficial for the society. The third argument Wall emphasized was the most successful and related to the notion of political empowerment that put aside the commonalities of discrepancies between genders and focused on power. In his opinion, the children's suffrage movement shares similarities with the very early stage of women's suffrage movement in the sense that, inter alia, it is still not in the mainstream public debate but it involves passionate children's advocates and child leaders that are convinced about their mission.⁵⁰

Indeed, the notions of power and equality can be a solid foundation of the argument in favor of children's right to vote. However, historical analogies are not sufficient enough to strengthen the arguments in favor of lowering the voting age. Despite the fact that women's fight for suffrage can

⁴⁵ J. Holt, *Escape from Childhood*, 1974, 166-168.

⁴⁶ „The only answer is to give the vote to everyone who wants it, do all we can to see that they have access to information that will help them vote wisely, and hope for the best”. J. Holt, *Escape from Childhood*, 1974, 171.

⁴⁷ M. D. A. Freeman, *The Moral Status of Children: Essays on the Rights of the Children*, 1997, 6.

⁴⁸ M. Freeman, *Why it remains important to take children's rights seriously*, in: *Children's Rights: Progress and Perspectives: Essays from the International Journal of Children's Rights*, ed. Michael D. A. Freeman, Michael Freeman, 2011, 114.

⁴⁹ M. Freeman, *Why it remains important to take children's rights seriously*, in: *Children's Rights: Progress and Perspectives: Essays from the International Journal of Children's Rights*, ed. Michael D. A. Freeman, Michael Freeman, 2011, 114.

⁵⁰ J. Wall, *Democratizing democracy: the road from women's to children's suffrage*, in: *The International Journal of Human Rights*, vol. 18, issue 6, 2014, 650-651.

undoubtedly be inspirational, there is a need for seeking more updated response to children's exclusion that is happening today.

1.2.3. Demeny Voting: An Alternative for Lowering the Voting Age?

Wall referred to the idea proposed in 2008 in Germany, by a coalition of children, children's advocates and politicians from both, liberal and conservative part of the political scene, that would involve parents or guardians voting on behalf of their children. This system, called the Demeny voting was created by demographer Paul Demeny in 1986 as a remedy to the fertility crisis in several countries. The Demeny explained that by granting parents or guardians with voting rights of their children, it will support the development of youth-focused policies because the voting process itself will be more influenced by children's interests expressed by adults.⁵¹ However, the actual power of granting the voting right lay in the hands of a parent or a guardian, depending on an adults' assessment of the child's capability to vote and this regulation was included in the German proposal.⁵² The concept of parents acting as children's representatives in the voting process can raise several questions, such as whether they will perform that duty with due diligence, whether the child's opinion will be taken into account and finally, whether children would be able to vote by themselves and under what requirements and circumstances. Olsson, expressed support for the idea of parents acting on behalf of children in the voting process, argued that parents are already equipped with an impressive amount of decision-making power concerning their children, in terms of, for instance, education or economic affairs or property rights. Thus, political representation performed by parents would be complementary in regard to other, already existing activities undertaken in the name of their children.⁵³

The idea of the Demeny voting requires further elaboration with careful consideration of its advantages and disadvantages. First, in most cases the parents or guardians, not the child, would be acting as the rights holders by actually giving their vote and then granting the right to vote to children only when they prefer to do so. They could therefore never grant the right to vote earlier to the child, due to belief that only a person above the 18 years old is able to vote. Second, one implication of this idea is the tokenizing of children, because having more children would result in more voting potential. Lastly, the fact that the Demeny finds indirect children's suffrage as an antidote to the low fertility rate because of the reason mentioned above, has been cynically used by politicians who under the umbrella of universal suffrage would actually want to enlarge their electorate. Wall referred to the 2008 German initiative to introduce the Demeny voting. The actual power of granting the voting right would lie in the hands of a parent or a guardian, because the child could vote himself or herself depending on an adults' assessment of the child's capability to vote.⁵⁴ More recently, a similar proposition has been made by Polish Deputy Prime Minister⁵⁵ as a cure for "gerontocracy". When asked whether this would mean that Poland will join other countries in the debate on lowering the voting age, he explained that this project would not consider lowering the voting age at all. That approach was broadly commented as being not rational and unconstitutional. As one of the experts noted, the voting age of 18-years-old combined with the Demeny voting would create a potential situation when parents could easily vote

⁵¹ P. Demeny, *Pronatalist Policies in Low-Fertility Countries: Patterns, Performance and Prospects*, in: *Population and Development Review*, vol. 12, 1986, 335–358.

⁵² CRIN (Children's Rights Information Network), *Germany: Children Should Have the Right to Vote, Say Parliamentarians*, 2008, available at: <http://www.crin.org/resources/infoDetail.asp?ID=17831&flag=news>

⁵³ S. Olsson, *Children's suffrage: A critique of the importance of voters' knowledge for the well-being of democracy*, *The International Journal of Children's Rights*, vol. 16, 2008, 70-72.

⁵⁴ CRIN (Children's Rights Information Network), *Germany: Children Should Have the Right to Vote, Say Parliamentarians*, 2008, available at: <http://www.crin.org/resources/infoDetail.asp?ID=17831&flag=news>

⁵⁵ More democracy instead of gerontocracy. What is the family voting proposal really about, available at: <http://visegradplus.org/more-democracy-instead-of-gerontocracy-what-is-the-family-voting-proposal-really-about/>

against the will of their 16-year-old child.⁵⁶ One might ask whether extending of the parental power in that way is something that will advance children's rights in terms of compliance with empowering approach and will bring children closer to political participation.

Notwithstanding the risks mentioned above that should be taken into consideration, the Demeny voting could be an interesting solution from a children's rights perspective. When mindfully modified, it can actually accelerate children's suffrage. Wall, while sharing his own idea of children's inclusion to voting process, used the Demeny voting as an inspiration and starting point but is aware of flaws of this concept. Therefore, he proposed an improved version of the concept, to ensure the realization of post-modern diversity approach that invites all to political participation. Instead of the parent or guardian deciding when the child is eligible for voting, the child himself or herself would be able to claim the right to vote, whenever she or he wants to do so.⁵⁷ Adults do not claim their voting rights, they just are entitled to it and therefore, children should enjoy the same status of right holder that do not need to claim that right in from of anyone. By changing that power dynamic, he equipped the child in the right to vote that is temporarily "suspended" until the child's will want to use it. In practice, that makes it possible for a child to gain suffrage much earlier than the traditional age limit would provide. Furthermore, the child by claiming his or her right would act and be acknowledged as rights holder.

When considering the Demeny voting and children's suffrage in general, the main issue that emerged is power. Therefore, as seen from children's rights perspective, how the Demeny voting could have the positive impact on children's lives? The compromise between Demeny's original proposal with the age limit set at 18 years and Wall's idea that does not contain any specific age limit, can be the following: all minors will have the right to vote, although exercised by their parents who will have the possibility to assess and decide when the child can be independently active as a voter. However, the direct exercise the power of giving their vote should be possible for all children that attained the age of 14 years or older. Bearing in mind that the synonym of "power" is "influence", this new form of Demeny voting would transform minors into influential actors with real interests that should be taken into account by not only parents and guardians but also by policy makers. Politicians would be aware that, at least some parents, when voting on behalf of their children, would immediately take into consideration whether the party they are voting for have some children-focused points in its programme. Moreover, while creating their elections strategy would no longer talk only to adults but also to youngsters voters, whose voices would either be represented by parents or by minors themselves.

1.3. Conclusions.

As presented above, lowering the voting age and children's suffrage are inevitably connected with the empowerment approach to children's rights. Developing the thought on the possibility of lowering the voting age would mean ensuring the full empowerment for children and strengthening their position as rights holders. Since the end of World War II, the discussion around children's suffrage has an interesting dynamic and new ideas had emerged. From Korczak's children's right to respect, thorough unlimited and universal suffrage to the Demeny voting, empowering ideas regarding children are still evolving. Following Wall's comparison between women's suffrage and children's suffrage, the argument of power is undoubtedly crucial as an argument in favor of involving minors in the voting

⁵⁶ *O wyborcach lepszych i gorszych, czyli glosowanie rodzinne Gowina, (On Gowin's family voting)*, Gazeta Wyborcza, 2018, <http://wyborcza.pl/7,75398,23287684,o-wyborcach-lepszych-i-gorszych-czyli-glosowanie-rodzinne-gowina.html>

⁵⁷ Wall, *Democratising democracy: the road from women's to children's suffrage*, in: *The International Journal of Human Rights*, vol. 18, issue 6, 2014.

process. Furthermore, the form of Demeny voting with the age limit proposed here (14 years) can create a different narrative in politics, addressing children's issues in a more efficient way. Both children and their parents or guardians will be able to make a bigger influence on legislators and will put the child in the position of being the direct or indirect voter since very young age, with his or her interests that need to be taken into account in political programs.

The exploration of empowering approaches and different proposals of the inclusion of youngest member of society into the political life can not be possible without referring to the actual position of that child in the society, which is citizenship. The relationship between the State and the child as citizen should be nurtured and supported by various rights attached to citizenship. Therefore, the next chapter will address the concept of the citizen child seen from the theory of citizenship but first and foremost, seen through the lenses of the UNCRC. The first questions that emerge are what is the relationship of citizenship with the right to vote and what does it mean to be a child and a citizen. Furthermore, there are other relevant issues that the next chapter tries to address that ask whether children are actually citizens if they can not exercise the right to vote. Lastly, that question is posed in the opposite way: if children are considered as full citizens by the UNCRC, why can they not vote?

Chapter 2

Citizen Child and Her/His Right to Vote

The previous chapter presented empowerment theories concerning children as rights holders and a brief overview of past and current discussions about children's suffrage. Bearing in mind that the right to vote is an integral part of citizenship, in order to comprehensively address the idea of empowering children by lowering the voting age, it is essential to closely consider the concept of the child as a citizen.

This chapter examines the idea of a child as a citizen generally and provides another argument in favour of lowering the voting age by questioning the extent to which children can enjoy their citizenship while limited by their disenfranchisement. By carefully analyzing the definition of citizenship and its close connection to the right to vote, this section demonstrates that lowering the voting age would ensure the full realization of children's citizenship and add substance and meaning to the concept of child as citizen.

2.1. The Definition of Citizenship

Marshall described citizenship as: "[A] status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed."⁵⁸ He perceived citizenship as a concept built on a three-dimensional foundation of civil, political and social rights.⁵⁹

Faulks argued that citizenship encompasses individual and collective aspects, which can be evoked in both conservative and liberal political arguments.⁶⁰ Furthermore, citizenship is a form of special civil and political status that entitles the bearer to certain privileges but simultaneously generates responsibilities. As Faulks highlighted, all states have a vital interest for their citizens to realize duties imposed by them. Citizenship includes two elements essential for people's functioning in politically organized society: firstly, a respect for individual autonomy that ensures fair and just trial in case of a dispute and secondly, integration to the community. The other unique characteristic of citizenship is the fact it allows and encourage participation and engagement of those who possess the title of citizens. Thus, as Faulks pointed out, citizenship is a "dynamic identity" that invites those who are equipped with it, to differently use it as a tool of a self-expression in a public sphere.⁶¹

Faulks was a proponent of a postmodern approach to citizenship that focused more on unity than on uniformity. For him, citizenship is expressed in solidarity despite differences. Because the modern world is full of diversity, the concept of citizenship should also be open and responsive to heterogenous, globally-oriented reality.⁶² That is particularly interesting from a children's suffrage perspective. Lowering the voting age would comply with the postmodernist vision of diverse groups engaged together to impact policies. Inclusion of voters younger than the current age of majority would enrich the now homogenous group of citizens that are able to vote, as it consists of adults only.

⁵⁸ T.H. Marshall, *Citizenship and Social Class*, 1950, 28-29.

⁵⁹ T.H. Marshall, *Citizenship and Social Class*, 1950, 28-29.

⁶⁰ K. Faulks, *Citizenship*, 2000, 1.

⁶¹ K. Faulks, *Citizenship*, 2000, 6.

⁶² K. Faulks, *Citizenship*, 2000, 164-167.

Gould mentioned that citizenship also encompassed participation rights: "the right of participation in decision-making in social, economic, cultural and political life."⁶³ Participation is one of the main pillars of the children's rights framework, an argument outlined more fully in the third chapter's assessment of children's participation as a prelude to children's suffrage.

2.2. Equal Citizenship and the Right to Vote

What is the relationship between citizenship and the right to vote? According to Michelman, "the right to vote is partly constitutive of what it means to be a full citizen".⁶⁴ However, Fishkin pointed out that although the right to vote is not the sole prerequisite to enjoying full citizenship, as the very beginning of the theoretical construct of citizenship it is its crucial element.⁶⁵ Aristotle described those inhabitants of polis as citizens who are "entitled to participate in an office involving deliberation or decision".⁶⁶ The rest were considered either aliens or slaves. Shklar argued that disenfranchised people were deprived from enjoyment of the "marks of civic dignity" that were embodied in the enjoyment of the full citizenship.⁶⁷ Martin Luther King, Jr., during his fight for voting rights for Afro-Americans, saw their exclusion as degrading treatment.⁶⁸ Fishkin proposed to focus on equality while considering the nature of the right to vote; he argued that the majority of modern theories had agreed that suffrage is an issue of political equality.⁶⁹ According to Young, although the right to vote is undoubtedly not enough to ensure equal citizenship, it constitutes a basis for it.⁷⁰ Dworkin saw the right to vote as the indication of being considered a "free and equal citizen"⁷¹, having a role in decision-making process as a member of community.⁷²

Taking all these views into consideration, one must question whether children are treated in compliance with one of the fundamental values of human and children's rights, the right to equality in their suffrage. In recent years, the equality discourse in other areas related to children has proven very successful, in particular when it comes to children's participation in judicial proceedings. Underage persons, regardless if they are perpetrators or victims, have the recognized rights to a fair trial, non-discrimination and equality. The equality narrative might be transposed to the debate about lowering the voting age as well.

2.3. Being or Becoming a Citizen

Like the concept of the child, the notion of children's citizenship can be understood and interpreted from different perspectives (empowerment or welfare). Lockyer's empowering 'citizenship from below' understood children as contributing, income-earning, and active members of society who are already *being* citizens⁷³, while Liebel's welfare-based theory puts a strong emphasis on the role of school as

⁶³ C.C. Gould, *Rethinking democracy: freedom and social cooperation in politics, economy, and society*, 1988, 212.

⁶⁴ F. I. Michelman, *Conceptions of Democracy in American Constitutional Argument: Voting Rights*, 1989, 451-52.

⁶⁵ J. Fishkin, *Equal Citizenship and the Individual Right to Vote*, in: *Indiana Law Journal*, vol. 86, 2011, 1333.

⁶⁶ Aristotle, *The Politics*, 1984, 86-87.

⁶⁷ J. N. Shklar, *American Citizenship: The Quest for Inclusion*, 1991, 2.

⁶⁸ "The denial of the vote not only deprives the Negro of his constitutional rights-but what is even worse-it degrades him as a human being". M. L. King Jr., *Speech Before the Youth March for Integrated Schools*, 1959 in: *A Testament of Hope: The essential writings and speeches of Martin Luther King Jr.*, 1986, 21-22.

⁶⁹ J. Fishkin, *Equal Citizenship and the Individual Right to Vote*, in: *Indiana Law Journal*, vol. 86, 2011, 1335.

⁷⁰ I. M. Young, *Inclusion and Democracy*, 2000, 6.

⁷¹ R. Dworkin, *Sovereign virtue: The theory and practice of equality*, 2000, 210. 209.

⁷² R. Dworkin, *Sovereign virtue: The theory and practice of equality*, 2000, 210. 209.

⁷³ A. Invernizzi, J.M. Williams, *Children and citizenship*, 2008, 4.

crucial to the citizenship education for a child in the process of *becoming* a citizen⁷⁴. The interpretation of the notion of child citizen is closely related with the approach to the definition of the child. In order to illustrate this link, Invernizzi used the Qvortrup's differentiation regarding the notion of the child that sees 'human beings' and 'human becomings' when explaining Lockyer's and Liebel's contrasting ideas about child's citizenship. Furthermore, Invernizzi noted that other distinctions can be made in relation to their various perspective because Lockyer expressed a bottom-up viewpoint while Liebel was a proponent of a top-down approach.⁷⁵ However, Invernizzi pointed out that limiting the whole idea of children's citizenship to only one of those two concepts would make the image incomplete and limited to either a welfare or empowerment lens. She proposed including both perspectives, because she argued that both adults and children are accordingly 'human beings' and 'human becoming'.⁷⁶ Invernizzi concludes that contemplating children's citizenship should take into account both angles to be comprehensive.⁷⁷

The need for complex, broad interpretation of the children's citizenship seems to be justifiable. On the one side, young people by observing and participating in political process would educate themselves about the nature of citizenship. Therefore, lowering the voting age could be for them a very valuable learning experience, showing democracy and active citizenship in practice and help them to *become* fully aware citizens. On the other side, as some of young members of the society are already working or running households because they do not have parents or guardians, they are contributing to the society in a way adults do. Thus, through being able to vote they would strengthen their position as already *being* established citizens.

2.4. Citizen Child as Rights Holder

Doek presented a concept of citizen child seen through the lens of United Nations Convention on the Rights of the Child. Besides addressing fundamental issues related to child's citizenship within children's rights framework, Doek's perspective showed how far the UNCRC developed and moved forward Korczak's concept of child as rights holder. Doek observed that there is no right to citizenship explicitly stipulated in any international instrument.⁷⁸ Moreover, he pointed out that the use of the notion of nationality as a replacement for the term citizenship can be misleading and not precise, because those two terms do not have identical meaning. To illustrate that, he gave an example of women in some countries⁷⁹ who although are state's nationals but do not yet have the right to vote or to hold a public office and therefore are not able "to enjoy full citizenship of the State".⁸⁰ This position is similar to that of children.

⁷⁴ A. Invernizzi, J.M. Williams, *Children and citizenship*, 5, 2008.

⁷⁵ A. Invernizzi, J.M. Williams, *Children and citizenship*, 5, 2008.

⁷⁶ Invernizzi suggests that choosing only one option is bad.: Full citizenship v. non-citizenship, or "sectoralized approaches considering exclusively one or another component (i.e. rights, obligations, membership etc.) or approach (for instance as "human becoming" or "human being", as above) – that "provides limited depth", A. Invernizzi, J.M. Williams, *Children and citizenship*, 6, 2008.

⁷⁷ A. Invernizzi, J.M. Williams, *Children and citizenship*, 6, 2008.

⁷⁸ J. E. Doek, *Citizen Child: A Struggle for Recognition, a Foreword to: A. Invernizzi, J.M. Williams, Children and Citizenship*, 2008.

⁷⁹ Women in Saudi Arabia until 2015 could not vote in municipal elections, which are the only public elections in the country. Nowadays they can enjoy the right to vote, however there are plenty of obstacles for female Saudi citizens to get to the voting booth. More at: <https://www.bbc.com/news/world-us-canada-15052030>

⁸⁰ J. E. Doek, *The CRC and the Right to Acquire and Preserve a Nationality*, in: *Refugee Survey Quarterly*, vol. 25(3), 2006, 26.

However, Doek pointed out that notwithstanding their disenfranchisement, children are equipped with a set of citizenship-related rights by the UNCRC.⁸¹ Moreover, the UNCRC Committee considers children full citizens despite their exclusion from the voting process. When the Committee enumerated several objectives in General Comment No. 21 on children in street situations, one of them was "to enhance respect for [children in street situations] as rights holders and full citizens."⁸²

In order to enable the child to be recognized as a citizen, there are certain steps that must be undertaken.⁸³ Doek stressed the importance of the article 7 of the UNCRC, which established that the child "shall be registered at birth"⁸⁴ and thereby recognized as a legal person, because in a majority of countries being registered is the prerequisite to have access to education and health services.⁸⁵ Some states condition acquiring nationality upon registration.⁸⁶ Doek also focused on the other relevant part of the art. 7 of the UNCRC that ensured the right to acquire nationality for the child with the aim of preventing statelessness, which for children creates particular difficulties in participation within the community, puts the child at risk of discrimination and exclusion from the society, and hampers their assimilation.⁸⁷

Aside from the article 7 of the UNCRC, that is certainly of big gravity for children's citizenship, Doek raised other provisions from the Convention that contribute to the acknowledgment the child as citizen. He referred to the Preamble of the Convention and to article 29 that make explicit that the child's development involves not only the child's life as an individual but also his or her as an active part of bigger social group.⁸⁸ Significantly, as Doek emphasized, the UNCRC guarantees inclusivity in articles 23⁸⁹ and 40⁹⁰, in which the Convention urged State Parties to make sure disabled minors or those in conflict with penal law can also have an opportunity to be valuable members of the society.⁹¹ Moreover, the inclusivity goes beyond the birth registration or nationality as children without them are also considered to be under the umbrella of the UNCRC.⁹² That approach is clearly expressed in the UNCRC Committee's General Comment No. 6 on treatment of unaccompanied and separated children outside their country of origin, which stated that "the enjoyment of rights stipulated in the Convention [...] must therefore, if not explicitly stated otherwise in the Convention, also be available to

⁸¹ J. Doek, *Citizen Child: A Struggle for Recognition, a Foreword to: A. Invernizzi, J.M. Williams, Children and Citizenship*, 2008.

⁸² UNCRC Committee, General comment No. 21 on children in street situations, CRC/C/GC/21, 2017, par. 9c.

⁸³ J. E. Doek, *Citizen Child: A Struggle for Recognition, a Foreword to: A. Invernizzi, J.M. Williams, Children and Citizenship*, 2008.

⁸⁴ Art. 7 of the United Nations Convention on the Rights of the Child, 1989.

⁸⁵ J.E. Doek, *Citizen Child: A Struggle for Recognition, a Foreword to: A. Invernizzi, J.M. Williams, Children and Citizenship*, 2008.

⁸⁶ J.E. Doek, *Citizen Child: A Struggle for Recognition, a Foreword to: A. Invernizzi, J.M. Williams, Children and Citizenship*, 2008.

⁸⁷ J.E. Doek, *Citizen Child: A Struggle for Recognition, a Foreword to: A. Invernizzi, J.M. Williams, Children and Citizenship*, 2008.

⁸⁸ „Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community". Preamble, United Nations Convention on the Rights of the Child, 1989.

⁸⁹ „States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community". Art. 23 par. 1 of the UNCRC.

⁹⁰ "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law

to be treated in a manner consistent with the child's sense of dignity and worth which [...] takes into account [...] the desirability of promoting the child's re-integration and the child's assuming a constructive role in society". Art. 40 par. 1 of the UNCRC.

⁹¹ J.E. Doek, *Citizen Child: A Struggle for Recognition, a Foreword to: A. Invernizzi, J.M. Williams, Children and Citizenship*, 2008.

⁹² J.E. Doek, *Citizen Child: A Struggle for Recognition, a Foreword to: A. Invernizzi, J.M. Williams, Children and Citizenship*, 2008.

all children – including asylum- seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.”⁹³

Evolving capacities of the child⁹⁴ enshrined in the article 5 of the UNCRC⁹⁵ constitute the essential element of the theoretical and legal construct of the child as rights holder and, consequently, are necessary to be touched upon when analyzing the position of the Citizen Child.⁹⁶ Lansdown saw the need for cultural shift in thinking and approaching children’s need and development that would ensure higher level of consciousness regarding evolving capacities of the minor in order to provide adequate protection but also to for children to be “respected as citizens, as people, and as rights bearers”.⁹⁷

2.5. Citizens Without the Right to Vote. Felony and Children’s Disenfranchisement

In a modern world, alongside minors, there is also another group of citizens without the right to vote. This parallel phenomenon is the institution of felony disenfranchisement. Prisoners in some countries, for instance in United States, are, alongside minors, excluded from the voting process. Siegel emphasized that “felon disenfranchisement hinders the democratic process by undermining equitable representation of citizens’ interests, a critical component of a functioning democracy.”⁹⁸ Human Rights Watch considered felony disenfranchisement in the United States to be a harmful relic of the old times, bringing back the “civil death”⁹⁹ from medieval Europe that denies the modern democratic system¹⁰⁰. The exclusion of convicted persons from voting process is therefore a form of an additional punishment for them and creates a large community of citizens deprived of their right to vote. That practice is based on the logic that if someone broke the law, he or she should be excluded from full participation in that society that he or she harmed due to criminal activity. However, the imprisonment is already a punishment that separates the convicted person from the society. The logic behind children’s disenfranchisement is based on the assumption of minor’s lack of the capability to vote. Nevertheless, as mentioned before there are also a lot of adult voters lacking knowledge or experience needed to vote in a fully aware way. Regardless the rationale behind those situations, they both create the social, legal and political landscape with two big groups of citizens that can not take part in the democratic process. Both groups don’t have a power to impact the reality they live in, in particular they can not affect future legislators that create legal frameworks relevant for children and convicted persons (for instance in regard to education or in terms of the penal law). Thus, maybe a bigger movement that would include persons affected by both, felony and children’s disenfranchisement, could be a powerful and effective way to create a comprehensive strategy and valid arguments in order to achieve the universal and equal suffrage that would contribute to full enjoyment of the citizenship.

⁹³ UNCRC Committee, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 2005, par. 12.

⁹⁴ J.E. Doek, *Citizen Child: A Struggle for Recognition, a Foreword to: A. Invernizzi, J.M. Williams, Children and Citizenship*, 2008.

⁹⁵ “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention”. Art. 5 of the UNCRC.

⁹⁶ J.E. Doek, *Citizen Child: A Struggle for Recognition, a Foreword to: A. Invernizzi, J.M. Williams, Children and Citizenship*, 2008.

⁹⁷ G. Lansdown, *The Evolving Capacities of the Child*, UNICEF, Innocenti Research Centre, 2005, 11.

⁹⁸ J. Siegel, *Felon Disenfranchisement and the Fight for Universal Suffrage*, in: *Social Work*, Vol. 56, Issue 1, 2011, 89.

⁹⁹ *Losing the Vote, The Impact of Felony Disenfranchisement Laws in the United States*, Human Rights Watch and the Sentencing Project, 1998, 1.

¹⁰⁰ *Losing the Vote, The Impact of Felony Disenfranchisement Laws in the United States*, Human Rights Watch and the Sentencing Project, 1998, 22.

2.6. Conclusions

This chapter presented various conceptualizations of the child as citizen. The issue of suffrage seems not to be raised very often within theoretical considerations about that children's citizenship. The UNCRC also does not contain many rights explicitly related with civil and political rights but does acknowledge the children as citizens and guarantees other rights for them as rights holders. Nevertheless, disenfranchisement of all children seems to contradict the idea of young citizens, that have an impact on the community or the state where they live. Children's suffrage is a children's rights matter, an issue inevitably connected with the idea of child as rights holder and that the absence of child's right to vote, with only little mention about political participation is not enough in terms of fully realizing children's rights. Bearing in mind, that minors are not the only group of citizens excluded from democratic process of voting, the analogy to felony disenfranchisement can be helpful for finding common, strong arguments for ensuring equal suffrage for all.

At this point, there is a need to go further in terms of analysis of the political participation of children, the concept recognized and strongly supported by the CRC Committee. That is to assess what kind of political activities are within the scope of the definition of political participation and whether it creates a space to include children's direct participation, that is voting.

Chapter 3

Children's Political Participation

From the UNCRC perspective, the child is recognized as citizen, despite the fact he or she is not able to vote. The next part will try to answer whether political participation of children, as the concept created and supported by the UNCRC, can serve as a first step towards lowering the voting age and ensure bigger inclusion of young people into political process. Bearing in mind that young people through the history were actively engaged politically, although still excluded from voting, the next part tries to answer whether their political participation without suffrage remains in compliance with the right to non-discrimination and whether using children to be engaged in politics without allowing them to vote can be seen as exploitation. Finally, this part asks about the future of the concept of political participation of children. Bearing in mind that the Convention has almost 30 years, it will evolved in the future in order to be more coherent with modern, globalized world where young people can organize themselves much more effective than before, through Internet and social media and, where, as a result, politicians have also easiest access to them as to potential voters. This chapter proves that child's right to vote is a matter of ensuring the direct political participation.

3.1. The concept of children's participation.

Apart from non-discrimination (article 2¹⁰¹), best interest of the child (article 3¹⁰²), the right to life, survival and development (article 6¹⁰³), the right to express your views (article 12¹⁰⁴) is the fourth general principle of the Convention on the Rights of the Child¹⁰⁵. Some authors proposed to see the UNCRC as being based on three pillars (that are indeed categories of rights) called often „three P's”

¹⁰¹ “1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.” Article 2, UNCRC, 1989.

¹⁰² “1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.” Article 3, UNCRC, 1989.

¹⁰³ “1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Article 6, UNCRC, 1989.

¹⁰⁴ “1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.” Article 12, UNCRC, 1989.

¹⁰⁵ Rights under the Convention on the Rights of the Child, available at: https://www.unicef.org/crc/index_30177.html

that embody children's rights guaranteeing their protection, provision and participation¹⁰⁶, although there is also a critique in a doctrine against this perception. Quennerstedt argued that this narrative actually hinders children's rights and their position as rights holders. She presented an alternative division of rights, taken from the human's rights law, namely civil, political and social rights. As one of her arguments, she gave a philosophical point of view that focuses on the child as a human. Thus, she asked: "a fundamental question is whether we regard children as being included in humanity primarily as children or as humans. What are they first and foremost?"¹⁰⁷ Her other argument, of pragmatic character, pointed out that using the nomenclature that is now used only for describing "adult" categories of rights would benefit children because it will reverse the protectionist image of weak child that have been dominant since very long time. Quennerstedt concluded with powerful statement: "I believe that a construction of the child and the child's status as human, which a human rights terminology contributes to, will benefit the expansion of the whole range of children's rights"¹⁰⁸.

Despite the fact that human rights vocabulary, that Quennerstedt proposed, would also contribute to draw the attention to children's right to vote, as one of the most important one from the civil and political categories, the children's rights framework operates mostly with using those three "P's" mentioned above. For this chapter, particularly relevant is the group of participatory rights that includes some components of civil and political rights. The Convention on the Rights of the Child presented a set of participatory rights that include: the right to be heard (article 12 of the UNCRC), the right to freedom of expression (article 13 of the UNCRC), right to freedom of association and peaceful assembly (article 15 of the UNCRC). As General Comment No 12 on the child's right to be heard defines, the promotion of the commonly, consensually agreed upon concept of "participation" is been present on various levels and aims at exchanging information and thoughts between children and adults "based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes."¹⁰⁹

Thorburn Stern translated "participation" into "ordinary language"¹¹⁰, where it "simply means some form of engagement with others"¹¹¹. Thomas described participation as "actually taking part in decision-making."¹¹² He put an emphasis on necessary differentiation that should be made regarding "consultation" and "participation". "Consultation" is limited to listening to children only whereas "participation" results in authentic outcome concerning decisions affecting children.¹¹³

At this point it is important to highlight Thomas's juxtaposition of those two terms in terms of adolescent's denied suffrage. Political activities that young people below 18 years old are allowed to participate fall within the scope of the definition of "consultation" rather than "participation". The genuine decision-making impact is achievable through voting process only because it is directly linked to choosing future legislators. Adolescents who are deprived of that right have only been "consulting" over political matters affecting them. Thus, the participation element is not fully present. Those quasi-

¹⁰⁶ R. Thorburn Stern, *Implementing Article 12 of the UN Convention on the Rights of the Child Participation, Power and Attitudes*, 2017, 4.

¹⁰⁷ A. Quennerstedt "Children, but not really humans? Critical reflections on the hampering effect of the 3 p's", *International Journal of Children's Rights*, 2010, 630.

¹⁰⁸ A. Quennerstedt "Children, but not really humans? Critical reflections on the hampering effect of the 3 p's", *International Journal of Children's Rights*, 2010, 631.

¹⁰⁹ UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par.

¹¹⁰ R. Thorburn Stern, *Implementing Article 12 of the UN Convention on the Rights of the Child Participation, Power and Attitudes*, 2017, 46.

¹¹¹ R. Thorburn Stern, *Implementing Article 12 of the UN Convention on the Rights of the Child Participation, Power and Attitudes*, 2017 46.

¹¹² Nigel Thomas, *Towards a Theory of Children's Participation*, in: *International Journal of Children's Rights*, vol. 15, 2007, 199.

¹¹³ Nigel Thomas, *Towards a Theory of Children's Participation*, in: *International Journal of Children's Rights*, vol. 15, 2007, 199-200.

participatory practices engaging adolescents, like Youth Parliaments, are on the verge of being good intentions-driven public consultations and can easily be treated as pure tokenism, that is based on exploitation of young people in terms of their image, time and ideas. Hart points out that “children need to be involved in meaningful projects with adults.”¹¹⁴ Undoubtedly full participation of adolescents would be much more “meaningful” than consultations, as having much more purpose and result.

Hart’s understanding of “participation” referred to having the right to be involved in decision-making processes that touches not only an individual’s life but also the functioning of the whole community¹¹⁵. More importantly, he perceives “participation” as one of the most essential components of democracy and as the essential citizenship’s right¹¹⁶. Unfortunately, the door of democracy remains only half-open for children due to their disenfranchisement. As Thornburn Stern noticed, children are “excluded from formal political power” and their “marginalization in the process of decision-making” is maintained¹¹⁷. Another relevant observation is that participation of the child is crucial and beneficial for the well-being of all members of society as well as for the development programming¹¹⁸, not only for the child herself or himself or for the group of children¹¹⁹. To continue this thought, it can be added that full participation ensured by lowering the voting age would be valuable alternative to quasi-participation or consultation and will expand the perspective of the whole society.

Nevertheless, participatory rights enshrined in the UNCRC can not be underestimated due to their important empowering role and the fact they marked the new era in children’s rights. Notwithstanding the fact political participation within children’s rights framework has indirect and maybe even, symbolic character rather than having a real political impact as giving vote in the elections, it undoubtedly can create a space for discussion about the possibility of the extension of that term and inclusion suffrage within its scope.

At this point it should be noted that the Human Rights Committee in its General Comment No 25 on “Participation in Public Affairs and the Right to Vote” mentioned that “the right to vote (...) should be available to every adult citizen”.¹²⁰ By stating that, the Committee reaffirmed the denial of the right to vote for non-adults. However, UNCRC Committee as being the treaty body exclusively focused on children has its own view on children’s political participation and that would be presented in this chapter.

This chapter aims not only at analyzing the very nature of the concept of participation but also at gaining an insight into the very character and content of every particular UNCRC article belonging to the set of abovementioned participatory rights. That will help to conclude at the end, whether those

¹¹⁴ Hart argues that children should be involved in serious matters quite early in order to prepare them to be responsible and aware citizens in the future: “It is unrealistic to expect them suddenly to become responsible, participating adult citizens at the age of 16, 18, or 21 without prior exposure to the skills and responsibilities involved.” He clearly mentions above the age of 16 as being one of the age limit for being full participant of the democratic society. Hart, 5 Roger A. Hart, Children’s participation. From Tokenism to Citizenship, UNICEF International Child Development Centre, Innocenti Essays No. 4, 1992, 5.

¹¹⁵ Roger A. Hart, Children’s participation. From Tokenism to Citizenship, UNICEF International Child Development Centre, Innocenti Essays No. 4, 1992, 15.

¹¹⁶ Roger A. Hart, Children’s participation. From Tokenism to Citizenship, UNICEF International Child Development Centre, Innocenti Essays No. 4, 1992, 16.

¹¹⁷ R. Thornburn Stern, *Implementing Article 12 of the UN Convention on the Rights of the Child Participation, Power and Attitudes*, 2017, 78.

¹¹⁸ S. Asker, A. Gero, The role of child and youth participation in development effectiveness, Sustainable Futures at University of Technology in Sydney and ChildFund Australia, 2012, 9-18.

¹¹⁹ R. Thornburn Stern, *Implementing Article 12 of the UN Convention on the Rights of the Child Participation, Power and Attitudes*, 2017, 75.

¹²⁰ Human Rights Committee General Comment No 25: Article 25 (*Participation in Public Affairs and the Right to Vote*) The Right to Vote in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, CCPR/C/21/Rev.1/Add. 7, 1996, par. 4.

rights can be interpreted as encouragement for adolescents' voting as a part of their political participation or at least can be the starting point for updating the UNCRC to make it more explicitly supportive for the idea of lowering the voting age.

3.1.1. The Child's Right to be Heard

Our journey through children's participation starts with one of the most critical and very often evoked child's right: the child's right to be heard. This is the incarnation of the whole new children's rights framework, theory and practice established by the UNCRC. The child's right to be heard is enshrined in article 12 of the UNCRC and states:

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

*2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."*¹²¹

UNCRC Committee in its General Comment No 12 elaborated on that right and provides its legal and literal interpretation. Several paragraphs of General Comment No 12 seem to be particularly relevant in regard to the idea of lowering the voting age and the Committee's approach to children's political participation in general. The Committee highlighted two dimensions of the inclusion of children's voices: firstly, the child should be heard as an individual being and secondly, children should be heard as a group¹²². Furthermore, taking into consideration that challenges can be faced regarding age and maturity of children, the Committee encouraged States parties to "listen to or seek the views of those children speaking collectively."¹²³ The Committee not only saw the collective voice of children as relevant to build a plausible argument for considering the inclusion of a whole new group of children voters, but also as a solution of young people "speaking collectively" to ensure they are being heard even when it is difficult to determine their level of maturity. The Committee provided also its own interpretation of the "participation" concept: "The concept of participation emphasizes that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives."¹²⁴

Moreover, the Committee reiterated that a child's status as rights holder can make an impact on her or his life and that the rights the child can exercise are "not only rights derived from her or his vulnerability (protection) or dependency on adults (provision)." Therefore, the Committee emphasized the third pillar of the UNCRC—participation--expressed by, inter alia, the right to be heard from article 12.¹²⁵ According to General Comment No 12, States Parties, aside from the strictly legal implementation of the Convention, should also implement a mindset that rejects the outdated

¹²¹ Art. 12 of UNCRC, 1989.

¹²² UNCRC, General Comment No 12 on „UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par. 9, 10.

¹²³ UNCRC, General Comment No 12 on „UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par. 10.

¹²⁴ UNCRC, General Comment No 12 on „UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par. 13.

¹²⁵ UNCRC, General Comment No 12 on „UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par. 18.

perception of the child as “incapable of expressing her or his own views.”¹²⁶ Also, the Committee saw the role that media should play in changing the narrative that children need to prove they are indeed capable of expressing their own views to one where there is not that burden of proof¹²⁷. Taking that idea further, it can be argued that adolescents should not therefore be excluded from voting under the argument they are not capable of making a political decision. Young people can have their own political views or share them with friends and family and they should not be presumed to not be able to express them in elections.

Another aspect of article 12 that was addressed by the Committee is the phrase “in all matters affecting” the child. Indeed, while those who oppose the idea of lowering the voting age would support a narrow and literal interpretation of this phrase that limits it to either judicial or administrative proceedings or school-related activities within the community¹²⁸. However, the Committee seemed to leave space for broader analysis: “the child must be heard if the matter under discussion affects the child. This basic condition has to be respected and understood broadly.”¹²⁹ Additionally, the UNCRC Treaty Body tackled the issue of children being excluded from political process: While the Committee supported a broad definition of “matters”, which also covered issues not explicitly mentioned in the Convention, it recognized the clause “affecting the child”, which was added in order to clarify that no general political mandate was intended. In practice, however, including the World Summit for Children, demonstrated that a wide interpretation of matters affecting the child and children helps to include children in the social processes of their community and society. Thus, States parties should carefully listen to children’s views wherever their perspective can enhance the quality of solutions.”¹³⁰ This shows the UNCRC Committee’s ambiguous approach toward full political participation of children. On the one side it allows for the broad interpretation and inclusion of children’s views in societal matters, but it also admits that children do not possess any political mandate. Influencing the community, society and policies without the act of voting itself seems to be a contradictory vision. Furthermore, in reality, policy makers work on projects that directly affect children’s lives. For example, education reforms or decisions related to particular school subjects affect lives of every high school student. In 2007, Poland’s Ministry of Education introduced a new decree that made catholic religion an obligatory subject at school that counts toward one’s average grade¹³¹. The children’s perspective was taken into account in any form. First and foremost, however, adolescents could not vote against the party that established those changes.

The Committee precisely described the activities in which the child should take part and used the word “consult” instead of “participate.” This makes a difference when taking into account the aforementioned distinction proposed by Hart. According to the UNCRC Committee: “Beyond the school, States parties should consult¹³² children at the local and national levels on all aspects of

¹²⁶ UNCRC, General Comment No 12 on „UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par. 20.

¹²⁷ The Committee recommends States Parties to “combat negative attitudes, which impede the full realization of the child’s right to be heard, through public campaigns, including opinion leaders and the media, to change widespread customary conceptions of the child.” UNCRC, General Comment No 12 on „UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par. 49.

¹²⁸ “The Committee welcomes the introduction of child-friendly school programmes in many countries, which seek to provide interactive, caring, protective and participatory environments that prepare children and adolescents for active roles in society and responsible citizenship within their communities.” UNCRC, General Comment No 12 on „UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par. 114.

¹²⁹ UNCRC, General Comment No 12 on „UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par. 26.

¹³⁰ UNCRC, General Comment No 12 on „UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par. 27.

¹³¹ <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20092101629/O/D20091629.pdf>

¹³² The Committee mentions also that children should be engaged in architecture process of public space development: “Children should be supported and encouraged to form their own child-led organizations and initiatives, which will create space for meaningful participation and representation. In addition, children can

education policy, including, inter alia, the strengthening of the child-friendly character of the educational system, informal and non-formal facilities of learning, which give children a 'second chance', school curricula, teaching methods, school structures, standards, budgeting and child-protection systems."¹³³

3.1.2. The Child's Right to Freedom of Expression

Article 13 of the UNCRC ensured the child's right to freedom of expression by stating:

"1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals".¹³⁴

Thorgeirsdóttir explained freedom of expression as a "cornerstone of democratic rights and freedoms, a basic civil and political right, accordingly laid down in all respective human rights instruments. Freedom of expression is a prerequisite for basic democratic governance as free elections are to ensure the free expression of the opinion of the people in the choice of their legislature".¹³⁵ Furthermore, the set of civil rights related articles from the UNCRC can be used, according to Thorgeirsdóttir, to argue "for the child's right to participate 'so that it can fully assume its responsibilities within the community' as stated in the Preamble to the CRC".¹³⁶ Notwithstanding the fact that the UNCRC aimed to improve children's ability to represent their interests, creators of the UNCRC consciously avoided granting minors the most important civil and political right—the right to vote.¹³⁷ Thorgeirsdóttir said that the UNCRC Committee did not address children's discrimination comprehensively enough because it did not see a connection between those abuses and discriminatory practices and the "actual lack of exercising their (children) civil and political rights."¹³⁸

As to seeking information, a very important part of article 13, nowadays in the age of Internet and social media, children are able to access almost any information they want. Aside from pure entertainment, they can get plenty of information with high educational value from the Internet. Moreover, even children who in the past would be excluded from school because of sickness, disability, or large distances, can now actively participate in the class thanks to new

contribute their perspectives, for example, on the design of schools, playgrounds, parks, leisure and cultural facilities, public libraries, health facilities and local transport systems in order to ensure more appropriate services. In community development plans that call for public consultation, children's views should be explicitly included." UNCRC, General Comment No 12 on „UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par. 128.

¹³³ UNCRC, General Comment No 12 on „UNCRC Committee, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12 20, 2009, par. 111.

¹³⁴ Art. 13, UNCRC, 1989.

¹³⁵ H. Thorgeirsdóttir, *Article 13. Freedom of expression*, in: Commentary to the United Nations Convention on the Rights of the Child, 2006, 3.

¹³⁶ H. Thorgeirsdóttir, *Article 13. Freedom of expression*, in: Commentary to the United Nations Convention on the Rights of the Child, 2006, 4.

¹³⁷ H. Thorgeirsdóttir, *Article 13. Freedom of expression*, in: Commentary to the United Nations Convention on the Rights of the Child, 2006, 52.

¹³⁸ Thorgeirsdóttir, *Article 13. Freedom of expression*, in: Commentary to the United Nations Convention on the Rights of the Child, 2006, 53.

technology and the Internet¹³⁹. The online world, however, is dominated by pervasive commercialization¹⁴⁰. Children are targeted as valuable consumers by companies selling toys, games, fast foods and sweets. These industries approach children on the Internet with the help of a new phenomenon called “advertgames” addressed exclusively to children. This is a powerful hybrid tool that consists of an advertisement hidden in a game. Companies know that children now have more money to spend than before¹⁴¹ and therefore they are now being treated as adult consumers, bombarded with commercial campaigns. Furthermore, young people now have access to political information to a greater extent and can be actively engaging in online political discussions through Internet-born political jokes called memes¹⁴², not through the boring, black-and-white newspapers of their parents. Thanks to Internet, adolescents in particular are now more politically aware than this group was generations before. Thus, when analyzing the right to freedom of expression and access to information, it is clear that when young people are considered to be money-generating consumer groups, they are treated like adults. However, article 13 does not necessarily result in participation, at least not physical, nor does it go as far as to recognize the right to vote. Under the provisions of article 13 it is clear that young people can join social media and express their political views, just not directly through political participation and voting. Thus, they can exchange and share their views and seek information but their opinions do not have direct political impact.

Thorgeirsdóttir pointed out that “enlightened children are a hope for the future”.¹⁴³ That is indeed a very true statement. However, enlightenment is not possible when an individual is only a recipient of information, targeted as consumer, or simply as a consultant. Enlightened children are those who are allowed to further use their gathered information, especially regarding politics, and express them through the process of democratic elections.

3.1.3. The Right to Freedom of Association and to Freedom of Peaceful Assembly

According to Daly, the fact that children are disenfranchised does not undermine other rights related to “freedom” such as those established by article 15 of the UNCRC¹⁴⁴. Article 15 says:

“1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”¹⁴⁵

¹³⁹ *Kids isolated by cancer connect online*, available at: <https://edition.cnn.com/2017/03/16/health/cnn-hero-leslie-morrisette-grahamtastic-connection/index.html>

¹⁴⁰ S. van der Hof, *I agree...or do I? - a rights based analysis for the law on children's consent in the digital world*, in: *Wisconsin International Law Journal*, 2017, 107.

¹⁴¹ S. van der Hof, *I agree...or do I? - a rights based analysis for the law on children's consent in the digital world*, in: *Wisconsin International Law Journal*, 2017, 107.

¹⁴² *The power of political memes*, available at: <http://theweek.com/articles/644312/power-political-memes>, *Mainstreaming of political memes*, at: <https://www.nytimes.com/interactive/2018/02/09/technology/political-memes-go-mainstream.html>

¹⁴³ Thorgeirsdóttir, *Article 13. Freedom of expression*, in: *Commentary to the United Nations Convention on the Rights of the Child*, 2006, 34.

¹⁴⁴ A. Daly, *Article 15 The Right to Freedom of Association and to Freedom of Peaceful Assembly*, in: *Commentary on the United Nations Convention on the Rights of the Child*, 2016, 6.

¹⁴⁵ Art. 15, UNCRC, 1989.

Daly admitted that because children are not able to vote, they “are in greater need than others of opportunities to further their rights and interests”¹⁴⁶. In Daly’s opinion, association and assembly provide tools for those opportunities¹⁴⁷. However, as several case studies from history show, despite the fact that adolescents have always been present when they were needed to fight for democracy, human rights and peace, they did not gain any political advantages for themselves.

Indeed, in the past, adolescents successfully joined associations, protests, movements. They profoundly contributed to achievements in democracy. In Nelson Mandela’s revolution, underage children were active to the point where Mandela himself proposed lowering of the voting age to 14 in order to honor the youngest supporters. His proposal was dismissed by the African National Congress¹⁴⁸. The second example concerns The Federation of Fighting Youth, created by high school students in Poland in 1984, which was an anticommunist organization of Polish youth, named “youngest opposition”, which cooperated with the social movement “Solidarity” in civil resistance. The Federation of Fighting Youth used to publish its own underground magazine, distribute leaflets and paint slogans on walls in order to raise awareness amongst youngest part of Polish society¹⁴⁹. Additionally, youth in the US was actively engaged in the Civil Rights Movement in the 1960s and 1970s. Most recently, due to unfortunate and tragic shooting events, young people are present on American streets to protest against gun violence¹⁵⁰. As mentioned in the first chapter, after the Brexit referendum, young people protested that their voices had not been heard in a matter as crucial as EU membership, which will affect their lives for the next decades¹⁵¹. These cases portray adolescents as fully aware rights holders brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity¹⁵². Adults who supported these causes were grateful for the young people who showed up. Despite this, however, the debate about lowering the voting age has never become serious. This again presents a tokenistic approach toward young children exercising their right to peaceful assembly.

However, more importantly, article 15 explicitly implies political participation by allowing children to join associations and political parties. These parties very often have youth sections within their structures and when the party gathers, its underage supporters and activists do as well. Therefore, article 15 illustrates the paradox that children can join established political parties while still not being able to vote. Perhaps the reason is that voting is an actual exercise of power and although young people are welcomed to the political parties as volunteers or members of youth sections when they help and contribute to the party’s activities, it all stops at the moment when children would be allowed to actually use their voices to influence policy and, as a result, to change adults’ attitude toward them as the group that now also has the power to vote.

3.2. Political Participation of Adolescents According to the UNCRC Committee

¹⁴⁶ A. Daly, Article 15 The Right to Freedom of Association and to Freedom of Peaceful Assembly, in: Commentary on the United Nations Convention on the Rights of the Child, 2016, 15.

¹⁴⁷ A. Daly, Article 15 The Right to Freedom of Association and to Freedom of Peaceful Assembly, in: Commentary on the United Nations Convention on the Rights of the Child, 2016, 15.

¹⁴⁸ *The making of a leader*, in: Time, 5/9/1994, Vol. 143 Issue 19, p. 36.

¹⁴⁹ K. Gerland, *Future Perspectives and Images of the Past: A “New, Young Generation” of the 1980s in the GDR at the People’s Republic of Poland*, in: Berghoff H., Jensen U., Lubinski C., Weisbrod B., *History by Generations: Generational Dynamics in Modern History*, 2013.

¹⁵⁰ *How Young Is Too Young for Protest? A National Gun-Violence Walkout Tests School*, available at: <https://www.nytimes.com/2018/03/13/us/national-school-walkout-guns.html>

¹⁵¹ *Brexit: Young people gather at Parliament in protest at not being given EU referendum vote*, available at: <https://www.independent.co.uk/news/uk/home-news/brexit-eu-referendum-latest-protest-young-people-parliament-vote-a7101701.html>

¹⁵² Preamble of United Nations Convention on the Rights of the Child.

UNCRC Committee developed General Comment No 20 “On the implementation of the rights of the child during adolescence.” This comment acknowledges and separates the group of adolescents as young people who, although they are still underage, are characterized by different needs and problems. General Comment No 20 provides many empowering provisions referring to political participation and refers to rights that were touched upon above.

The UNCRC Committee emphasized that adolescents’ attachment to “digital and social medial environments” presents a potential opportunity for them to engage politically.¹⁵³ The Committee highlights the fact that young people use the Internet, inter alia, “to explore their identity, learn, participate, express opinions, play, socialize, engage politically and discover employment opportunities”.¹⁵⁴ Thus, States Parties should make sure that every young person has “access to digital citizenship.”¹⁵⁵ The Committee stresses also the relevance of young people’s participation in terms of negotiation and advocating for their rights. Moreover, adolescents’ participation can be used to “hold States accountable.”¹⁵⁶ The Committee encouraged States to “adopt policies to increase opportunities for political participation, which is instrumental in the development of active citizenship.”¹⁵⁷

As to freedom of association, the Committee pointed out that the fact that adolescents are looking for meaningful relationship with their peers can be beneficial “not merely social[ly] but also contribute towards competencies that are foundational for successful relationships, employment and community participation, building, inter alia, emotional literacy, a sense of belonging, skills such as conflict resolution and strengthened trust and intimacy.”¹⁵⁸ General Comment No 20 explicitly mentioned young people joining political parties as one of the forms of freedom of association and peaceful assembly.¹⁵⁹

¹⁵³ UNCRC Committee, General comment No. 20 *on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, 2016, par. 2.

¹⁵⁴ UNCRC Committee, General comment No. 20 *on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, 2016, par. 47.

¹⁵⁵ UNCRC Committee, General comment No. 20 *on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, 2016, par. 47.

¹⁵⁶ UNCRC Committee, General comment No. 20 *on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, 2016, par. 24.

¹⁵⁷ UNCRC Committee, General comment No. 20 *on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, 2016, par. 24.

¹⁵⁸ UNCRC Committee, General comment No. 20 *on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, 2016, par. 44.

¹⁵⁹ “Legal recognition should be afforded to adolescents to establish their own associations, clubs, organizations, parliaments and forums, both in and out of school, form online networks, join political parties and join or form their own trade unions.” UNCRC Committee, General comment No. 20 *on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, 2016, par.45

Conclusions

Notwithstanding the fact that the UNCRC disregarded children's political rights in a substantial way¹⁶⁰, the UNCRC Committee seemed to subtly suggest that the actual political participation of adolescents, including the realization of the idea of lowering the voting age, can be considered by State Parties as a response to the modernizing world (see 4.4.). Interestingly, Milne observed that the UNCRC participatory rights and its proposed implementation effectively divide society into two groups – children and adults. He also pointed out that children's participation is to a great extent dependent on adults "invitation" to that process¹⁶¹. Milne therefore called for the deconstruction "of the position of children in society¹⁶²" in order to "look again how participation that resembles citizenship can be achieved."¹⁶³ In response to that appeal, lowering the voting age would be one step toward the deconstruction of the child's position in society. Most importantly, however, it would enable participation that not only will "resemble" citizenship but actually bring full citizenship to young people.¹⁶⁴

The UNCRC Committee seemed to hint at this paradigm shift in highlighting the actual political participation of adolescents, including the realization of the idea of lowering the voting age. However, the UNCRC does not provide many politically empowering provisions. Bearing in mind that it was drafted a long time ago, the future updated version of the Convention would ideally be more complete in addressing the political rights of children more directly.

¹⁶⁰ B. Milne, *Do the participation articles in the Convention on the Rights of the Child (CRC) present us with a recipe for children's citizenship?*, in: *Working to Be Someone : Child Focused Research and Practice with Working Children Account*, 2007, 206.

¹⁶¹ B. Milne, *Do the participation articles in the Convention on the Rights of the Child (CRC) present us with a recipe for children's citizenship?*, in: *Working to Be Someone : Child Focused Research and Practice with Working Children Account*, 2007, 206-207.

¹⁶² B. Milne, *Do the participation articles in the Convention on the Rights of the Child (CRC) present us with a recipe for children's citizenship?*, in: *Working to Be Someone : Child Focused Research and Practice with Working Children Account*, 2007, 206-207.

¹⁶³ B. Milne, *Do the participation articles in the Convention on the Rights of the Child (CRC) present us with a recipe for children's citizenship?*, in: *Working to Be Someone : Child Focused Research and Practice with Working Children Account*, 2007, 206-207.

¹⁶⁴ "We urgently need to revisit philosophical thought and follow its path through to today and present-day philosophers and sociologists who offer a clear view of what citizenship is. We also need to reappraise the legal and moral change that created contemporary childhood. They are intellectual processes that we cannot avoid if we are to construct our arguments well. Of course, intellectual analyses in themselves do not offer enough; more depends on pragmatism. Thus, the solution rests in all of our hands but how to effect that change is a far greater question to which I certainly have no answer." B. Milne, *Do the participation articles in the Convention on the Rights of the Child (CRC) present us with a recipe for children's citizenship?* in: *Working to Be Someone : Child Focused Research and Practice with Working Children Account*, 2007, 209.

Chapter 4

Lowering the Voting Age in Light of the Age Limits

This chapter familiarizes the reader with the UNCRC Committee's approach toward the idea of lowering the voting age and presents arguments in favor of that idea, using the conceptual framework of different age limits that apply to the child and changes the definition of child from the article 1 of the UNCRC.

4.1. First Age Limit - The Definition of the Child.

Age limits is an issue very closely related to rights and entitlements. Age limits separate children from adults and create groups within the society characterized by different ranges of privileges and responsibilities depending on the capability assessment. When John Stuart Mill was referring to liberty as the greatest value that guarantees people's freedom and right to have a choice, he points out that children are "too immature" to enjoy liberty and make decisions for themselves¹⁶⁵. Thus, the separation between adults and children has been justified with immaturity and lack of development. As Milne noticed, "age of consent" divided adulthood from childhood¹⁶⁶. However, Mill's "notion of the immature child has scarcely changed since, thus allowing us to 'guide' children according to 'evolving capacities' as Article 5¹⁶⁷" (of the UNCRC).

Age limits are strongly present in national, regional and international law regarding children. UNCRC set its own age limit at 18 years by its definition of the child in article 1:

"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier"¹⁶⁸.

The second part of the UNCRC definition of the child is particularly relevant when talking about age limits because it has been common practice by every State Party that despite the rigid age of majority that is established by national law, there are possible exceptions when a child can be treated as an adult. Those exceptions can be found, inter alia, in criminal and labor law .

These two areas will be tackled in this chapter in order to show the inconsistency within age limits regarding children. As a result of this analysis, the chapter hopes to prove that lowering the voting age is also a matter of age limits that presents a good solution for these inconsistencies.

4.2. Minimum Age of Criminal Responsibility

In article 40 paragraph 3a, the UNCRC expressed the obligation for States Parties to set a minimum age of criminal responsibility and stressed that this was a crucial element of introducing a child's rights-oriented juvenile justice system. The article stated that:

¹⁶⁵ J.S.Mill, On Liberty, 1859, 224.

¹⁶⁶ B. Milne, *Do the participation articles in the Convention on the Rights of the Child (CRC) present us with a recipe for children's citizenship?* in: *Working to Be Someone : Child Focused Research and Practice with Working Children Account*, 2007, 207.

¹⁶⁷ B. Milne, *Do the participation articles in the Convention on the Rights of the Child (CRC) present us with a recipe for children's citizenship?* in: *Working to Be Someone : Child Focused Research and Practice with Working Children Account*, 2007, 207.

¹⁶⁸ Art. 1 of the UNCRC, 1989.

“States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.”

According to the Committee, higher minimum ages of criminal responsibility are much more progressive and embody underlying ideas behind human rights-oriented justice systems. It proposes the age of 12 years as a minimal standard used for guidance by States Parties¹⁶⁹. It should be mentioned that there is no international consensus in terms of minimum age of criminal responsibility and therefore, the age limits vary drastically worldwide¹⁷⁰. As a result of setting the minimum age of criminal responsibility, the State presumes that the child is able to be held accountable for his or her criminal activities while still not being able to vote. The child has the right to be adequately informed about all proceedings that concern her or him. Furthermore, if she or he does not agree with the sentence, there is a possibility of appeal. The child enjoys all of the fundamental rules of fair trial. Analogically, in the voting process, the UNCRC Committee stressed the importance of civic education and providing all necessary information to children if the State Party would consider lowering the voting age (see 4.4.) Similar to the information received by children in the pre-trial process, the child would have all practical and theoretical information before he or she would go to the voting booth. The assumption that after receiving necessary knowledge, the child is capable of being a voter, applies to the same extent as the assumption that he or she is capable of standing in front of the judge.

4.3. The Working Child and Age Limits

According to the Convention Concerning Minimum Age for Admission to Employment, the International Labor Organization¹⁷¹ provided that children from 13 years old can engage in light work, while the basic minimum age of work cannot be set under 15 years. Bearing in mind that in developing countries children are very often forced to work because of difficult circumstances and very often become the only provider for the family, this age limit seems to be reasonable. Children entering the legal labour market become members of bigger communities where they can join labor unions, which they organize by themselves. Moreover, children who are workers are understandably interested in legislation concerning, inter alia, labor conditions, social security in the workplace, or minimum wage regulations. They can participate in negotiations with the employer. However, workers below 18 years are excluded from expressing their disappointment about government policies concerning work regulations that clearly demonstrate discrimination. Children workers should, aside from enjoying their obligations and privileges deprived from belonging to the legal labor market community, have the same level of influence on the government's labor policy as their older counterparts.

4.4. The UNCRC Committee and Voting Age Limits

The UNCRC Committee, in its Concluding Observations on Austria's report concerning the implementation of the Convention, praised the country's effort to include adolescents to the voting process and consider lowering the voting age from 18 to 16 as “progress achieved by the State

¹⁶⁹ UNCRC Committee, General Comment No.10, *Children's rights in juvenile justice*, 2007, p. 11.

¹⁷⁰ G. Maher, *Age and criminal responsibility*, Ohio State Journal of Criminal Law vol. 2:493, 2005, p. 496.

¹⁷¹ Art. 7, International Labour Organization, *Convention concerning Minimum Age for Admission to Employment*, No 138, 1973.

party¹⁷²”. In the part of the document dedicated to respecting the views of the child, the Committee reminded the State Party that some measures need to be undertaken in order to harness the full potential of that legal reform. Treaty Body recommended to conduct “research to monitor the impact of the lowering of the voting age and educate children on the exercise of the right to vote in an effective manner. The Committee also recommends that the State party take into account its general comment No. 12 (2009) and take effective measures to implement the right of the child to participation in relevant matters arising under the Convention¹⁷³.”

The Committee not only appreciated the introduction of adolescent suffrage by States Parties but also encouraged it to lower the voting age when there was such social need within the society. As mentioned, Brexit mobilized plenty of young people who demanded their voices be better heard in elections, especially for national referendums. The Committee urged the United Kingdom to be receptive to those claims and states: “The Committee noted increasing demands from children for a right to vote from the age of 16 years and that, in Scotland, voting age has been extended to 16 and 17 year olds for local and Scottish Parliament elections¹⁷⁴.” Further, the Committee recommended to extend the idea of conducting consultations with children further. In the case of lowering the voting age, it presented a similar narrative as in the Austrian Concluding Observations with safeguards regarding effective implementation of the right to vote for young people¹⁷⁵.

More importantly, there was finally a remark about the possibility of lowering the voting age in General Comment No 20: “If States decide to lower the voting age to under 18 years, they should invest in measures that support adolescents to understand, recognize and fulfil their role as active citizens, including through citizenship and human rights education and by identifying and addressing barriers to their engagement and participation¹⁷⁶.” Thus, the Committee seemed to subtly suggest that lowering the voting age could be beneficial for adolescents and can be in State Parties’ agenda. Nevertheless, that idea should be strengthened by adequate action that will make sure that the process of adolescent inclusion will be proceeded thoughtful.

4.5. Initiatives to Lower the Voting Age to 16 in Europe

In 2009, in Councils of Europe’s Parliamentary Assembly was presented with an initiative to lower the voting age to 16 in Europe in order to enhance democratic participation. The document states that: “Despite a widespread interest in political issues amongst the 16-17 year olds, they apparently do not show up at the ballot boxes or register as voters¹⁷⁷.” It also recognizes the trend of lowering the voting age across Europe. The document refers to previous resolutions of the Council of Europe concerning spreading democratic values and participation. One such resolution is “Refreshing the youth agenda of the Council of Europe” from 2008, which states: “a key element has been encouragement of the

¹⁷² UNCRC Committee Concluding Observations on the combined third and fourth periodic report of Austria, CRC/C/AUT/CO/3-4, 2012, par. 3.

¹⁷³ UNCRC Committee Concluding Observations on the combined third and fourth periodic report of Austria, CRC/C/AUT/CO/3-4, 2012, par. 28.

¹⁷⁴ UNCRC Committee Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/5, 2016, 32.

¹⁷⁵ UNCRC Committee Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/5, 2016, 33.

¹⁷⁶ UNCRC Committee, General comment No. 20 *on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, 2016, par. 24.

¹⁷⁷ Council of Europe, Motion for a resolution, 11895, *Expansion of democracy by lowering the voting age to 16*, 2009, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12172&lang=en>

active participation of young people in civil and institutional life¹⁷⁸. Although the objective of the document is not explicitly about the right to vote, it is certainly a helpful tool to advance the debate around increasing youth's political participation—a future which may include the right to vote.

In 2016, Malta joined Austria by lowering the voting age to 16 with unanimous support of the Parliament¹⁷⁹.

Conclusions

Despite the fact that UNCRC set the age of majority at 18 years, children find themselves in various circumstances where they are treated like adults. However, children in those situations usually do not enjoy their sudden “adult-like” status because it is usually connected to juvenile delinquency or their need to work. All the possible exceptions regarding age limits create an illusion of many different, often contradictory images of the child and various, inconsistent assessments of his or her capabilities. This should not be disregarded while discussing the possibility of lowering the voting age.

Bearing in mind that the child can easily legally work while he or she is under the age of 18 years, join labor unions, or be held criminally responsible and end up in detention centres, there is a need to also include the possibility for the child to be able to influence the state's policy and choose legislators that regulate legal situations that touch and concern children. Thus, lowering the voting age will strengthen the position of the child in various fields of his or her activities and provide for the child actual having an impact on them.

At this point, one may wonder what the implications of progressive lowering age limits may be. Is the age of majority could also be lowered soon? Those considerations are inextricably connected with the future of the definition of the child itself and might be the interesting point for another paper.

¹⁷⁸ Council of Europe, Refreshing the youth agenda of the Council of Europe, 2008, available at: <http://semanticpace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbncveG1sL1hSZWYvWDJlLURXLWV4dHluYXNwP2ZpbGVpZD0xNzY3NSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWjHNsdC9QZGYvWFJlZi1XRRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTE3Njc1>

¹⁷⁹ Malta lowers the voting age to 16 with unanimous backing from parliament, available at: <http://www.dw.com/en/malta-lowers-voting-age-to-16-with-unanimous-backing-from-parliament/a-42838643>

Final Conclusions

“We disrespect children because they have many hours of life ahead of them”¹⁸⁰.

This paper attempted to analyse relations between the idea of changing the age limit of voting and theories of children’s empowerment, children’s citizenship, children’s participation and, last but not least, age limits in general.

Korczak’s quotation from the beginning of this part is very much related to the concept of the child as a “becoming” rather than “being”. Indeed, denying children the right to vote fuels the presumption that children have a lot of time before they need to consider and decide serious issues—that there is not *their* time yet (emphasis added). This thesis argues that, on the contrary, the age should not exclude children from being empowered to have political influence through voting. Thus, lowering the voting age is a crucial matter of children’s empowerment.

Bearing in mind that the field of international children’s rights is relatively new and therefore an eminently fascinating area of law, it should be noted that its novelty has certain implications that often seem untenable for policy and law makers. New phenomena constantly appear in children’s lives and legislators should make the law responsive to those changes. Thus, the development of children’s rights requires flexibility and adaptability.

One of upcoming challenges related to children’s rights will be lowering the voting age and strengthening the civil and political rights of children. As a result of the drafting process of the United Nations Convention on the Rights of the Child, a new image of child has emerged: an empowered rights holder. Nevertheless, certain civil and political rights were not explicitly included. However, during the process of drafting the UNCRC, provisions related to civil and political entitlements were particularly difficult upon which to reach consensus¹⁸¹. As a result, the youngest members of society were given substitutes for these rights. Although these were progressive and certainly advanced children’s rights, today they need to be reevaluated in order to assess whether they should be improved and adjusted to new realities.

The right to vote would be one of the most empowered actions the child would be able to undertake, because it would give the young person the power to decide who the future legislator in her or his country will be and who will create the law that will affect the child’s life.

Moreover, while considering children’s citizenship in light of children’s suffrage, an important issue has been highlighted: that children are and should be considered full citizens, regardless their disenfranchisement. They are entitled to several rights closely connected to citizenship and yet, notwithstanding the fact right to vote is very much related to citizenship, it is not its only component, as many authors has proven. Nevertheless, lowering the voting age would expedite the position of the child as a rights holder and a citizen by allowing adolescents to enjoy privileges of full citizenship. That is closely connected to the situation of other groups of citizens excluded from voting previously and in some countries, still: women and those who to whom felony disenfranchisement applies.

¹⁸⁰ J. Korczak, *A child’s right to respect*, 2017 (published originally in 1928), 13.

¹⁸¹ A. Quennerstedt “Children, but not really humans? Critical reflections on the hampering effect of the 3 p’s”, *International Journal of Children’s Rights*, 2010, 628.

Regarding the concept of children's participation, many authors have noticed that there are various dimension of it due to the vagueness of the term "participation" itself. Bearing in mind that participation of children can be ensured through different means and realized to different extents, children's suffrage achieved by lowering the voting age would enable children to participate in a direct, political way. History has shown how often adolescents have been actively engaged in civil society movements, reforms, revolutions and uprisings. They can join political parties but they still cannot vote. Therefore, using idealistic young people to be a symbol of political actions without inviting them to join the process of creation of political realities through voting constitutes a tokenistic approach to children that can even indicate exploitation of children's images, time and energy. Thus, lowering the voting age is an essential step forward realizing the full participation of children that would include them fully into community life. Young people would therefore become societal participants who are legitimated by their eligibility to express their voices in voting processes.

Lastly, examples of inconsistent and exceptional age limits prove that there is not a unified definition of the child that covers all occurrences within a child's life. Depending on the circumstances, laws allow for one to distinguish between the child as underage one sphere while in the other, the minor is treated alongside adults. Thus, the minimum voting age should be lowered in order to be consistent with other age limits that are much lower than 18 years old and that allows children to legally work, join labor unions, and be held criminally accountable.

To conclude, the idea of lowering the voting age is first and foremost a matter of children's rights. It should not be treated as a political weapon used just before elections but instead, it should be considered very thoroughly, with regard to adequate implementation and civic education to make it valuable and effective, following the CRC Committee's suggestions in its aforementioned Concluding Observations. The idea of the voting age being set at 14 years has great potential. However, it should be addressed in a comprehensive and consistent manner with providing necessary education all the retaining an appreciation for the child as rights holder. Then, the lowering of the voting age could profoundly benefit the lives of young people and would make their voices not only heard, but also, in the literal and metaphorical sense, count.

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