



Universiteit
Leiden
The Netherlands

LEIDEN UNIVERSITY, FACULTY OF LAW

Master of Law: Advanced Studies in International Children's Rights

**CONSTITUTIONAL RECOGNITION OF CHILDREN'S RIGHT TO PARTICIPATE
IN DEMOCRATIC DECISION-MAKING**

Leiden, 2022

Declaration Statement

Advanced LLM in International Children's Rights



Date: 01.06.2022

Location:

Declaration Statement

I further hereby certify that this is an original work, that this thesis does not contain any materials from other sources unless these sources have been clearly identified in footnotes, and any and all quotations have been properly marked as such and full attribution made to the author('s) thereof.

I further authorise Leiden University, the Faculty of Law, the Master of Laws: Advanced Studies in International Children's Rights, its Programme Board and Director, and/or any authorised agents of the Institution, and persons named here in and above, to place my thesis in a library or other repository including but not limited to associated websites, for the use of the visitors to or personnel of said library or other repository. Access shall include but not be limited to hard copy or electronic media.

Name:

Student ID Number:

Signature:

Table of Contents

Acknowledgments	v
Keywords.....	vi
Executive Summary.....	vi
Overview of Main Findings	viii
List of abbreviations	ix
1. Introduction	1
1.1. Problem statement and research question	1
1.2. Scope of the research.....	2
1.3. Methodology	3
2. Increasing attention to children’s participation rights.....	4
2.1. International Framework.....	4
2.1.1. Historical background.....	4
2.1.2. Conceptual framework of children’s right to participate	5
2.1.3. Increasing attention to children’s participation rights at the international level.....	9
2.2. Regional Framework for Europe	9
2.2.1. Legal Framework.....	10
2.2.2. Increasing attention to children’s participation rights in the CoE.....	10
2.2.3. Increasing attention to children’s participation rights in the EU	10
2.3. Conclusion	11
3. Children’s right to participate in public, national, and democratic decision-making	12
3.1. Defining participation in public, national, and democratic decision-making.....	13
3.2. Conceptualising children’s right to participate in democratic decision-making under the CRC	13
3.2.1. Questions regarding the scope of children’s right to participate in democratic decision-making	13
3.2.1.1. Do all matters that are subject to democratic decision-making affect children?	13
3.2.1.2. To whom and to what extent does children’s right to participate in democratic decision-making apply?.....	14
3.2.1.3. Different models and means of participation in democratic decision-making for children	16
3.2.1.3.1. Models of participation	16
3.2.1.3.2. Means of participation.....	20
3.2.1.3.2.1. Indirect participation in democratic decision-making	20
3.2.1.3.2.2. Children’s councils and parliaments.....	20
3.2.1.3.2.3. Children’s rights impact assessment.....	21
3.3. Can CRC Article 12(1) be read as a right to vote for children?	22
3.4. Is children’s right to participate in democratic decision-making a constitutional law matter?	23
3.5. Conclusion	24

4. Constitutional recognition of children’s rights	25
4.1. Constitutionalisation as an implementation method for children’s rights at the national level	25
4.2. Increasing constitutional recognition of children’s rights in CoE Member-States	26
4.3. Constitutional recognition of children’s right to participate in CoE Member-States	28
4.4. Conclusion	29
5. Mapping the current stage of the constitutional recognition of children’s participation rights in CoE Member-States	31
5.1. Child-specific constitutional recognition of participation rights protected under both international human and children’s rights frameworks	31
5.2. Constitutional provisions that may hinder children’s participation rights	32
5.2.1. Provisions that provide a ground for State to limit children’s civil and political rights	32
5.2.2. Provisions that endorse parental rights	33
5.2.3. Conclusion.....	33
5.3. Constitutional recognition of child-specific participation rights that are protected under the international children’s rights framework.....	34
5.3.1. Constitutionalisation of children’s right to participate in a similar way to CRC Article 12(1)	34
4.1.1.5.3.2. Constitutionalisation of children’s right to participate to a limited number of issues that concern them	35
5.3.3. Recognition of children’s evolving capacities at a constitutional level.....	35
5.3.4. Recognition of the best interest principle at a constitutional level.....	35
5.3.5. Other constitutional provisions that support children’s participation.....	36
5.4. Conclusion	37
6. Is there a need for constitutional reform in CoE Member-States to ensure children’s participation in democratic decision-making more effectively?	38
6.1. The value and shortcomings of constitutionalising children’s right to participate in a similar way to CRC Article 12(1)	39
6.2. The need for constitutional recognition of children’s right to participate in democratic decision-making.....	39
6.3. Risks of constitutional recognition of children’s right to participate in democratic decision-making.....	40
6.4. Conclusion	42
7. Recommendations and the way forward.....	43
Bibliography	45

Acknowledgments

Being able to study at Leiden University's Advanced LLM Programme in International Children's Rights Law and work on a thesis on child rights has been a dream of mine for a long time, and I must acknowledge the support of the people who have helped me achieve this dream.

First of all, I would like to thank Prof. Dr. Liefwaard for the value he has shown to his students as the director and lecturer of this Programme, as well as for the time he has spent listening to my ideas and guiding me as my supervisor.

I would also like to thank all the lecturers of the Programme, from whom I have learned a lot, and especially Dr. Klep, who supported us throughout the year, as well as Ms Uiterweerd and Ms van Dijck, who helped me with all the administrative difficulties of being a student in a foreign country.

It was a great privilege to be in a classroom full of valuable people with whom I shared my passion for children's rights. I would like to give special thanks to Yaël, Daniel and Lauren for proofreading my thesis and to Rachele, Francesca, Rehana and Iacopo for the much-needed coffee breaks during the long hours of studying in the library.

I must thank Christina Juyeon, who made me feel her friendship from across the oceans and proofread my thesis with sincere pleasure.

I would also like to acknowledge Prof. Dr. Mahmutoğlu, Dr. Arslan Öncü, Atty. Akço and all my other professors at Galatasaray and Geneva Universities Law Faculties, who prepared and supported me to participate in this Programme.

I would like to show my gratitude to Çağın, whose support and encouragement I have always felt by my side.

Without further ado, I would like to express my heartfelt thanks to my brother Ufuk, my mother Gülsevin and my father Osman for their material and moral support and trust throughout my life.

Key Words

Children – Participation Rights – Decision-making – Constitutional Recognition – Europe

Executive Summary

The focus of this thesis is to identify children's right to participate in democratic decision-making as a standalone right deriving from Article 12(1) of the Convention on the Rights of the Child and to examine whether there is a need for constitutional reform to ensure more effective implementation of this right.

Article 12 of the Convention on the Rights of the Child is a unique provision that constitutes a milestone on the road to restoring children's legal and social status as independent rights-holders. In this study, Article 12(1) is referred to as children's right to participate as it is considered the most empowering description of the right. Although extremely important, children's right to participate is a right that is difficult to implement due to its complex nature and massive scope. Therefore, before diving into the conceptualisation of children's right to participate in democratic decision-making, this thesis first attempts to conceptualise children's right to participate as a fundamental standalone right in Chapter 2.

The core values of children's right to participate are determined as the acknowledgement of children's agency in decision-making processes and the requirement to create an accountability mechanism to give due weight to children's views. Regarding the nature of the right, it is underlined that Article 12 is a civil and political right realisation of which is independent of the availability of States' resources. Regarding the scope of the right, it is emphasised that Article 12(1) covers all matters affecting children beyond those explicitly mentioned as children's rights in the Convention and that both younger and older children are entitled to the right to participate. The importance of the interaction between children's right to participate and other participation rights is highlighted.

Chapter 2 also provides an overview of the increasing attention to children's participation rights globally and in Europe. It is observed that the focus was more on children's right to participate in judicial and administrative decision-making initially, and children's right to participate as a group in democratic decision-making is one of the least scrutinised aspects of children's participation.

Chapter 3 attempts to conceptualise children's right to participate in democratic decision-making as a standalone right. First, "public, national, and democratic decision-making" was defined as legislative and policy decisions made by the legislative and executive branches of a State where people participate in the process principally through elections. Concerning the scope of children's right to participate in democratic decision-making, a recent European Court of Human Rights judgment on the voting rights of people with disabilities was analysed by analogy to illustrate the importance of developing tools and methods to ensure that children increasingly access the right to participate in democratic decision-making rather than being categorically excluded. Furthermore, an overview of selected models and tools for the implementation of children's right to participate in democratic decision-making processes are presented. This Chapter also highlights the relationship between constitutional law and children's right to participate in democratic decision-making.

Whether the right to vote can be an appropriate means for children's participation in democratic decision-making and whether Article 12(1) of the Convention on the Rights of the Child can provide a basis for the right to vote for children is also a matter of debate that should not be overlooked in this research. While it is crucial to examine the appropriateness of depriving especially older children of suffrage, it is found that the right to vote does not appear to be the best way to accommodate the broad scope of children's right to participate in democratic decision-making. Although it seems to share the

same view, the Committee on the Rights of the Child has so far failed to suggest an alternative accountability mechanism for voting rights. Potentially the Committee will have to make a more precise comment on whether Article 12(1) grants children the right to vote or how to create an alternative accountability mechanism shortly, thanks to the entry into force of the OPIC.

Based on the findings of previous comparative studies, Chapter 4 shows the ongoing trend in Europe to use constitutions as an incorporation tool for children's rights and that Council of Europe Member-States are more reluctant to constitutionally recognise children's participation rights than their protection and provision rights. Although constitutional recognition is not required, the Committee on the Rights of the Child welcomes the constitutionalisation of children's rights. The Venice Commission recommends States to provide constitutional guarantees for children by recognising them as rights-holders and incorporating general principles of the Convention on the Rights of the Child in their constitutions. Therefore, it is argued that constitutionalisation is a critical element that should not be neglected in incorporating children's rights into domestic law. Constitutional recognition of children's rights is important in both monist and dualist States, even if it reiterates directly applicable provisions of the Convention or existing statutory laws.

In Chapter 5, Council of Europe Member-States' constitutions have been examined and mapped with a comparative methodology and from a children's rights perspective to understand the extent and means of constitutionalising children's right to participate. The mapping activity was conducted under the guidance of three main questions:

1. Is there a child-specific constitutional recognition of participation rights protected under both international human and children's rights frameworks?
2. Are there constitutional provisions that hinder children's participation rights?
3. Is there a constitutional recognition of child-specific participation rights protected under the international children's rights framework?

Chapter 6 reflects on the potential value of constitutional recognition of children's right to participate in a similar way to Article 12(1) to enhance children's status as independent rights-holders but also highlights that generic recognition of children's right to participate is not enough to provide a robust foundation for implementing this right in all divisions of life, including democratic decision-making processes. Consequently, whether there is a need for constitutional recognition of children's right to participate in democratic decision-making as a standalone right is discussed. Although various arguments have been put forward in favour of constitutional reform, it has not been possible to demonstrate with a concrete example whether constitutional recognition would lead to more effective implementation, as no Council of Europe Member-State recognises this right in its constitution. Additionally, it is observed that Member-States, as well as the Committee on the Rights of the Child, the Council of Europe, and the European Union are inconsiderate about the separate and constitutional recognition of this right. Therefore, before reaching any conclusions on advocacy, it was assessed whether constitutional reform would pose any risks.

Chapter 7 provides recommendations for relevant international, regional and national stakeholders and a way forward, as it is found that the constitutional recognition has great potential to ensure more effective protection of children's right to participate in democratic decision-making. However, it is also acknowledged in this Chapter that the constitutional reform is only the beginning of the journey and that post-constitutional reform measures, as well as measures to ensure the enforceability of constitutional recognition, are needed to ensure the full implementation of children's rights to participate in democratic decision-making.

Overview of Main Findings

As a result of the research carried out to define children's right to participate in democratic decision-making as a standalone right, it is concluded that categorically identifying issues that may concern children or determining an age group capable and mature enough to exercise this right is not conducive to ensure the full implementation of this right. Instead, it might be more appropriate to talk about the potential scope of children's right to participate in democratic decision-making and create methods and means that adopt children's increasing agency and holds States increasingly accountable to give due weight to children's views. It has also been argued that indirect means of participation and children's councils and parliaments can easily fall short of serving this purpose and the right to vote is not necessarily the best way to ensure democratic participation of all children. Therefore, the idea of presenting a constitutional requirement to conduct a well-planned children's rights impact assessment in democratic decision-making processes is put forward as a potential tool that can accommodate the broad scope of children's right to participate in democratic decision-making.

The review of selected comparative studies in Chapter 4 not only demonstrated the growing trend toward the constitutionalisation of children's rights in Europe but also helped to identify the necessary elements for constitutional reform. Accordingly, a decent constitutional reform should place the children as the rights-holders and should not override children's participation rights with protection and provision rights. Furthermore, constitutional provisions should be created with solid conceptualisation, clear wording and accountability mechanisms that ensure enforceability.

The mapping activity conducted in Chapter 5 has provided information on different ways of constitutionalising children's participation rights and on types of constitutional provisions that may hinder children's participation rights, either by providing a limitation ground for States' interference with children's civil and political rights or by endorsing the rights of families and parents. This study has also shown that there is no State in Europe that recognises children's right to participate in democratic decision-making as a standalone right at the constitutional level. The mapping activity also revealed the fragmented approach taken by Member-States in constitutionalising child-specific participation rights. Some States constitutionally recognise children's right to participate, as in Article 12(1) of the Convention on the Rights of the Child, some constitutionally guarantee children's right to participate only for a limited number of issues, some constitutionalise children's other participation rights and some completely ignore the participation aspect of children's rights at the constitutional level.

After considering the arguments in support of advocating for constitutional reform and the risks that the reform may entail, it has been concluded that the constitutional recognition of children's right to participate in democratic decision-making has a great potential to ensure more effective protection of children's right to participate as a group, to reassure their historically deprived agency in democratic decision-making, to better protect children's interests through law and policies, to provide legitimacy to any democratic decision that affects children, and to trigger a broader change of culture to recognise children as independent rights-holders. Such reform, however, must be accomplished through a participatory drafting process, with a constitutional provision drawn up with a strong conceptualisation of children's right to participate in democratic decision-making.

In conclusion, it has been found that constitutional recognition of children's right to participate in democratic decision-making can do more benefit than harm to ensure more effective protection of children's participation rights. However, it is just a starting point, and additional measures are required to provide the full implementation.

List of abbreviations

3-Ps	protection, provision, and participation rights
Art.	Article
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CoE	Council of Europe
CPRs	civil and political rights
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRIA	children's rights impact assessment
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ESCRs	economic, social and cultural rights
EU	European Union
GC	General Comment
HDI	United Nation's Human Developmental Index
ICCPR	International Covenant on Civil and Political Rights
ICHR	International Covenants on Human Rights
OPIC	Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure
UN	United Nations

1. Introduction

International children's rights law is a young and emerging domain of law.¹ One of the most important struggles is to change the perception of children from "human-becomings" in need of protection and care to "human-beings" who are independent rights-holders.² United Nations Convention on the Rights of the Child (CRC) constitutes an important milestone in this journey by providing child-specific participation rights to support children's agency in every division in life. However, recognising children's participation rights at the international level is not enough to ensure children's enjoyment of their rights. A strong understanding of children's participation rights and correct incorporation at the national level are indispensable.

The topic of this thesis is constitutional recognition of children's right to participate in democratic decision-making. One might think this topic deals with the most sophisticated and least practical domain of law. However, constitutional recognition of children's rights is the "floor rather than the ceiling of domestic legal protection for children's rights".³ Therefore, constitutional reform can be a starting point for removing barriers to children's enjoyment of participation rights and ensuring that legislative and policymaking processes to advance children's rights are not destined to remain top-down by allowing children's participation.⁴

1.1. Problem statement and research question

Noticing the growing interest in children's participation rights and the increasing trend in constitutionalising children's rights, on the one hand, and knowing the ongoing exclusion of children from democratic decision-making on the other, triggered the start of this research.

Today, children make their voices heard and taken seriously on issues like climate justice, peace, racial, gender, and socio-economic equalities, maybe more than ever with the advancement of technology. However, they still face several socio-cultural, political and legal barriers to accessing their participation rights. They are often excluded from opportunities to effectively influence the decisions that will affect their today and future,⁵ including voting rights. Teaching the principles of democratic participation without allowing children to participate in democratic decision-making is not enough to fully ensure children's right to participate.⁶

Thus, this research has been conducted around the following question: Is there a need for constitutional reform in Council of Europe (CoE) Member-States to ensure children's participation in public, national, and democratic decision-making more effectively? A working definition is provided to clarify what is meant by participation in public, national and democratic decision-making in Chapter 3.

In the search for an answer to the research question, the following sub-questions have been addressed:

- Why are human rights provisions designed for "everyone" not enough to protect children's rights, and why are child-specific provisions needed?

¹ Kilkelly, Liefwaard, *International Children's Rights: Reflections on a Complex, Dynamic, and Relatively Young Area of Law*, 2019, p.618.

² Freeman, *Law and Childhood Studies*, Oxford University Press, Oxford, 2012, p.4, 5.

³ Kilkelly, Lundy, Byrne, *Incorporating the UN Convention on the Rights of the Child into National Law*, 2021, (Kilkelly&al.), p.5.

⁴ Driskill, DeFalco, Lang, Habashi, *Constitutional Analysis: A Proclamation of Children's Right to Protection, Provision, and Participation*, 2010, (Habashi&al.), p.281.

⁵ UN General Assembly resolution, *Youth and Human Rights: Annual Report of the United Nations High Commissioner for Human Rights*, A/HRC/39/33, 28 June 2018, para.7.

⁶ Hart, *Children's Participation: From tokenism to citizenship*, 1992, p.5.

- What is the significance of children's participation rights?
- What is the nature and scope of children's participation rights?
- How have children's participation rights gained attention internationally and in Europe?
- Do children have a standalone right to participate in public, national, and democratic decision-making?
- How to conceptualise children's right to participate in public, national, and democratic decision-making as a standalone right?
- How are children's rights constitutionalised in Europe?
- Is there an obligation for States to recognise children's rights at a constitutional level under international children's rights law?
- To what extent are children's participation rights recognised at the constitutional level in CoE Member-States?
- What is the significance of constitutional recognition of children's right to participate in a generic manner?
- What is the significance of constitutional recognition of children's right to participate in public, national, and democratic decision-making as a standalone right?
- How should constitutional reform be carried out to ensure more effective participation of children in democratic decision-making?
- Will constitutional reform be sufficient to ensure more effective participation of children in democratic decision-making or what else is needed?

1.2. Scope of the research

When addressing children's participation in democratic decision-making, there is a tendency to discuss issues only regarding adolescents or youth, referring to children roughly from age of 10 to young adults up until the age of 30.⁷ In this research, participation rights in question are concerned for all children below the age of 18 as defined in the CRC Art.1.

This research has a legal scope, and discussions on the benefits and harms of child participation, children's citizenship, and well-functioning participatory democracies, have not been addressed as it requires an interdisciplinary approach. It is important to acknowledge that participating in democratic decision-making can become dangerous in a State with no safe and inclusive spaces and participation tools.⁸ However, if democratic participation is not safe in a State, it means that serious human rights violations are happening that affect not only children but also adults. Therefore, this discussion is also out of the scope of the current research, which has a specific children's rights focus.

The research starts by accepting that all children are entitled to the right to participate in all matters affecting them as recognised in the CRC, and State-Parties are the primary duty-bearers to implement this right. The main goal of this research is to conceptualise children's right to participate, especially in democratic decision-making and interrogate the use of constitutionalisation as an incorporation tool. Based on the international children's rights law framework, regional developments in Europe and the status of constitutional recognition of children's participation rights in the CoE member-States have been examined.

Although this research focuses on CoE Member-States, it is important to acknowledge that there is a growing trend towards the constitutionalisation of children's rights not only in Europe but globally. In 1899, for the first time in the world, children were recognized as a part of "national soul" in the Philippine

⁷ A/HRC/39/33, para.13.

⁸ United Nations, Office of the Secretary-General's Envoy on Youth, *If I Disappear: Global Report on Protecting Young People in Civic Space*, 2021, p.8.

Constitution.⁹ Despite neglecting children's right to participate, the 1996 South African Constitution is cited as one of the best examples of constitutional incorporation of children's rights, in line with international standards.¹⁰ Most recently, the Committee on the Rights of the Child¹¹ (CRC Committee) welcomed the inclusion of children's rights in the drafting of the new Chilean Constitution.¹² However, in order to provide a more in-depth analysis of constitutional provisions, the scope of the thesis is limited to Europe.

It is also important to recognise that this thesis focuses only on CoE Member-States that have a codified constitution and does not include a discussion of how children's right to participate in democratic decision-making can be better incorporated in States without a written constitution.

1.3. Methodology

Legal and academic desk research have been conducted in this thesis. A comparative methodology has been used to show the different forms of constitutional recognition of children's participation rights in CoE Member-States, as well as to reflect upon the similarities and differences of constitutional provisions with regional and international standards.

While mapping and comparing relevant constitutional provisions of CoE Member-States, Venice Commission's database was used as the primary source to access the English versions of each constitution.¹³ However, when it was noticed through the conducted academic research that the database does not contain the most recent version or the relevant section of the constitution,¹⁴ State's official websites have been used to access the official English translations. It must therefore be acknowledged that this research may be excluding some of the recent constitutional provisions or ongoing drafting processes that were not updated in the Venice Commission's database and were not reflected in the examined academic literature.

⁹ Habashi&al., p.268.

¹⁰ Kilkelly&Liefwaard, Legal implementation of the UNCRC: lessons to be learned from the constitutional experience of South Africa, 2019, p.536.

¹¹ The CRC Committee was established under CRC Art.43(2) to monitor the convention's implementation in State-Parties through reporting process and concluding observations. The Committee also provides more information on the interpretation of the convention through its GCs and examines individual complaints of children on specific cases through the application of the Optional Protocol on a Communications Procedure.

¹² Concluding observations on the combined sixth and seventh periodic reports of Chile, CRC/C/CHL/CO/6-7, 22 June 2022, para.3.

¹³ Venice Commission, Constitutions available in CODICES in English, online at: https://www.venice.coe.int/WebForms/pages/?p=01_CODICES_constitutions&lang=EN.

¹⁴ For instance, Austria has a separate constitutional act on the rights of the children.

2. Increasing attention to children's participation rights

2.1. International framework

2.1.1. Historical background

The categorical distinction between children and adults in society and law dates back to ancient times.¹⁵ Plato characterises children as becoming-adults who need education.¹⁶ In Roman law, one of the essential sources that formed the basis of the legal systems in Europe, children were defined with their incapability to speak using the term "infants" and were considered the father's property. As a result, the father who is in charge of the family had the right not to recognise the child born out of wedlock, abandon the child born within the marriage, give the child for adoption, marry the child, and even decide on the life or death of the child.¹⁷

The idea of developing an international children's rights framework started in the 20th century as a result of both local and international incidents. In Europe, at the beginning of the twentieth century, the notion of viewing children as the property of parents was curbed, with local child protection legislations that allowed State authorities to intervene in private family life to pursue the child's best interests.¹⁸ Children's best interest is often considered not what they want or like now but as an interest in their future, when they become free and autonomous members of society.¹⁹

The first attempt to recognise child-specific rights at international level was the Geneva Declaration of the Rights of the Child in 1924. The Geneva Declaration imposes responsibilities for adults about rearing and ensuring healthy development of children and addresses humanitarian needs such as food, health, protection and care. It was created by Eglantyne Jebb and criticised by another children's rights pioneer Janusz Korczak for neglecting children's right to be respected.²⁰ The second milestone was the adoption of the 1959 United Nations (UN) Declaration of the Rights of the Child. Although emphasising children's right to special protection and access to facilities, the UN Declaration presents a rights-based language for children for the first time.

International Covenants on Human Rights (ICHR) dated 1966 are essential documents that recognise human rights for everyone, with some special attention to children. For instance, children's right to privacy in criminal proceedings,²¹ right to receive special protection without any discrimination,²² right to identity and nationality,²³ right to protection from economic exploitation,²⁴ and right to healthy development²⁵ are among the first child-specific rights that impose internationally binding legal obligations to States. At this point, one may question whether children are not entitled to generic human rights designed for all. Is there a need for an additional set of child-specific rights for children? Is it impossible to address children's rights issues within the international human rights framework? Would creating an international children's rights framework cause rights inflation and complicate the system? The deeply embedded and ancient distinction between children and adults justifies all child-specific

¹⁵ Hopman, Looking at law through children's eyes, 2021, p.35.

¹⁶ Plato, The Republic, p.13.

¹⁷ Erdoğan, Tahiroğlu, Roman Law Lectures, 2016, s.159.

¹⁸ Doek, The Human Rights of Children: An Introduction, 2019, p.4.

¹⁹ Hopman, p.42-45.

²⁰ Doek, 2019, p.6.

²¹ ICCPR Art.14(1).

²² ICCPR Art.23, 24(1); ICESCR Art.10(3).

²³ ICCPR Art.24(2), 3.

²⁴ ICESCR Art.10(3).

²⁵ ICESCR Art.12(2)(a).

rights. Rights for all are designed for adults and noteworthy portion of adults' rights do not apply to children. Freedom of movement, right to marriage, right to work, and right to vote are examples where children are not always considered rights-holders provided for all.²⁶

It is possible to argue that children's rights have progressed, and are still progressing, from seeing children as a family property to a rights-based approach, and CRC plays a significant role. Although the drafting of the Convention reflects paternalistic and welfare approaches to children, especially at the beginning,²⁷ the most important added value of nearly global ratification of the CRC is the recognition of children as independent rights-holders instead of passive objects in need of protection.²⁸ Janusz Korczak's view that "children are not people of tomorrow but people of today" constitutes the CRC's foundation.²⁹ The Convention sets the goal not only to provide rights to children but to realise children's rights holistically for and with children. Therefore, perhaps the most unique feature of the CRC is Art.12 on children's right to participate, which opened a route to follow towards the realisation of this goal. According to Freeman, it is Art.12 that "recognises the child as a full human being with integrity and personality and the ability to participate freely in society".³⁰ Art.12 reflects one of the fundamental values of the Convention, aiming to restore the legal and social status of children as rights-holders who lack the complete autonomy of adults.³¹ This is also why Art.12 is presented as one of the most controversial provisions of the CRC³² and an excuse for the only UN Member-State that has not ratified the Convention.³³

Children are obliged to comply with the existing laws created by adults before they are born and over which they have no say. The international children's rights framework is no exception in this matter. No children were involved in drafting the CRC, and what rights children have were decided by adults.³⁴ This is why some authors describe the CRC as an illustrative list of children's interests, instead of a classical human rights treaty.³⁵ On the other hand, the Convention assures Art.12 for children to participate in determining their interests that are not necessarily listed as rights in the CRC or in decision-making processes in all matters affecting them. To give an example of the former, children's increasing advocacy for combating climate change and intergenerational justice led the CRC Committee to work on a General Comment (GC) on children's rights and environment with a special focus on climate change.³⁶

2.1.2. Conceptual framework of children's right to participate

CRC Art.12 reads as follow:

"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."

²⁶ Hopman, p.50.

²⁷ United Nations High Commissioner for Human Rights, Legislative History of the Convention on the Rights of the Child, 2007, paras.40-44.

²⁸ Verhellen, The Convention on the Rights of the Child: reflections from a historical, social policy and educational perspective, 2015, p.50.

²⁹ Doek, 2019, p.6.

³⁰ Freeman, Children's education; a test case for best interests and autonomy, 1996, p.37.

³¹ UN Committee on the Rights of the Child, General Comment No. 12 on the right of the child to be heard, CRC/C/CG/12, para.1.

³² Krappmann, The weight of the child's view, 2010, p.505.

³³ Lundy, 'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child, 2007, p.928.

³⁴ Hopman, p.50.

³⁵ Tobin, Justifying Children's Rights, 2013, p.416.

³⁶ UN Committee on the Rights of the Child, Open Letter to the Authors of the Sacchi et al v Argentina and four similar cases, online at: https://www.ohchr.org/sites/default/files/2021-12/Open_letter_on_climate_change.pdf.

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.”

As can be seen, the word “participation” is not used anywhere in the CRC Art.12. Therefore, what is meant when talking about children’s right to participate is in need of definition. Participation is associated with inclusion, democracy, open dialogue, freedom and equality.³⁷ It became the key term to summarise CRC Art.12.³⁸ Although some commentators argue that labelling CRC Art.12 as children’s right to participate constitutes an imperfect summary of the full extent of the obligation,³⁹ it is the preferred term for this research as it is the most empowering description compared to other options. Describing this right as “the right to be heard”, “the voice of the child” or “the right to be consulted” may undermine the obligation to provide due weight to children’s views.⁴⁰ The CRC Committee describes participation as an ongoing exercise between children and adults on developing policies and measures in all matters affecting children’s lives.⁴¹ Therefore, in this research, children’s right to participate represents children’s right to express their views and influence decision-making processes in line with the CRC Art.12(1).

The vast scope and confusing nature of the CRC Art.12 make it difficult to conceptualise and ensure the enforcement of children’s right to participate. To begin with the nature of the right, CRC Art.12 is not only a fundamental right in itself but also a general principle of the CRC. Four provisions of the Convention⁴² are qualified as general principles by the CRC Committee.⁴³ They are applicable for the interpretation and implementation of all rights regulated under the Convention. Hanson&Lundy criticize classification of some provisions of the CRC as general principles not only due to the thin conceptualization of the concept of “general principles” but also because of the risk to hinder conceptualization of each general principle as a standalone right.⁴⁴ They convey that although Art.12 is always mentioned in Concluding Observations and GCs of the CRC Committee, thanks to its general principle status, it is often covered by repetitive stock phrases.⁴⁵ They also argue that the general principle status is generally ascribed only to Art.12(1), neglecting Art.12(2). However, Krappman observes that consideration of children’s views in judicial and administrative proceedings covered in Art.12(2) is the most addressed issue especially in the States-Parties’ reports to the CRC Committee.⁴⁶ Examining the Committee’s Concluding Observations on CoE Member-States published since 2020 affirms that children’s participation in judicial and administrative proceedings is still the first and more widely discussed issue under the section dedicated to Art.12 as a general principle.⁴⁷

³⁷ Parkes, *Children and International Human Rights Law the Right of the Child to be Heard*, 2013, p.14.

³⁸ CRC/C/CG/12, para.3.

³⁹ Lundy, 2007, p.930.

⁴⁰ Lundy, 2007, p.930.

⁴¹ CRC/C/CG/12, para.13.

⁴² Art.2 non-discrimination, Art.3(1) the best interests of the child, Art.6 right to life, survival, and development, and Art.12 right to participate.

⁴³ The Committee on the Rights of the Child, *General Guidelines regarding the Form and Content of Initial Reports to be submitted by States-Parties under Article 44, paragraph 1 (a), of the Convention*, CRC/C/5, 30 October 1991, para 13.

⁴⁴ Hanson&Lundy, *Does Exactly What it Says on the Tin?: A Critical Analysis and Alternative Conceptualisation of the So-called “General Principles” of the Convention on the Rights of the Child*, 2017.

⁴⁵ *Ibid*, p.294.

⁴⁶ Klappmann, p.512.

⁴⁷ E.g. Concluding observations on the sixth periodic report of Hungary, CRC/C/HUN/CO/6, para.18; Concluding observations on the combined fifth and sixth periodic reports of Austria, CRC/C/AUT/CO/5-6, para.19; Concluding observations on the combined fifth and sixth periodic reports of Luxembourg, CRC/C/LUX/CO/5-6, para.14; Concluding observations on the combined fifth and sixth periodic reports of Switzerland, CRC/C/CHE/CO/5-6, para.20; Concluding observations on the combined fifth and sixth periodic reports of the Kingdom of the Netherlands, CRC/C/NLD/CO/5-6, para.17.

CRC Art.12, as a fundamental right in itself, provides both substantial and procedural guarantees. Substantially, it acknowledges children as actors in decision-making processes concerning them. It is also a procedural right allowing children to promote, protect and realise their other rights.⁴⁸

One of the core values of Art.12(1) is the requirement to create an accountability mechanism, contained in the second half of the provision, stating that the views of the child should be taken seriously and given due weight. Accordingly, simply allowing children to express their views and listening to them is insufficient.⁴⁹ This is also the feature that distinguishes children's right to participate from freedom of expression regulated under CRC Art.13 for all children. If Art.12(1) had not contained the second half of the provision, it would be providing children a right to express their views freely only on matters concerning them and only to those capable of forming their own views. It would simply be a narrower repetition of Art.13. The UN Secretariat drew attention to this issue during the drafting process, stating that the wording of the first half of Art.12(1) alone would contradict with International Covenant on Civil and Political Rights (ICCPR) Art.19(2) on freedom of expression.⁵⁰

Another question that needs to be answered to clarify the nature of Art.12 is whether children's right to participate falls under the cluster of civil and political rights (CPRs) or economic, social and cultural rights (ESCRs). This question might seem unnecessary as dividing human rights under different generations is an outdated approach. The CRC is a pioneer that expressly abolishes this distinction, providing CPRs and ESCRs at the same time.⁵¹ However, the Convention also acknowledges the difference between these two clusters of rights in Art.4, stating that the realisation of ESCRs are dependent on the maximum extent of States-Parties' available resources. The Convention does not explicitly determine which provision falls under which category. Discussing this question might also be considered unnecessary, as one can argue that the answer is quite straightforward. The CRC Committee declares that Art.12 impose a clear and immediate legal obligation to States-Parties,⁵² therefore it is clearly a CPR, the realisation of which does not depend on the limits of available resources. However, "*assuring*" all the requirements to realize CRC Art.12(1), including the establishment of an accountability mechanism, might require numerous positive actions from the States-Parties and may seem more like an ECSR in practice. Therefore, it is crucial to underline that Art.12 is a CPR, as States are very prone to postpone the realisation of children's right to participate on the pretext that its realisation requires a lot of resources and expertise. The CRC Committee also acknowledges that many political and economic barriers often impede the implementation of children's right to participate.⁵³

To continue with the scope of Art.12, children have the right to participate "*in all matters affecting the child*". Therefore, methods and mechanisms to listen to children and take their views into account in decision-making processes should be developed in all areas such as family, school, communities, courts, national and international instances.⁵⁴ Although Art.12(2) emphasises the importance of children's participation in judicial or administrative proceedings affecting them, it is clear that the scope of this right is not limited to such proceedings. So much so that the scope of Art.12(1) exceeds the issues explicitly covered by the CRC.⁵⁵

⁴⁸ Parkes, p.31; Lansdown, *Can You Hear Me? The Right of the Child to Participate in Decisions Affecting Them*, 2005, p.1.

⁴⁹ CRC/C/CG/12, para.28.

⁵⁰ Legislative History of the Convention on the Rights of the Child, p.442.

⁵¹ Assim, *Civil Rights and Freedoms of the Child*, 2019, p.390, 394; Nolan, *Children's Economic and Social Rights*, 2019, p.240.

⁵² CRC/C/CG/12, para.135.

⁵³ CRC/C/CG/12, para.4.

⁵⁴ Lansdown, 2005, p.3.

⁵⁵ CRC/C/CG/12, para.27.

Another challenge regarding the scope appears when trying to answer the question to whom and to what extent children's right to participate applies. Art.12 does not apply to every child on an equal basis but to children "*capable of forming his or her views*" and "*in accordance with the age and maturity of the child*". According to the CRC committee, the burden to assess the capacity of children lays with the State-Parties, not with the children to prove their capabilities.⁵⁶ The Committee underlines that Art.12 does not impose any age limit for participation and recommends States to avoid introducing age limits in law or practice. The requirement of due weight be given in accordance with not only the age but also the maturity makes it clear that age alone cannot limit children's access to their right to participate.⁵⁷ The Committee states that Art.12 requires recognition of this right for children who express themselves with non-verbal forms of communication.⁵⁸ This means that both younger and older children are entitled to the right to participate.⁵⁹ Therefore, the full realisation of children's right to participate depends on the development of effective means and methods in line with the vast scope of this right and children's evolving capacities.

Throughout time, different models of participation have been developed. The most known ones are Hart's ladder of child participation⁶⁰ and Lundy's model of participation.⁶¹ These models and more will be examined further in a more focused manner in Chapter 3. However, it is essential to highlight that there is no agreement on whether there is a need for one method that is adaptable to the vast scope of the CRC Art.12 and that transforms in line with children's evolving capacities or different means and methods should be developed for different occasions.⁶² Nevertheless, while not suggesting a model, the CRC Committee lists the indispensable elements of the correct implementation of Art.12, which are preparation, hearing, assessment of the child's capacities, feedback on the weight given to the views of the child and effective complaint mechanisms.⁶³

Although CRC Art.12 is defined as children's right to participate in this research, it is not the only provision in the Convention that refers to children's participation rights. The CRC Committee continuously repeats the indivisibility of rights regulated under the Convention and underlines the importance of the holistic approach to children's rights.⁶⁴ Therefore each right is equally important and works best when interacting. Traditionally, the rights regulated under the CRC have been grouped under three clusters called the 3-*Ps*: protection, provision, and participation.⁶⁵ Participation rights regulated under the CRC have been listed in a UNICEF report as Arts.5 (evolving capacities), 9(2) (right to participate in family separation proceedings), 12 (right to participate), 13 (freedom of expression), 14 (freedom of thought, conscience and religion), 15 (freedom of assembly and association), 16 (right to privacy), 17 (right to access to information), 21(a) (right to participate in adoption proceedings), 22(1) (right to participate in migration proceedings), 23(1) (right to participation of children with disabilities) and 29 (aims of education).⁶⁶ It is possible to argue that CRC Art.3(1) (best interest of the child) is also a participation right as the CRC Committee has hewed out the paternalistic approach to best interest assessment, which sees it as a trump card to disregard the views of children. The Committee clarified the inseparable nature of Art.3(1) with Art.12 by stating that Art.3(1) cannot be correctly applied if the

⁵⁶ Ibid, para.20.

⁵⁷ Ibid, para.29.

⁵⁸ Ibid, para.21.

⁵⁹ UN Committee on the Rights of the Child, General Comment No. 7 on implementing child rights in early childhood, CRC/C/CG/7/Rev.1, para.14.

⁶⁰ Hart, p.8.

⁶¹ Lundy, 2007.

⁶² Parkes, p.25.

⁶³ CRC/C/CG/12, paras.40-47.

⁶⁴ UN Committee on the Rights of the Child, General Guidelines for Periodic Reports, UN Doc CRC/C/58, para 9.

⁶⁵ Hammarberg, The UN Convention on the Rights of the Child – and How to Make it Work, 1990, p.100.

⁶⁶ UNICEF, The State of the World's Children, 2003, p.24.

requirements of Art.12 are not met.⁶⁷ The proximate nature of Arts.3 and 12 is not a late invention, the fact that Art.12(2) was first proposed as a subsection of Art.3 during the drafting process shows that it was evident from the very beginning.⁶⁸ Hence, all of the rights mentioned above will be referred as children's participation rights in this research.

In addition, as human rights-holders, children are also entitled to participation rights regulated under the ICCPR, although they are not specifically designed for children. Children's participation rights protected under the CRC as well as the ICCPR are freedom of expression (ICCPR Art.19), freedom of thought, conscience and religion (ICCPR Art.18), freedom of assembly and association (ICCPR Art.21), and right to access to information (ICCPR Art.19).

2.1.3. Increasing attention to children's participation rights at the international level

Children's participation rights have been highlighted in most of the CRC Committee's Day of General Discussions since the CRC Art.12 is a general principle.⁶⁹ The Committee also published GC No.12 in 2009 to support the implementation of Art.12, building upon the outcome of the Day of General Discussion on the 'Right of the Child to be Heard' in 2006. In addition, the entry into force of the Optional Protocol on a Communications Procedure (OPIC) has taken the international visibility of children's participation rights to another level. The Committee published an open letter to explain an international decision to children for the first time⁷⁰ and is still searching for better ways to fully realise children's participation rights in all domains. For instance, they conduct an online questionnaire to involve children in the drafting process of General Comment No.26 on Children's rights and the environment with a special focus on climate change.⁷¹

The increasing attention to children's participation rights at international level is not limited to the CRC Committee's initiatives. For instance, this year the Committee on Economic, Social and Cultural Rights also listened to children for the first time in the drafting process of their General Comment on Sustainable Development and the International Covenant on Economic, Social and Cultural Rights.⁷²

2.2. Regional framework for Europe

In Europe, two regional bodies have mandates on human and children's rights protection. The European Union (EU) is an economic and political union between 27 European States.⁷³ It supports decision-makers at the EU or national level to make debates, policies and legislation on fundamental rights better informed through its Agency for Fundamental Rights.⁷⁴ The CoE is a bigger regional

⁶⁷ CRC/C/CG/12, paras.70-74; UN Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/CG/14, para.43.

⁶⁸ Legislative History of the Convention on the Rights of the Child, p.338.

⁶⁹ UN Committee on the Rights of the Child, Day of General Discussion, The Child and the Media, UN Doc CRC/C/50, 7 October 1996; UN Committee on the Rights of the Child, Day of General Discussion, Children's Rights and the Environment, 23 September 2016; UN Committee on the Rights of the Child, Day of General Discussion, Protecting and Empowering Children as Human Rights Defenders, 2018.

⁷⁰ UN Committee on the Rights of the Child, Open Letter to the Authors of the *Sacchi et al v Argentina* and four similar cases, online at: https://www.ohchr.org/sites/default/files/2021-12/Open_letter_on_climate_change.pdf.

⁷¹ #ChildRightsEnvironment: Children and Young People's Online questionnaire on draft general comment No. 26, online at: <https://www.ohchr.org/en/events/events/2022/childrightsenvironment-children-and-young-peoples-online-questionnaire-draft>.

⁷² Children's Global Consultation on Sustainable Development and Economic, Social and Cultural Rights: Support Children's Engagement!, online at: <https://childrightsconnect.org/childrens-global-consultation-on-sustainable-development-and-economic-social-and-cultural-rights/>.

⁷³ European Commission, Directorate-General for Communication, The European Union: what it is and what it does, Publications Office, 2020, p.7.

⁷⁴ European Union Agency for Fundamental Rights, Overview, online at: https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/fra_en.

organisation with 46 Member-States and a clear mandate to promote democracy, protect human rights and the rule of law in Europe.⁷⁵ All members of the EU are also Member-States of the CoE, and every State in Europe is a State-Party to the CRC.

2.2.1. Legal framework

The primary regional instrument for human rights protection at the regional level in Europe is the European Convention of Human Rights (ECHR) which is older than the CRC and does not make any child-specific references to children's participation rights. Although ECHR was not drafted with children's rights in mind, it is also a living instrument.⁷⁶ The European Court of Human Rights⁷⁷ (ECtHR) plays an important role in integrating CRC principles into the interpretation of the ECHR.⁷⁸ The Court's case-law evolves to cover the children's rights as they are considered human rights-holders just as much as adults.⁷⁹ There are cases where ECtHR discusses children's participation rights under general provisions of the ECHR, such as Arts.6 (fair trial), 9 (freedom of thought), 10 (freedom of expression), and 11 (freedom of peaceful assembly).⁸⁰

Explicit recognition of children's right to participate exists in the EU Charter of Fundamental Rights in Art.24(1). Furthermore, with the entry into force of the Lisbon Treaty, protection of the rights of the child is stated for the first time among the general objectives of the EU, in Art.3(3) of the Treaty on European Union. However, the applicable scope of these treaties is limited to the activities of the EU and EU Member-States only when acting in relation to EU law.

2.2.2. Increasing attention to children's participation rights in the CoE

In 2006, the CoE adopted a children's rights programme called "Building a Europe for and with Children" in which promoting child participation was among the priority topics. This program aims to support the implementation of international children's rights standards in all CoE Member-States.⁸¹ Since then, important guidelines and recommendations have been published promoting children's right to participate in judicial⁸² and all matters affecting them.⁸³ The CoE continued to develop strategies regularly, and children's right to participate was always among the priority areas. 220 children were included in the design of the latest strategy for 2022-2027,⁸⁴ and children's participation rights are described as an area that is "still often overlooked and fragmented at the national level", especially regarding "children's democratic engagement".⁸⁵

2.2.3. Increasing attention to children's participation rights in the EU

Although it does not contain any direct reference to children's participation rights, the 2006 Communication "Towards an EU strategy on the rights of the child"⁸⁶ was an important milestone in the

⁷⁵ Handbook on European law relating to the rights of the child, European Union Agency for Fundamental Rights and Council of Europe, 2015, p.23.

⁷⁶ Fenton-Glynn, Children and the European Court of Human Rights, 2021, p.2.

⁷⁷ ECtHR is the judicial organ of CoE, established under ECHR Art.19. The role of the Court is to ensure the implementation of the ECHR.

⁷⁸ Handbook on European law relating to the rights of the child, p.26, 27.

⁷⁹ ECtHR, The European Convention on Human Rights – A Living Instrument, 2021, p.6, 7.

⁸⁰ Handbook on European law relating to the rights of the child, p.33, 34.

⁸¹ Ibid, p.25.

⁸² Council of Europe, Committee of Ministers, Guidelines on Child Friendly Justice, 17 November 2010.

⁸³ Council of Europe, Committee of Ministers, Recommendation Rec(2012)2 on the participation of children and young people under the age of 18, 28 March 2012.

⁸⁴ Council of Europe Strategy for the Rights of the Child (2022-2027), p.6.

⁸⁵ Ibid, p.39.

⁸⁶ Communication from the Commission, Towards an EU strategy on the rights of the child, COM/2006/0367.

EU at a policy level. It triggered the development of EU strategies on children's rights. Children's right to participate has always received attention in EU strategies starting from participation in civil, criminal and administrative proceedings.⁸⁷ Over 10.000 children were included in the design process of the last EU strategy for 2021-2024.⁸⁸ Children's participation rights, especially their right to participate in political and democratic life, are the first thematic area of the new strategy. One of the main goals is to involve children in decision-making processes at EU level through the Children's Participation Platform that connects the existing child participation mechanisms at local, national and EU level.⁸⁹ In addition, child-friendly versions of the strategy and guides for professionals working with children have been published.⁹⁰ Best practice examples on children's participation in democratic life at international, EU, national and local levels have been gathered in research conducted in 2021.⁹¹

2.3. Conclusion

Art.12 of the CRC is a milestone on the road to restoring the legal and social status of children as rights-holders. In this study, CRC Art.12(1) is referred to as children's right to participate as it is considered to be the most empowering description of this right. The vast scope and confusing nature of the Art.12 make it difficult to conceptualise and ensure the enforcement of children's right to participate. This chapter has, therefore, sought to conceptualise CRC Art.12(1) as a standalone fundamental right. Core values of children's right to participate are determined as the acknowledgement of children's agency in decision-making processes and the requirement to create an accountability mechanism to give children's views due weight. Regarding the nature of the right, it is underlined that Art.12 is a CPR to emphasize that the State's responsibility to realize children's right to participate is independent of the availability of resources. Regarding the scope of the right, it is emphasized that Art.12(1) covers all matters affecting children beyond those explicitly mentioned as children's rights in the CRC and that both younger and older children are entitled to the right to participate. Additionally, the importance of the interaction between children's right to participate and other participation rights regulated under the CRC and other international human rights treaties is mentioned.

This chapter also provides an overview of the increasing attention to children's participation rights globally and in Europe. The CRC Committee at the international level, the ECtHR, the CoE and the EU at the regional level play an important role in promoting children's right to participate. Although the initial focus was mostly on children's right to participate in judicial and administrative decision-making processes, it is observed that, over time, other issues that fall within the broad scope of the right, such as children's participation in democratic life, have begun to be addressed.

⁸⁷ Parkes, p.11.

⁸⁸ UNICEF, Report "Our Europe, Our Rights, Our Future", Children's and young people's contribution to the new EU Strategy on the Rights of the Child and the Child Guarantee, online at: <https://www.unicef.org/eu/reports/report-our-europe-our-rights-our-future>.

⁸⁹ Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, EU strategy on the rights of the child, COM(2021) 142 final, p.4.

⁹⁰ Listen-Act-Change, Handbook for professionals working for and with children on children's participation, October 2020.

⁹¹ European Commission, Study on Child Participation in EU political and demographic life, 2021.

3. Children's right to participate in public, national, and democratic decision-making

The full realisation of children's participation rights requires implementation beyond the boundaries of family, school and justice system.⁹² Hence, the research question of this thesis regards children's right to participate in public, national, and democratic decision-making, one of the least scrutinised aspects of children's participation. The increasing effort to better implement children's right to participate in political and democratic life is apparent in Europe. Therefore, it is timely to scrutinize the children's right to participate in public, national, and democratic decision-making.

3.1. Defining participation in public, national, and democratic decision-making

What is meant by "right to participate in public, national, and democratic decision-making" needs a working definition. First, "public" decision-making may refer to decisions made out of the private sphere (such as family) at community, national, regional and international levels. Second, for the purposes of this research, "national" is used more as an antonym for "international". It relates to any formal decision-making under the responsibilities of States-Parties to the CRC, covering instances at the local, national and federal levels. This may enclose any legally binding decision, such as judgement of a national court or legislation, as well as public policymaking that has practical impacts. "Democracy" is another complex term that lacks a concrete definition. In this research, Nolan's utmost legal and objective definition will be used as a reference to understand democracy. Accordingly, democracy means the rule of people where "laws and public policies are determined either directly by a vote of the electorate or indirectly by officials freely elected".⁹³ Hart argues that a State is democratic to the extent that its citizens are involved.⁹⁴ According to CoE, "participation of citizens is at the very heart of the idea of democracy".⁹⁵ Electoral participation is only one type of participation in democratic decision-making.⁹⁶ Other CPRs such as freedom of expression and assembly also constitute essential aspects of participatory democracy. However, some authors consider the right to vote as "the civil and political right that demonstrates freedom of expression like no other" when it comes to participation in democratic decision-making.⁹⁷ Others who argue that voting is not necessarily the most effective way to participate in governance, also agree that it is the global benchmark for measuring basic participation in democratic decision-making.⁹⁸ Therefore, Nolan's definition does not constitute an incompatibility with the participation focus of this research, as it principally deals with CoE Member-States, all of which claim that they are governed by democracy and the rule of law and present the right to vote as the main instrument of participation in democratic decision-making in their constitutions.

Thus, in this research, "public, national, democratic decision-making" refers to legislative and policy decisions made by the legislative and executive branches of a State where people participate in the process principally through elections.⁹⁹ For the reader's convenience, this concept will be named briefly to "democratic decision-making".

⁹² Parkes, 2013, p.181.

⁹³ Nolan, 2019, p.44.

⁹⁴ Hart, 1992, p.4.

⁹⁵ Council of Europe, CM/Rec(2018)4.

⁹⁶ Mihăilescu, On Participatory Democracy and Citizen's Involvement in Europe And in The World, 2018, p.14.

⁹⁷ Assim, 2019, p.402.

⁹⁸ Wall, Democratising democracy: the road from women's to children's suffrage, 2014, p.646.

⁹⁹ This definition can be rightly criticized for being too narrow, and one can argue that it is impossible to claim all of the CoE Member-States are democratically governed.

3.2. Conceptualising children's right to participate in democratic decision-making under the CRC

Children's right to participate in democratic decision-making is often discussed in academic literature under a broader question regarding children's citizenship. However, citizenship is a complex and contested notion concerning multiple children's rights issues rather than just participation in democratic decision-making.¹⁰⁰ This chapter aims not to address the debates on children's citizenship but to conceptualise children's right to participate in democratic decision-making as a standalone right.

Children's right to participate regulated under CRC Art.12(1) applies to all matters affecting the child covering democratic decision-making, which can affect children today and in the future. According to the CRC Committee, Art.12(1) imposes on States-Parties the obligation to consider children's views "in decision-making, policymaking and preparation of laws".¹⁰¹ However, interpreting Art.12(1) as a standalone right for children to participate in democratic decision-making requires further examination.

The requirement to create an accountability mechanism to take children's views seriously and give them due weight is one of the core values of Art.12(1). The CRC Committee underlines that all participation processes should be accountable, meaning that children must be provided with the opportunity to influence the decision and feedback on how their participation has influenced the outcome.¹⁰² In its Concluding Observations, the Committee underlines States-Parties' responsibilities to systematically feed democratic decision-making by children's participation¹⁰³ and guarantee that children's views are taken into account by local and national authorities on national policy issues.¹⁰⁴ However, it does not describe a specific accountability mechanism that would ensure children's right to participate in democratic decision-making.

3.2.1. Questions regarding the scope of children's right to participate in democratic decision-making

It is not enough to say that the scope of CRC Art.12(1) covers children's participation in democratic decision-making. There are at least two other questions to contemplate to understand the scope of children's right to participate in democratic decision-making as a standalone right.

3.2.1.1. Do all matters that are subject to democratic decision-making affect children?

The CRC Art.12(1) does not limit children's right to participate by providing a list of issues. However, it also does not provide the right to participate for children in all matters but only in matters affecting them. The CRC Committee provides some examples in GCNo.12 where children's views should be taken into account. Accordingly, the development, establishment and budgeting of childcare, health, and education systems; development of policies to eliminate the root causes of child labour; drafting of labour law; formulation of legislation and policy related to the prevention strategies for children's rights violations are among matters that affect children. In its recent GCs, the Committee reiterates that States-Parties shall "ensure the meaningful participation of children in the design and implementation of policies and programmes aimed at achieving all 17 Sustainable Development Goals as far as they concern

¹⁰⁰ Doek, Foreword, in: Children and citizenship, 2008.

¹⁰¹ CRC/C/CG/12, para.12.

¹⁰² Ibid, para.134/i.

¹⁰³ CRC/C/CHE/CO/5-6, para.20/b; CRC/C/NLD/CO/5-6, para.17/b.

¹⁰⁴ CRC/C/HUN/CO/6, para.18/e; CRC/C/CHE/CO/5-6, para.20/c.

children".¹⁰⁵ It urges States to establish appropriate mechanisms through which children may participate in all stages of public budgeting.¹⁰⁶ Education, climate change, and the rights of children with disabilities are among the topics that are highlighted most often regarding children's right to participate in democratic decision-making.¹⁰⁷

Defining the scope of this right by determining what issues may concern children is not only challenging but also very limiting, especially when adults determine it. For instance, one may argue that a decision regarding the national debt which has to be repaid by today's children in the future is a matter that affects children,¹⁰⁸ while others may argue that this is an overly complex issue for children to deal with. The ideal way to solve this problem might be to allow children to determine what matters they want to participate in. However, this is not a simple solution when it comes to the implementation and leads us to the next questions regarding the scope. Are all children capable of forming their views, also capable of selecting the matters affecting them without any support? Are all children who determine a matter to participate, old and mature enough to be taken seriously? These questions should be considered while designing mechanisms that would allow children's participation in democratic decision-making.

3.2.1.2. To whom and to what extent does children's right to participate in democratic decision-making apply?

The CRC Committee starts GCNo.12 by differentiating the right to participate for an individual child and groups of children. The Committee elaborates on evolving capacities of children starting from very early ages and States' responsibility not to presume incapacity and immaturity but conduct an individual assessment for each child who will engage in a participation process individually.¹⁰⁹ However, the Committee is contented to say that the assessment of age and maturity is more difficult when children participate collectively,¹¹⁰ and does not provide guidance on how to assess the capabilities and maturity of a group of children.

Children's participation in democratic decision-making refers to children's participation as a group in decisions that would affect a group of children. Historically, children are not the only group deprived of the right to participate in democratic decision-making. For instance, poor people, women, racial and ethnic minorities and young adults reclaimed their right to participate in democratic decision-making through suffrage after compelling social debates and upheavals.¹¹¹ There are also other groups of people who are still categorically deprived of their right to participate in democratic decision-making, like children, such as people with disabilities.

It can be possible to draw an analogy between States' responsibilities to ensure the right to participate in democratic decision making for children and people with disabilities. First, the Convention on the Rights of Persons with Disabilities (CRPD) contains a provision to ensure this right for people with disabilities like the CRC. However, it is also important to note that the provisions in the CRPD and the CRC are not the same. CRPD Art.29 is specific on "participation in political and public life" and points out access to the right to vote as the principal means. Second, both groups suffer from biological, social

¹⁰⁵ CRC/C/HUN/CO/6, para.6; CRC/C/AUT/CO/5-6, para.5; CRC/C/LUX/CO/5-6, para.5; CRC/C/CHE/CO/5-6, para.5; Concluding observations on the combined fifth and sixth periodic reports of Poland, CRC/C/POL/CO/5-6, para.6; CRC/C/NLD/CO/5-6, para.5.

¹⁰⁶ CRC/C/HUN/CO/6, para.10/c; CRC/C/NLD/CO/5-6, para.9/b.

¹⁰⁷ CRC/C/HUN/CO/6, para.18/e; CRC/C/AUT/CO/5-6, para.31/a; CRC/C/POL/CO/5-6, para.37/d.

¹⁰⁸ Krappmann, p.509.

¹⁰⁹ CRC/C/CG/12, paras.20, 30.

¹¹⁰ Ibid, para.10.

¹¹¹ Wall, p.646.

and legal obstacles to accessing their right to participate in democratic decision-making. Third, ensuring their right to participate in democratic decision-making requires additional positive actions of the State.

Starting with the last point, as underlined in Chapter 2, the right to participate is a CPR. Therefore, the amount of required positive actions and additional resources cannot justify States' delay or failure to realise the right to participate in democratic decision-making.

To move on to the second point, it may be interesting to analyse a recent ECtHR case against Bulgaria, where the Court assessed whether the indiscriminate removal of voting rights for people with disabilities under guardianship with a blanked restriction is proportionate for restricting the right to vote regulated under Art.3 of Protocol No.1 to the ECHR. Although this decision is specific to the right to vote, it is possible to draw relevant conclusions about how capability assessment should be done when dealing with participation rights for a group of people. Under the Bulgarian Constitution, three groups are categorically deprived of their right to participate in democratic decision-making through elections and referendums: children, people placed under guardianship, and people serving a prison sentence.¹¹² ECtHR starts its judgment by recalling the Court's subsidiary role and Contracting-States' wide margin of appreciation in implementing the right to vote.¹¹³ However, the margin of appreciation left to the States is not unlimited.¹¹⁴ It is narrower if the restriction on the right to vote applies to particularly vulnerable groups in society that have been historically subjected to discrimination and exclusion.¹¹⁵ The Court declares that "the presumption in a democratic State must be in favour of the inclusion of all",¹¹⁶ and any limitation imposed on the exercise of this right should have a legitimate aim and should be proportionate.¹¹⁷ The Court states that limiting the right to vote to ensure that "only citizens capable of assessing the consequences of their decisions and making conscious and judicious decisions should participate in public affairs" constitutes a legitimate aim.¹¹⁸ However, the Court finds limitations with an automatic, blanket restriction, without an individualised judicial review and solely because the applicant was under partial guardianship disproportionate to the legitimate aim.¹¹⁹ While coming to this judgment, the Court underlines the importance of assessing whether restrictions on the right to vote can be justified in modern times¹²⁰ and took the lack of evidence that the Bulgarian legislature has ever sought to assess the proportionality of the restriction into account.¹²¹

Two different conclusions can be drawn from this judgment relevant to children's right to participate in democratic decision-making. First, their historically embedded and almost unanimously maintained categorical exclusion requires highly scrutinised proportionality assessment when excluding children from participating in democratic decision-making. Second, the Court differentiates people under total and partial guardianship and finds the lack of individual assessment unproportionate for only the latter. Therefore, step-by-step inclusion of groups historically deprived of their right to participate in democratic decision-making is preferable to categorical exclusion.

In a search for a method to ensure step-by-step inclusion of children, defining the scope of children's right to participate by suggesting an age group that is sufficiently capable and mature risks perpetuating the tradition of the categorical exclusion of (this time some) children. Suggesting a system that allows

¹¹² Bulgaria, Art.42(1).

¹¹³ European Court of Human Rights, *Anatoliy Marinov v. Bulgaria*, Application no. 26081/17, 15 February 2022, paras.44, 45.

¹¹⁴ *Ibid*, para.49.

¹¹⁵ *Ibid*, para.44.

¹¹⁶ *Ibid*, para.48.

¹¹⁷ *Ibid*, para.46.

¹¹⁸ *Ibid*, para.50.

¹¹⁹ *Ibid*, para.57.

¹²⁰ *Ibid*, para.55.

¹²¹ *Ibid*, para.53.

children to participate in democratic decision-making after an individual assessment also bears serious risks and raises many questions. Is it even possible to create an assessment mechanism that does not discriminate children who have better access to education, working children, children living in disadvantaged situations or minority groups? If it is possible what would be the justification of granting participation rights to adults without any assessment while requiring an assessment for children?

Consequently, it might be more appropriate to talk about the potential scope of children's right to participate in democratic decision-making. The scope of Art.12(1) is not narrower when it comes to children's right to participate in democratic decision-making all children are entitled to the right to participate. Although the CRC Committee underlines that implementation of Art.12 should not contradict with the best interests, and protection rights especially for younger children,¹²² it also recommends States-Parties to promote meaningful and empowered participation of all children in all decisions related to them, including ones under 12-years-of-age.¹²³ States-Parties should exert all efforts to listen to or seek children's views on occasions where they participate as a group.¹²⁴ Hence, maybe all children can participate in democratic decision-making with the correct means and methods. Instead of excluding children completely and categorically from democratic decision-making processes, there is a need for mechanisms that ensure children's increasing agency in participation and hold States increasingly accountable to give their views due weight.

3.2.1.3. Different models and means of participation in democratic decision-making for children

This subsection aims not to develop a new model or suggest a specific means but to provide an overview of selected models and means to discuss their relevance to realise children's right to participate in democratic decision-making.

3.2.1.3.1. Models of participation

Many child participation models are developed to support children's participation as a group.

¹²² CRC/C/CG/7/Rev.1, para.14/a.

¹²³ CRC/C/NLD/CO/5-6, para.17/a; CRC/C/LUX/CO/5-6, 14/c.

¹²⁴ CRC/C/CG/12, para.10.

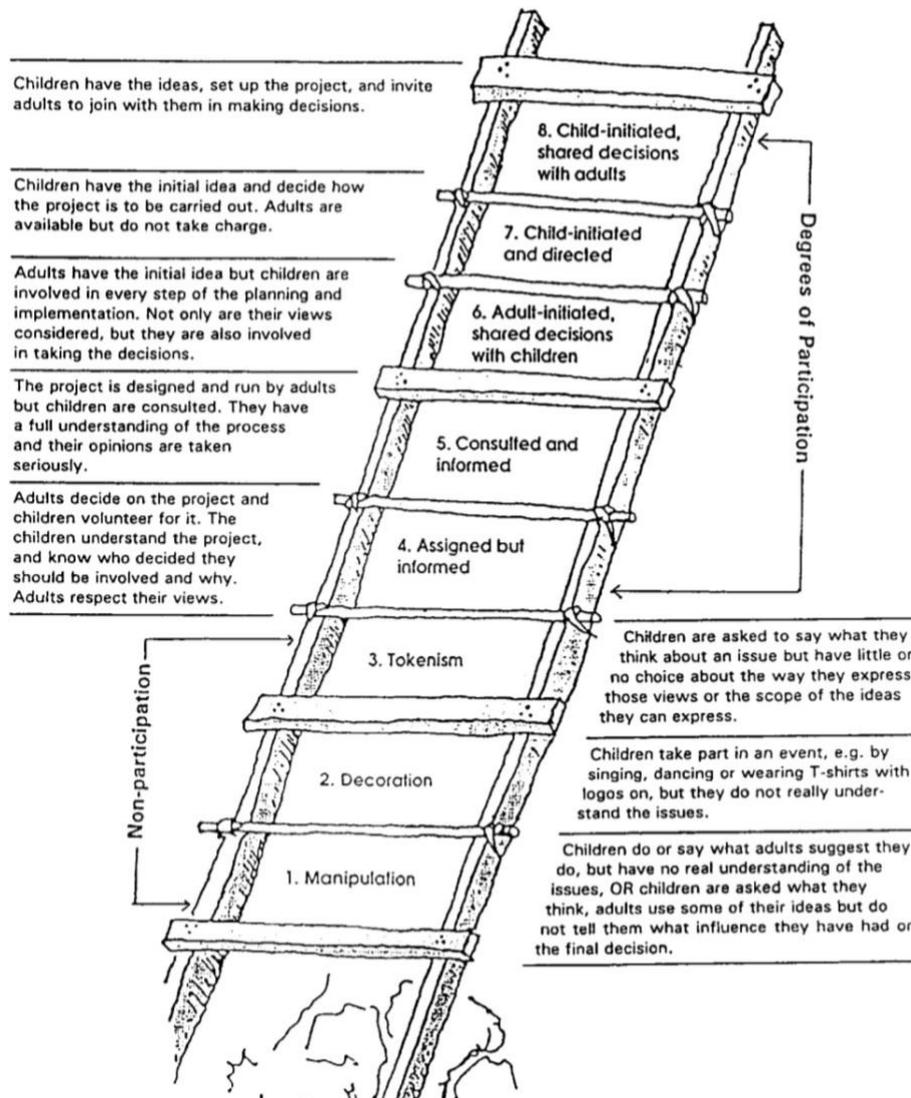


Figure 1: Hart's ladder of participation (from Shier, Pathways to participation: Openings, opportunities and obligations, 2001, p.109.)

The first child-specific model of child participation is Hart's ladder which is developed by using Arnstein's ladder of citizen participation as a blueprint. Hart's ladder consists of eight rungs, starting from non-participation and climbing up to genuine participation.¹²⁵ According to this model, manipulation, decoration, and tokenism are forms of non-participation. Manipulation and decoration refer to situations where adults use children to project a view that does not belong to children.¹²⁶ Tokenism refers to situations where children can voice their views but only in appearance.¹²⁷ Hart argues that "adult-initiated, shared decisions with children" and "child-initiated, shared decisions with adults" represent true participation, as they refer to situations where children's views are given due weight in the decision-making process. He also acknowledges that these forms are more appropriate for older children.¹²⁸ Hart's ladder has been criticised for assuming that child-initiated participation is the overall aim of all participation activities and for creating a misconception that suggests only older children can truly enjoy their right to participate.¹²⁹ Hart has clarified his position later, stating that any degree of participation is

¹²⁵ Hart, p.8.

¹²⁶ Ibid, p.9.

¹²⁷ Ibid, p.9.

¹²⁸ Ibid, p.12, 14.

¹²⁹ Parkes, p.18.

not necessarily inferior to another as long as it operates in line with the abilities and interests of children.¹³⁰

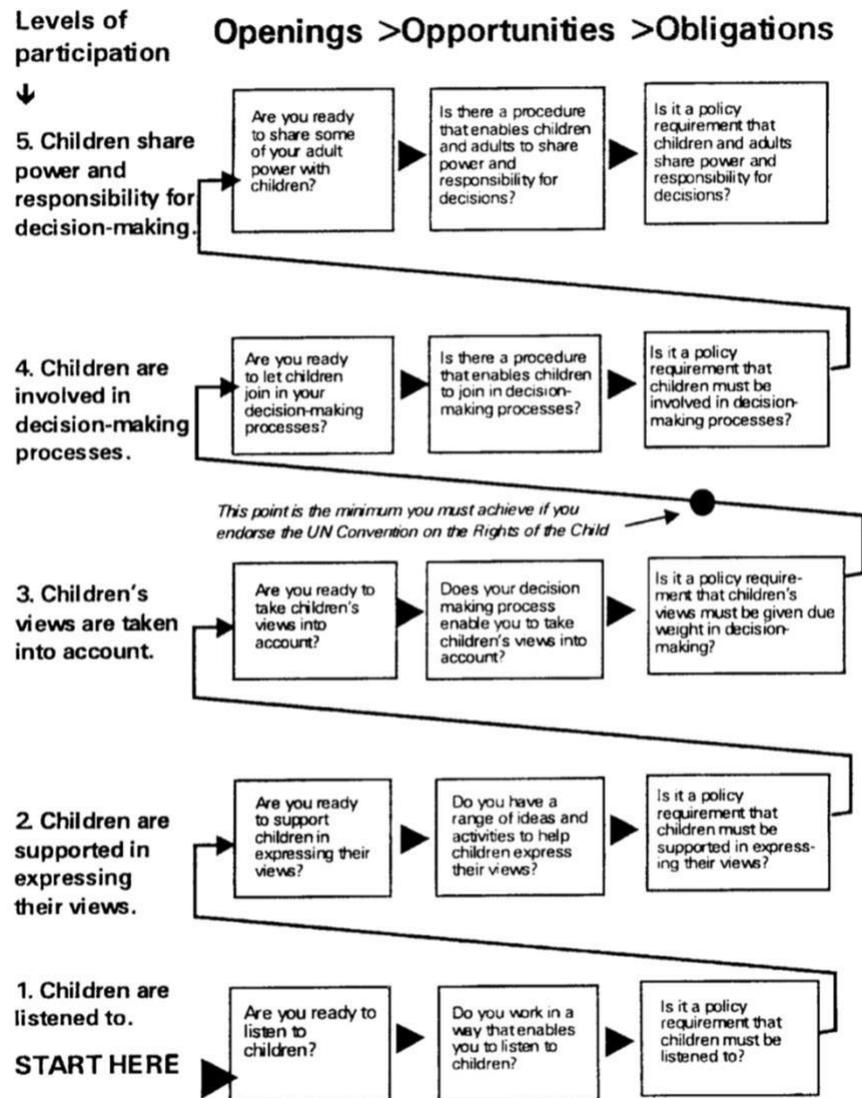


Figure 2: Shier's participation model (from Shier, 2001, p.111.)

Later, building on Hart's ladder, Shier developed an additional model to support practitioners in implementing children's right to participate. His model consists of five levels of participation: 1. listening to children, 2. supporting children in expressing their views, 3. taking children's views into account, 4. involving children in decision-making, and 5. sharing power and responsibility with children.¹³¹ The most important contributions of Shier's work are, first, that he refers directly to the CRC by stating that the obligation under Art.12 requires, at a minimum, attainment of level three, and second, that he emphasises the importance of regulating children's participation as an obligation for decision-makers.

¹³⁰ Ibid, p.19.

¹³¹ Shier, Pathways to participation: Openings, opportunities and obligations, 2001, p.110.

The same year Lansdown published a guideline to promote children's participation in democratic decision-making. He identified seven principles of democratic participation:¹³²

1. Children must understand what the project or the process is about, what it is for and their role within it
2. Power relations and decision-making structures must be transparent
3. Children should be involved from the earliest possible stage of any initiative
4. All children should be treated with equal respect regardless of their age, situation, ethnicity, abilities or other factors
5. Ground rules should be established with all the children at the beginning
6. Participation should be voluntary, and children should be allowed to leave at any stage
7. Children are entitled to respect for their views and experience

The added value of this model is that it highlights children's right to participate in democratic decision-making as a fundamental, standalone right and not as "a gift on the part of sympathetic adults" that can "be offered or withdrawn as a reward or punishment".¹³³ It also highlights that children's participation is not an obligation, and children have the right not to exercise this right which is an issue that the CRC Committee also attaches great importance to.¹³⁴

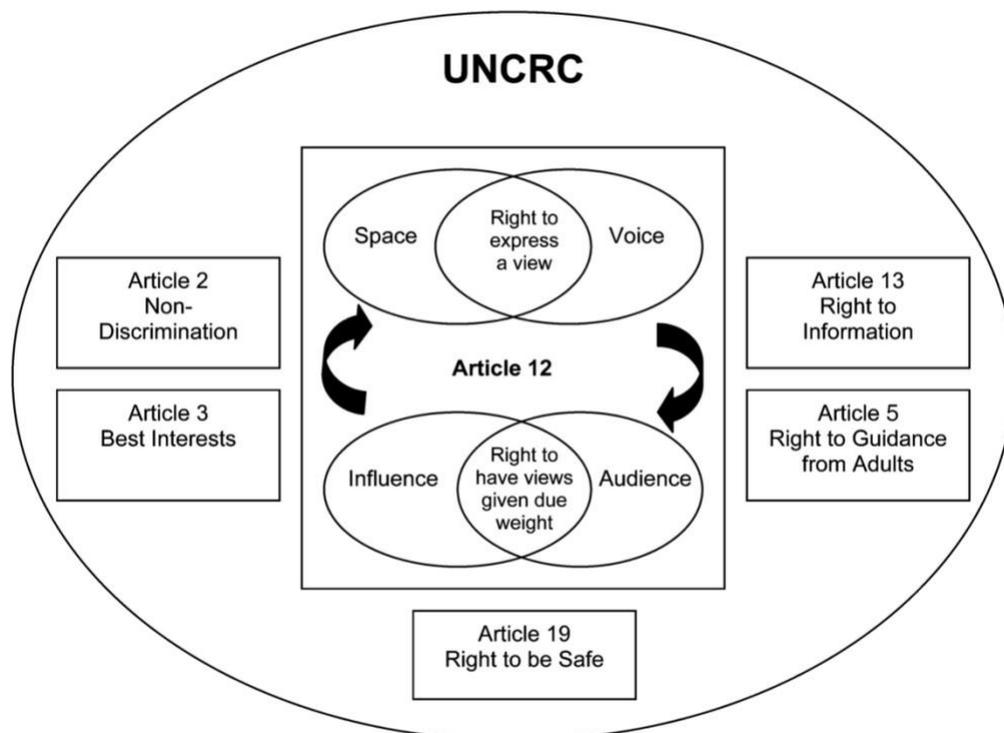


Figure 2: Lundy's model of participation (from Lundy, 2007, p.932.)

Lastly, it is important to mention Lundy's model of participation as it is the most promoted one by the CoE and the EU. However, ironically, this model provides the least practical guidance as its primary goal is to conceptualise CRC Art.12.¹³⁵ Lundy argues that implementation of Art.12 requires first, a "space" in which children are encouraged to express their views, second, support to children to "voice" their views freely, third, a skilful "audience" to listen to children, and forth, feedback on the "influence" of children's participation. In addition, she highlights that participation is an ongoing process, and implementation of other provisions of the CRC should not be neglected during this process.

¹³² Lansdown, Promoting children's participation in democratic decision-making, 2001, p.9, 10.

¹³³ Ibid, p.10.

¹³⁴ CRC/C/CG/12, para.16.

¹³⁵ Lundy, 2007, p.931.

All of these models can serve as a useful guide to enforce children's right to participate in democratic decision-making. They essentially suggest that children's need for support during participation should not hinder their access to the right to participate. Children's participation should be voluntary for children but not for the decision-makers. Therefore, ensuring children's participation should be regulated as a continuous, obligatory activity for law and policymakers. An accountability mechanism should be developed to ensure the influence of children's views in the decision-making process. The influence does not necessarily require a tangible impact on the outcome but a genuine consideration of children's views and a feedback on how children's views are given due weight.

3.2.1.3.2. Means of participation

3.2.1.3.2.1. Indirect participation in democratic decision-making

Indirect participation in democratic decision-making refers to participation through activism, civil society and lobby groups. Although these types of participation can be seen as complementary means for adults who can exercise their right to vote, they are indispensable for more inclusive and robust democracies. Indirect participation in democratic decision-making requires implementation of other CPRs such as CRC Arts.13 (freedom of expression), 14 (freedom of thought, conscience and religion), 15 (freedom of assembly and association), and 17 (right to access to information) in case of children.

Ensuring children's aforementioned participation rights does not necessarily amount to ensuring their right to participate in democratic decision-making for two reasons. First, children's exercise of their CPRs in an environment where there is no formal, direct, child-specific mechanism for participation in democratic decision-making makes children's participation less likely to create a real impact and make children dependent on voting adult "proxies" to forward their views.¹³⁶ Second, although CPRs are reaffirmed as children's rights in the CRC, children's enjoyment of these rights is limited according to CRC Art.5, through the rights and duties of parents and other persons responsible for the child, as well as children's evolving capacities.¹³⁷

Children's access to all participation rights is required to ensure the genuine realisation of children's right to participate in democratic decision-making. However, the interaction between CRC Art.12(1) and children's other participation rights should not be interpreted as if children can exercise their other participation rights, there is no need to take additional measures to implement Art.12(1) in democratic decision-making processes.

3.2.1.3.2.2. Children's councils and parliaments

Children's councils and parliaments are being promoted as one of the main means of children's participation in democratic decision-making. States-Parties proudly report such mechanisms as an implementation measure of CRC Art.12(1).¹³⁸ The CRC Committee welcomes such initiatives and consistently recommends States to promote the meaningful and empowered participation of all children by strengthening the children's councils and parliaments.¹³⁹ The Committee recommends States to institutionalise these mechanisms as a regular event and underlines States' responsibility to "ensure that it is provided with a meaningful mandate and adequate human, technical and financial resources, to facilitate children's effective engagement with national legislative processes on issues that affect

¹³⁶ Nolan, 2010, p.5, 17.

¹³⁷ Ibid, p.8.

¹³⁸ Krappmann, p.512.

¹³⁹ CRC/C/HUN/CO/6, para.18/d; CRC/C/AUT/CO/5-6, para.19/d.

them”.¹⁴⁰ However, the Committee also voices some valid concerns regarding these mechanisms as they can easily exclude many groups of children,¹⁴¹ such as children in disadvantaged situations and younger children. Additionally, there are views in academic literature suggesting that without any power to make binding decisions, means like children’s councils or parliaments cannot compensate for the lack of children’s political rights.¹⁴²

3.2.1.3.2.3. Children’s rights impact assessment

Given the proximate nature of CRC Art.3(1) and 12(1), it is relevant to discuss whether children’s rights impact assessment (CRIA) can be a means to ensure children’s participation in democratic decision-making.

The CRC Committee has presented CRIA for the first time in its General Comment No.5 as a tool for indirect incorporation of the CRC.¹⁴³ Accordingly, to ensure compliance with Art.3(1), States-Parties should conduct a CRIA first to predict “the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights” and then to monitor and evaluate “the actual impact of implementation”.¹⁴⁴ In one of its latest Concluding Observations, the Committee recommends to the Netherlands to conduct participatory CRIAs on tax and financial policies to ensure that national companies operating abroad do not harm children’s rights¹⁴⁵ and other laws and policies to ensure combatting discrimination against children in disadvantaged situations.¹⁴⁶ While conducting an impact assessment, inputs from several different parties such as civil society, experts, relevant Government departments, and children should be gathered.¹⁴⁷ Children’s participation should be presented as an indispensable component of the CRIA which is essentially a best interest assessment that cannot be correctly applied without children’s participation.¹⁴⁸ The Committee recommends States to promote the visible integration of children in law and policymaking through CRIA.¹⁴⁹

Therefore, a well-planned CRIA can be a tool to ensure children’s right to participate in democratic decision-making, which can adapt to evolving capacities of children from all age groups. For instance, views of very young children can be expressed through parents, legal representatives, civil society and experts, and children can gradually begin to represent themselves through online/offline inquiries, consultations and children’s parliaments. For the CRIA to be an effective means of ensuring the realisation of children’s right to participate in democratic decision-making, its application should be an ongoing process that covers all the matters affecting children, allowing relevant parties, including children, to select the issues. There should also be an accountability mechanism to ensure that children’s views have a significant impact on the outcome of the CRIA and that the CRIA has a significant impact on the law and policymaking.

¹⁴⁰ CRC/C/LUX/CO/5-6, para.14/d.

¹⁴¹ CRC/C/CG/12, para.127.

¹⁴² Nylund, Children’s right to participate in decision-making in Norway: Paternalism and autonomy, 2020, p.209.

¹⁴³ Kilkelly, The UN Convention on the rights of the child: incremental and transformative approaches to legal implementation, 2019, p.333.

¹⁴⁴ UN Committee on the Rights of the Child, General Comment No. 5 on general measures of implementation of the Convention on the Rights of the Child, CRC/C/CG/5, para.45; CRC/C/CG/14, para.99.

¹⁴⁵ CRC/C/NLD/CO/5-6, 9/c.

¹⁴⁶ CRC/C/NLD/CO/5-6, 15/d.

¹⁴⁷ CRC/C/CG/14, para.99.

¹⁴⁸ Ibid, para.53.

¹⁴⁹ CRC/C/CG/5, para.47.

3.3. Can CRC Article 12(1) be read as a right to vote for children?

O'Donnell questions whether CRC Art.12(2) can replace the right to legal personality and right to remedy, which are rights recognised in ICHR but not reaffirmed in the CRC.¹⁵⁰ A similar inquiry can be made on CRC Art.12(1), regarding children's right to participate in democratic decision making. The right to vote, recognized under ICCPR Art.25 and Art.3 of Protocol No.1 to the ECHR, constitutes the mainstream accountability mechanism in democratic decision-making.¹⁵¹ However, it is not reaffirmed in the CRC as a children's right.¹⁵² In parallel, children are categorically excluded from right to vote, most of the time due to their presumed incompetence, while (most of the) adults are included regardless of their level of competencies and political maturity.¹⁵³ This constitutes a clear example where human rights accorded to "everyone" in international human rights treaties are not enough to ensure children's access to these rights.

Although very liberal approaches claiming equal rights for children with adults, including the right to vote, existed since the 1970s¹⁵⁴ and children, especially adolescents, working children and children in street situation, have long demanded the right to vote;¹⁵⁵ the adoption of a child-specific right regarding participation in democratic decision-making through elections has not even been discussed in the drafting of the CRC. Not only the literal and historical interpretations but also the current position of the CRC Committee prevents reading Art.12(1) as a right to vote for children. Let alone actively and consistently encouraging States-Parties to lower the voting age; the Committee remains relatively silent even when States-Parties increase the age of suffrage.¹⁵⁶ The Concluding Observation on the lowering the voting age to 16 in Austria also shows that the Committee does perceive children's suffrage as the ultimate means to realise children's right to participate in democratic decision-making. The Committee recommended Austria to monitor the impact of lowering the voting age on the effective implementation of children's right to participate and continue to take implementation measures in line with GCNo.12.¹⁵⁷

The right to vote can be a means of children's participation in democratic decision-making and it is crucial to scrutinize whether it is proportionate to exclude especially older children from this right. However, the CRC Committee's standing is understandable as it is not clear whether the right to vote can encompass the full scope of children's right to participate in democratic decision-making. An idea that has been proposed to allow all children's representation in democratic decision-making through elections is to give parents or guardians the right to vote for children and duty to conduct the individual assessment on when the child is ready to vote alone.¹⁵⁸ For instance, amending the constitution to adopt this system that would give a vote to children through their parents have been discussed in German Parliament in 2005 and 2008.¹⁵⁹ This can be seen as a method that creates an accountability mechanism for children's representation, that gradually allows children's participation in democratic

¹⁵⁰ O'Donnell, *The Right of Children to be Heard: Children's Right to Have Their Views Taken Into Account and to Participate in Legal and Administrative Proceedings*, 2009.

¹⁵¹ Nolan, *The child as 'democratic citizen'—challenging the 'participation gap'*, 2010, p.4.

¹⁵² Unlike International Convention on the Elimination of All Forms of Racial Discrimination (CEDAW), Art.5(c); Convention on Elimination of Discrimination Against Women, Art.7; Convention on the Rights of Persons with Disabilities, Art.29.

¹⁵³ Assim, p.403.

¹⁵⁴ Hanson, *Schools of Thought in Children's Rights*, Children's Rights Unit, 2008, p.14.

¹⁵⁵ Maksudyan, 'Revolution is the Equality of Children and Adults': Yaşar Kemal Interviews Street Children, 2021, p.4; UN Committee on the Rights of the Child, General Comment No.21 on children in street situations, CRC/C/CG/21, para 1.

¹⁵⁶ For instance, Iran as referred in Nolan, 2010, p.15.

¹⁵⁷ CRC/C/AUT/CO/3-4, para.28.

¹⁵⁸ Erec, *Lowering the Voting Age from Children's Rights Perspective*, 2018, p.15, 16.

¹⁵⁹ Deutsche Welle, *Germany Ponders Giving Children the Right to Vote*, 09.07.2008, online at: <https://www.dw.com/en/germany-ponders-giving-children-the-right-to-vote/a-3470938>.

decision-making, in line with CRC Art.5. However, it carries the risk of not acknowledging children's agency, one of the core values of the CRC Art.12(1), especially against their parents.

On the other hand, the CRC Committee fails to suggest an alternative accountability mechanism to right to vote in order to realise children's right to participate in democratic decision-making. Nolan associated this failure with the lack of an individual complaint mechanism where the Committee could develop concrete standards in the context of real-life scenarios.¹⁶⁰ With the entry into force of the OPIC, it seems that the Committee will have to make a more precise comment on whether Art.12(1) grants children the right to vote or how to create alternative accountability mechanisms for children shortly. The Committee already received a complaint from a 16-year-old child claiming that depriving him of the right to vote on the grounds of age constitutes a violation of CRC Arts.2(1), 3(1), 4 and 12(1).¹⁶¹ Although the Committee found this application inadmissible due to the non-exhaustion of domestic remedies and did not deal with the substantial issues, similar complaints will likely continue to be made in the future.

3.4. Is children's right to participate in democratic decision-making a constitutional law matter?

Constitutions have two crucial roles in a national legal order. First, they set down the rules for the legitimate and effective exercise of State power by protecting democratic legal order and second, they ensure the protection of human rights at a higher level in the hierarchy of norms.¹⁶² The right to participate in democratic decision-making falls under both mandates of the constitutional law. The binding nature of the law and policies of a State can be legitimised over voting adults because their right to participate in democratic decision-making through elections, and their other CPRs are recognised in the constitutions. This being the case, it is very problematic to defend the legitimacy of any law or policy on children without recognising their right to participate in democratic decision-making at a constitutional level.¹⁶³

According to the CRC Committee, implementation of Art.12 requires dismantling the legal, political, economic, social and cultural barriers that currently impede children's access to participation in all matters affecting them.¹⁶⁴ The CoE stresses the State's responsibility to provide the greatest possible legal protection for children's right to participate, including in constitutions.¹⁶⁵ If the core of children's right to participate in democratic decision-making is to repair children's historically embedded exclusion, ensure their agency in democratic decision-making processes and create an accountability mechanism for States to give children's views due weight; this right must be recognised at the constitutional level just like adult's right to vote.

The following Chapters will elaborate further on the role of constitutions in implementing the CRC at the national level and the current stage of constitutional recognition of children's participation rights in CoE Member-States.

¹⁶⁰ Nolan, 2010, p.12.

¹⁶¹ UN Committee on the Rights of the Child, Case D.C. v. Germany (case nr. 60/2018), CRC/C/83/D/60/2018, 10 March 2020.

¹⁶² Venice Commission, Report on Constitutional Amendment adopted by the Venice Commission at its 81st Plenary Session, CDL-AD(2010)001-e, 2009, para.5, 76, 78.

¹⁶³ For an elaborated discussion: Nolan, 2019, Chapter 2.

¹⁶⁴ CRC/C/CG/12, para.135.

¹⁶⁵ Council of Europe, Recommendation Rec(2012)2, p.2.

3.5. Conclusion

This Chapter attempts to conceptualise the right to participate in democratic decision-making as a standalone right for children. First, “public, national, and democratic decision-making” was defined as legislative and policy decisions made by the legislative and executive branches of a State where people participate in the process principally through elections.

Concerning the scope of children's right to participate in democratic decision-making, a recent ECtHR judgment on the voting rights of people with disabilities was analysed by analogy, and it was concluded that categorically identifying issues that may concern children or determining an age group capable and mature enough to exercise this right is not conducive to ensure the full implementation of CRC Art.12/1. Therefore, it might be more appropriate to talk about the potential scope of the right and work on developing methods and means that adopts children's increasing agency and holds States increasingly accountable to give their views due weight. Hence, an overview of selected models and means has been provided. Since indirect means of participation and children's councils and parliaments, can easily fall short of ensuring the full implementation of the right, it has been argued that a well-structured CRIA system could provide an alternative route.

It is also widely debated whether the right to vote can be a tool for children's participation in democratic decision-making. However, while it is crucial to examine the appropriateness of depriving especially older children of suffrage, the right to vote does not appear to be the best way to accommodate the broad scope of children's right to participate in democratic decision-making. Although it seems to share the same view, the CRC Committee has so far failed to suggest an alternative accountability mechanism for voting rights. Potentially the Committee will have to make a more precise comment on whether Art.12(1) grants children the right to vote or how to create an alternative accountability mechanism for children shortly, thanks to the entry into force of the OPIC.

Finally, the relevance of constitutional law is highlighted, and it is argued that children's right to participate in democratic decision-making should be recognised in constitutions, just like adults' right to vote.

4. Constitutional recognition of children's rights

4.1. Constitutionalisation as an implementation method for children's rights at the national level

CRC Art.4 sets the general obligation for States to implement children's rights protected under the Convention at the national level. Under Art.4, States shall take all appropriate measures, but it is the State's discretion to choose the means and methods of the implementation. According to the CRC Committee, a children's rights perspective must be developed through government, parliament and the judiciary to implement the Convention effectively.¹⁶⁶ Although the CRC does not contain an explicit provision that requires States to elevate children's rights to constitutional status,¹⁶⁷ the goal of effective implementation of the Convention needs national constitutions to be appropriate to ensure children's rights.¹⁶⁸ Therefore, the CRC Committee welcomes the constitutionalisation of children's rights in GC No.5.¹⁶⁹ It is possible to argue that children's rights should be constitutionalised for the full implementation at national level when the obligation in CRC Art.4 comes together with the CRC Committee's standing.¹⁷⁰

There are different methods to incorporate international human rights treaties in domestic law. The relationship between international and national law and the place of international conventions in the hierarchy of norms are among the important domestic law factors influencing the implementation at a national level.¹⁷¹ There are two main approaches to the relationship between international and national law: monism and dualism. In monist States, international treaties become directly part of the domestic legal order after ratification, and their justiciability depends on the nature and content of the provisions, but in dualist States, international treaties should be incorporated first to invoke any rights or duties at the national level. According to the Venice Commission, while monism and dualism still exist in theory, most States today follow a mixed approach, and this classification does not provide an adequate answer to determine the extent to which national law is in line with international standards.¹⁷² The Venice Commission notes that most CoE Member-States follow the direct implementation method and grant legal status to CRC most often in-between statute law and the constitution, implying that their constitutional provisions prevail over the CRC.¹⁷³ The higher position of constitutional provisions in the hierarchy of norms shields human rights from being subjected to easy changes with change of governments or suspensions in emergencies.¹⁷⁴ The Venice Commission also stresses the higher place of human rights provisions in the hierarchy of norms as an essential factor for implementing international human rights treaties in domestic law, especially to ensure their enforceability before the national courts.¹⁷⁵ This is why constitutional recognition of children's rights is important, even though it is redundant with directly applicable CRC provisions or existing statutory laws.

Additionally, the inclusive language of constitutions that provides rights for "everyone" or to "citizens" does not necessarily ensure the protection of children's rights but runs the risk of excluding children.¹⁷⁶

¹⁶⁶ CRC/C/CG/5, para.12.

¹⁶⁷ For instance, unlike CEDAW Art.2(a).

¹⁶⁸ Tobin, *Increasingly Seen and Heard: The Constitutional Recognition of Children's Rights*, 2005, p.89.

¹⁶⁹ CRC/C/CG/5, para.21.

¹⁷⁰ Tobin, 2005, p.90, 91.

¹⁷¹ Venice Commission, *Report on the Protection of Children's Rights: International Standards and Domestic Institutions*, adopted by the Venice Commission at its 98th Plenary Session, CDL-AD(2014)005-e, 2014, p.10.

¹⁷² Venice Commission, *European Commission for Democracy through Law, Report on the implementation of international human rights treaties in domestic law and the role of the courts*, Council of Europe, 2014, para.24.

¹⁷³ Venice Commission, CDL-AD(2014)005-e, p.11.

¹⁷⁴ UNICEF, *Handbook on legislative reform: realising children's rights*, 2008, p.166-168.

¹⁷⁵ Venice Commission, 2014, para.15.

¹⁷⁶ Habashi&al., p.278.

According to the CRC Committee, constitutional guarantees for “everyone” would be adequate to ensure children’s rights only if they are truly realised for children in practice and can be directed before the courts.¹⁷⁷

Habashi&al. state that constitutional recognition of children’s rights reflects a Nation-State’s stance regarding recognising children as active rights-holders and identifying the States’ role in implementing children’s rights.¹⁷⁸ Tobin sees constitutions “as important indicators of a State’s legal and political culture”.¹⁷⁹ According to O’Mahony, a national constitution that does not reflect the holistic children’s rights approach risks setting a tone for a legal system that contradicts the CRC and hinders the effective implementation of the Convention.¹⁸⁰

Constitutionalising children’s rights in a child-specific manner does not necessarily ensure the full realisation of children’s rights, and additional legal and non-legal measures may be required.¹⁸¹ It is difficult to assess the actual impact of constitutionalising children’s rights, and more research is needed on this matter.¹⁸² However, it is possible to argue that although constitutionalisation cannot be the only component of the full realisation of children’s rights, it is a critical component that should not be neglected. Alston&Darrow state that with the increasing constitutionalisation of human rights, it is becoming more and more difficult for States to demonstrate that all the appropriate measures have been taken without any constitutional recognition.¹⁸³ The same argument can be used for children’s rights due to the increasing trend of constitutionalisation of children’s rights that will be discussed in the following sub-section.

Constitutional recognition is crucial in the case of children’s rights¹⁸⁴ because often, children are systematically excluded from the democratic decision-making processes and left reliant on adults to advocate for their rights in the political arena.¹⁸⁵ Constitutionalisation of children’s rights is a sign of respect for children as rights-holders at the highest level.¹⁸⁶ It can constitute a solid foundation to provide legitimacy for defending children’s rights, and it can trigger a promotion of public awareness and a change in legal and policy frameworks.¹⁸⁷

4.2. Increasing constitutional recognition of children’s rights in CoE Member-States

The reasons behind the late visibility of children in the international human rights framework and national constitutions are similar. The lack of constitutional recognition of children’s rights until the mid-1800s roots back to the understanding of children as family property rather than reliable members of the community.¹⁸⁸ However, this understanding is changing over time. Today the Venice Commission recommends CoE Member-States to provide constitutional guarantees for children by recognising them as rights-holders and incorporating CRC general principles in their constitutions.¹⁸⁹

¹⁷⁷ CRC/C/CG/5, para.21.

¹⁷⁸ Habashi&al., p.270.

¹⁷⁹ Tobin, 2005, p.88.

¹⁸⁰ O’Mahony, *Constitutional Protection of Children’s Rights: Visibility, Agency and Enforceability*, Human rights law review, 2019, p.405.

¹⁸¹ CRC/C/CG/5, para.21.

¹⁸² Tobin, 2005, p.100.

¹⁸³ Alston, *Promoting Human Rights Through Bill of Rights: A Comparative Perspective*, 1999, p.469.

¹⁸⁴ Nolan, *Children’s socio-economic rights, democracy and the courts*, 2011, chapter 3.

¹⁸⁵ O’Mahony, 2019, p.410, 411.

¹⁸⁶ Kil Kelly, *The UN Convention on the rights of the child: incremental and transformative approaches to legal implementation*, 2019, p.5.

¹⁸⁷ UNICEF, 2008, p.160.

¹⁸⁸ Habashi&al., p.267, 268.

¹⁸⁹ Venice Commission, CDL-AD(2014)005-e, 2014, para.145.

To provide an overview of the increasing constitutionalisation of children's rights in CoE Member-States, this section will rely on the findings of four previous comparative studies. The first study belongs to Habashi&al. who conducted a linguistic content analysis on national constitutions of the 179 States listed in the United Nation's Human Developmental Index (HDI) of 2008.¹⁹⁰ They categorised constitutions under 3-Ps and reached out to three findings that are relevant to this research. First, countries worldwide are inclined to characterise children as innocent, immature, voiceless and weaker members of the society and constitutionalise children's provision and protection rights and turn a blind eye toward children's participation rights.¹⁹¹ According to authors, recognising only limited images of the child and not emphasising their rights holistically hamper children's growth and leaves the Nation-State's future unpredictable.¹⁹² Second, the constitutionalisation of children's provision and protection rights are higher in countries listed on Level One of HDI, but there is no such difference for participation rights.¹⁹³ This means that constitutional recognition of children's right to participate is more relevant to society's understanding of children than the State's resources. Third, careful selection of wording is essential to ensure the implementation of constitutional protection for the entire population of children.¹⁹⁴

Later on, Tobin conducted global comparative research to examine the transformative effect of the international children's rights framework on the status of children in national constitutions.¹⁹⁵ He grouped constitutions in three historical phases: "invisible child" constitutions adopted pre-Second World War; "special protection" constitutions adopted post-Second World War and reflecting the welfare approach of the international bill of rights that sees children as passive objects in need of care; and finally, "child rights" constitutions adopted after the ratification of CRC reflecting the rights-based approach to children's rights.¹⁹⁶ Tobin argues that constitutional recognition of children's rights "at a minimum legitimates political discourse on those rights, allowing children both to be seen and increasingly heard".¹⁹⁷ It is possible to draw four critical conclusions from his work. First, "invisible child" constitutions do not necessarily mean poor implementation of children's rights but States who rely solely on general human rights provisions in their constitutions as the foundation falls significantly behind other States who constitutionalised at least some child-specific rights.¹⁹⁸ Second, "special protection" constitutions do not necessarily contradict the CRC but fall short,¹⁹⁹ as they focus more on the State, family and society as the duty-bearers and not on children as rights-holders.²⁰⁰ Third, it is possible to see the emphasis is still on children's protection and provision rights in national constitutions all around the world, but there is also a shift from a welfare approach to a rights-based approach.²⁰¹ Finally, the justiciability of children's constitutional rights is essential to avoid the risk of symbolic recognition and "child rights" constitutions are more likely to be enforceable.²⁰²

O'Mahony developed a typology to assess whether a constitution aligns with the child rights approach envisaged by CRC. He places the constitutions of CoE Member-States on the visibility, agency, and enforceability spectrums. The visibility spectrum represents the scope of the constitutional protections offered to children and varies from constitutions that children are invisible to constitutions with detailed children's rights provisions. O'Mahony argues that children started to become visible in constitutions with the constitutionalisation of children's right to education; however, in most cases, the

¹⁹⁰ Habashi&al., p.271

¹⁹¹ *Ibid*, p.274, 275, 280, 282.

¹⁹² *Ibid*, p.283.

¹⁹³ *Ibid*, p.278.

¹⁹⁴ *Ibid*, p.278, 279.

¹⁹⁵ Tobin, 2005, p.86

¹⁹⁶ *Ibid*, p.88

¹⁹⁷ *Ibid*, p.126.

¹⁹⁸ *Ibid*, p.105.

¹⁹⁹ *Ibid*, p.109.

²⁰⁰ *Ibid*, p.106.

²⁰¹ *Ibid*, p.116.

²⁰² *Ibid*, p.118, 119.

right to education is not constitutionalised as a child-specific right but as a right to all. He also acknowledges that even in the constitutions where children are specifically mentioned in the provision devoted to the right to education, often parents' and States' rights and duties are the focal point instead of children's rights.²⁰³ The agency spectrum assesses the manner of constitutional protection and varies from a paternalistic approach to a child-centred approach. He argues that child-centred constitutions are the ones that recognise children as autonomous rights-holders. However, he also underlines that constitutional recognition of children's agency does not mean better protection of children's rights in practice without a culture change, especially among the judiciary.²⁰⁴ This point also highlights the importance of the enforceability spectrum, which assesses whether constitutional recognition of children's rights goes beyond being just a symbol and also provides remedial revenues. Reluctant to draw definitive conclusions, the enforceability spectrum indicates constitutions containing unenforceable provisions or providing administrative, weak or strong judicial remedies. O'Mahony concluded that although almost every constitution in Europe has at least some reference to children's rights, the quality of such provisions varies widely.²⁰⁵ He also could not situate any of the CoE Member-State at the highest point of all three spectrums.²⁰⁶

Last but not least, Sloth-Nielsen&Oliel assessed how CoE Member-States had incorporated the general principles of the CRC into their constitutions, giving more due weight to the effect and applicability of children's rights before domestic courts.²⁰⁷ They come to a similar conclusion with the previous researches and categorise CoE Member-State's constitutions under four different types: protection approach, rights-based approach, mixed approach and constitutions that mandate further legislative action to effectuate rights.²⁰⁸ They also clearly put forward that direct application or declaration of the supremacy of the CRC does not necessarily guarantee justiciability or enforcement of children's rights.²⁰⁹

The selected comparative researches do not only demonstrate the increasing trend of constitutionalisation of children's rights in CoE Member-States and highlights the added value of constitutionalisation but also provides a basis to develop a guideline for a constitutionalisation that would allow the full realisation of children's rights. Therefore, to have a constitution that ensures the best implementation of the CRC, it is essential to acknowledge that ensuring direct application or declaring the supremacy of the CRC by a constitutional provision is not enough to provide absolute constitutional protection to children's rights in practice. The constitutional provisions that incorporate or refer to children's rights should place the children as the rights-holders and pursue CRC's holistic approach without overriding children's right to participation with protection and provision rights. Careful selection of words and building up an accountability mechanism such as allowing access to judicial remedies is vital to prevent constitutionalisation from remaining a mere symbol and being a pioneer in changing the culture for the full realisation of the CRC at the national level.

4.3. Constitutional recognition of children's right to participate in CoE Member-States

None of the previous research described in the previous sub-section directly focuses on constitutional recognition of children's participation rights. However, they provide some important

²⁰³ O'Mahony, 2019, p.413.

²⁰⁴ Ibid, p.424.

²⁰⁵ Ibid, p.432.

²⁰⁶ Ibid, p.433.

²⁰⁷ Sloth-Nielsen&Oliel, Constitutionalising children's rights and domestic courts of member states of the Council of Europe, Constitutionalising children's rights and domestic courts of member states of the Council of Europe, 2019, p.3.

²⁰⁸ Ibid, p.21.

²⁰⁹ Ibid, p.28, 41.

insights. For instance, Habashi&al. states that “the hallmark of participation is the engagement of children in decision-making.”²¹⁰ They argue that constitutional recognition of only protection and provision rights hampers “children’s potential as decision-making partners.”²¹¹ However, most of the constitutions that they listed under the participation section are the ones that directly incorporate CRC into national law at the statutory level, such as France. Subsequent researches show that this method is not enough to ensure children’s right to participation in practice.

While arguing that constitutional recognition of children’s rights in whatever form allows children to be increasingly heard, Tobin stresses the importance of imposing positive constitutional obligations on States to listen to children. He puts forward the constitutions of Finland, Poland and Romania as an example.²¹² He also underlines that the success of constitutional recognition depends on an inclusive and legitimate drafting process.²¹³ Therefore, children’s participation in the drafting is essential while constitutionalising children’s rights.

O’Mahony places constitutions that provide provisions for children’s participation at the highest points of visibility and agency spectrums. However, he does not necessarily examine the scope and possible outcome of the provisions. For instance, although Ireland constitutionalised children’s right to participate, the scope of the relevant provision is limited to decisions concerning the adoption, guardianship, custody, or access rights.²¹⁴ The CRC Committee does not seem very sensitive to the potential risks of this restrictive recognition either, since it contented itself with welcoming Ireland’s constitutional amendment,²¹⁵ although it had recommended the constitutionalisation of children’s right to participate in all matters affecting them earlier.²¹⁶

Sloth-Nielsen&Oliel mainly focus on the constitutionalisation of children’s right to participate in judicial proceedings. Still, they recite an instance where Belgium presents active youth participation in policymaking and mandatory impact assessments as supportive means for children’s participation in cases concerning divorce, adoption, foster care, and education in response to the CRC Committee’s criticism of the weak implementation of Art.12.²¹⁷

The previous research highlights the reluctance of constitutional recognition of children’s participation rights compared to protection and provision rights. They also report in unison that CRC Art.12 is the least constitutionalised general principle after CRC Art.3. However, no study focuses on how and to what extent CoE Member-States constitutionalised children’s participation rights. Therefore, it is necessary to look into CoE Member-States’ constitutions from a children’s rights perspective to gain a better understanding of this issue.

4.4. Conclusion

Although constitutional recognition is not a requirement, the CRC Committee welcomes the constitutionalisation of children’s rights, and the Venice Commission recommends CoE Member-States to provide constitutional guarantees for children by recognising them as rights-holders and incorporating CRC general principles in their constitutions.

²¹⁰ Habashi&al., p.279.

²¹¹ Ibid, p.282.

²¹² Tobin, 2005, p.117.

²¹³ Ibid, p.123, 124.

²¹⁴ Ireland, Art.42A(4)(2).

²¹⁵ UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland, CRC/C/IRL/CO/3-4, para.4/a.

²¹⁶ CRC/C/IRL/CO/2, para.25/a.

²¹⁷ Sloth-Nielsen&Oliel, p.39.

Constitutionalising children's rights in a child-specific manner is not enough to ensure the implementation, and additional legal and non-legal measures to support constitutional reform are required. However, constitutionalisation is a critical element that should not be neglected in incorporating the CRC into domestic law. Constitutional recognition of children's rights is important in both monist and dualist States, even if it reiterates directly applicable CRC provisions superior than the statutory laws in the hierarchy of norms.

The review of selected comparative studies not only demonstrated the growing trend toward the constitutionalisation of children's rights in CoE Member-States but also helped to identify the necessary elements for a constitutional reform that would allow for the full realisation of children's rights. Accordingly, a decent constitutional reform should place the children as the rights-holders, pursue CRC's holistic approach without overriding children's right to participation with protection and provision rights. Furthermore, constitutional provisions should be created with strong conceptualisation, clear wording and accountability mechanisms that ensures enforceability.

This review has also shown that CoE Member-States are more reluctant to constitutionally recognise children's participation rights than their protection and provision rights. As a result, CRC Art.12 is one of the least constitutionalised provisions of the Convention.

5. Mapping the current stage of the constitutional recognition of children's participation rights in CoE Member-States

Since there is no specific study on the subject, it is necessary to go back to primary sources to understand better the extent and means of constitutionalising children's right to participate in CoE Member-States. Therefore, constitutions of the CoE Member-States have been read and examined from a children's rights perspective to serve this purpose. However, this research has not included San Marino and the United Kingdom because they have no codified constitutions. Furthermore, the Russian Federation was excluded from the study after its membership in the CoE ceased on 16 March 2022 as a consequence of the aggression against Ukraine.²¹⁸

The examination was conducted under the guidance of three questions: 1. Is there a child-specific constitutional recognition of participation rights protected under both international human and children's rights frameworks?, 2. Are there constitutional provisions that hinder children's participation rights?, 3. Is there a constitutional recognition of child-specific participation rights protected under the international children's rights framework?

5.1. Child-specific constitutional recognition of participation rights protected under both international human and children's rights frameworks

Participation rights protected under both international human and children's rights frameworks are freedom of expression (CRC Art.13, ICCPR Art.19, ECHR Art.10), freedom of thought, conscience and religion (CRC Art.14, ICCPR Art.18, ECHR Art.9), freedom of assembly and association (CRC Art.15, ICCPR Art.21, ECHR Art.11), and right to access to information (CRC Art.17, ICCPR Art.19, ECHR Art.10). Although all of the Member-States protect these participation rights for "everyone" under their constitutions, no child-specific constitutional recognition similar to international provisions has been found on this matter.

Child-specific provisions regarding these rights might be beneficial to support children's participation for three reasons. First, constitutional protection of some rights that are ensured for everyone does not hamper child-specific recognition of the same right in national constitutions. The most frequent examples of overlapping recognition of a right for everyone and for children separately are regarding the right to education and the right to health. For instance, Albania,²¹⁹ Bulgaria,²²⁰ Estonia,²²¹ and Norway²²² recognise the right to education and Montenegro,²²³ Poland,²²⁴ and Serbia²²⁵ protect the right to health in the same constitutional provision, first for everyone and then specifically for children.

This fact leads to the second argument. Child-specific recognition of participation rights is vital to ensure implementation of these rights and changing the culture to see children as independent rights-holders. 37 of the 44 CoE Member-States²²⁶ ensure at least one child-specific protection or provision right at constitutional level.²²⁷ A constitution that only provides an additional layer of protection for

²¹⁸ Council of Europe, Minister Deputies, Decision CM/Del/Dec(2022)1428ter/2.3, 16 March 2022.

²¹⁹ Albania, Art.57.

²²⁰ Bulgaria, Art.53.

²²¹ Estonia, Art.37.

²²² Norway, Art.109.

²²³ Montenegro, Art.69.

²²⁴ Poland, Art.68.

²²⁵ Serbia, Art.68.

²²⁶ Except Bosnia and Herzegovina, France, Liechtenstein, Luxembourg, Malta, Monaco, and Netherlands.

²²⁷ This outcome is not in line with the previous research as provisions that ensures "right to education for all" is not considered as a child-specific right per-se as long as there is not a special referral to children.

children's protection and provision rights portrays an image of children that are human-becomings in need of care and education to grow up first to enjoy participation rights.

Finally, child-specific recognition of participation rights is essential to balance child-specific constitutional limitations on CPRs that will be discussed in the upcoming sub-section.

5.2. Constitutional provisions that may hinder children's participation rights

Reading national constitutions from a children's rights perspective revealed several different types of limitation clauses that can hinder children's participation rights. It is possible to group these provisions under two main headings: 1.Provisions that provide a ground for State to limit CPRs, 2.Provisions that endorse parental rights.

5.2.1. Provisions that provide a ground for State to limit children's civil and political rights

To begin with the limitation clauses regarding participation rights that are protected under the international human rights framework. A few CoE Member-States' constitutions contain provisions that allow States to limit freedom of expression or right to information to protect children.²²⁸ The need for additional limitations to safeguard children from the production and dissemination of some harmful forms of expression and information, such as child sexual abuse material, is obvious.²²⁹ However, the existence of such limitation clauses demonstrates that children came into mind during the design of these constitutional rights, but the scope of the provisions is contained to the protection aspect of children's rights. For instance, in the constitution of Norway, although there is a provision which recognises the right to education for everyone and for children respectively,²³⁰ in the article on freedom of expression, there is only a limitation clause to protect children from the harmful influence of moving pictures, without a child-specific recognition of the participation aspect.²³¹

There are also other CPRs that CoE Member-States' constitutions have a child-specific limitation clause. The constitutions of Malta and Ukraine contain a child-specific limitation clause regarding the right to a fair trial that may hinder children's right to participate in legal proceedings. In Malta, it is stated in the constitution that children can be excluded from court hearings to protect their welfare.²³² Ukrainian Constitution states that "exceptions for representation before the court of minors or adolescents can be determined by law".²³³ These provisions do not necessarily violate children's right to a fair trial (CRC Art.40) or participation rights. However, constitutionalising only one aspect of the children's rights may lead to constitutional interpretations, which may hinder child justice systems' welfare and justice equilibrium.²³⁴

To give another example, children's freedom of assembly and association is limited in the constitution of Turkey, by a prohibition of children's participation in political parties.²³⁵

The CPR that children are systematically deprived of in almost all CoE Member-States constitutions is the right to participate in public affairs and right to vote (ICCPR Art.25, Art.3 of Protocol No.1 to the ECHR). 37 CoE Member-States exclude children from participating in the governance of the State

²²⁸ Romania, Art.31(3); Spain, Art.20(4).

²²⁹ CRC Committee, Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, CRC/C/156, 10 September 2019, para.41.

²³⁰ Norway, Art.109.

²³¹ Norway, Art.100.

²³² Malta, Art.39(4)(c)(ii).

²³³ Ukraine, Art.131.

²³⁴ Liefgaard, Juvenile justice from an international children's rights perspective, 2015, p.250.

²³⁵ Turkey, Art.68.

through elections and referenda in a generic manner, stating that citizens can enjoy the right to suffrage after the age of eighteen, majority or attaining adulthood in their constitutions.²³⁶ Some Member-States' constitutions refer to statutory laws regarding age qualification conditions.²³⁷ Only the Austrian Constitution allows children's participation in elections from the age of sixteen.²³⁸

5.2.2. Provisions that endorse parental rights

Constitutional provisions that endorse parental rights have three different appearances. First, 25 CoE Member-States' constitutions afford special protection for family and/or parents.²³⁹ Constitutional rights provided to family and/or parents create a barrier to fully implementing children's rights, especially when child-specific protection of children's participation rights is absent at the same level.²⁴⁰

Secondly, parental rights may appear in constitutions in the form of limitation clauses regarding CPRs. For example, the practice of parental discipline constitutes a legitimate ground of limitation on freedom of expression and freedom of assembly and association in the constitution of Malta.²⁴¹ Although unique, this example represents that participation rights are hardly recognised as part of children's rights that allow children to be accepted as independent rights-holders.

Lastly, 21 CoE Member-States constitutions provide rights to parents to decide the type of education, and/or moral or religious instructions, and/or upbringing of their children.²⁴² This type of constitutional provisions mirror the regulations under the ICCPR and the ECHR regarding States' responsibility to respect parental rights.²⁴³ However, again, without a recognition of children's participation rights at the same level, this approach increases the risk of paternalistic interpretations. To give an example of the constitutional provisions that might hinder children's participation rights by their paternalistic wording, the Croatian constitution grants parents the right and freedom to make "independent" decisions regarding their child's upbringing and education.²⁴⁴ Similarly, freedom of religion is restricted for children in the constitution of Cyprus by stating that the person having the lawful guardianship of the child shall decide the religion to be professed by a child younger than the age of sixteen.²⁴⁵

5.2.3. Conclusion

All of the constitutional provisions laid out in this subsection do not necessarily contradict the CRC's holistic rights-based approach or violate children's rights per-se; however, they bear a severe risk of upsetting the balance of children's protection and participation rights and lay a foundation for paternalistic constitutional interpretations. Therefore, they may potentially hinder children's participation rights.

²³⁶ Albania, Andorra, Armenia, Belgium, Bulgaria, Croatia, Cyprus, Czech, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Monaco, Montenegro, Macedonia, Norway, Poland, Portugal, Moldova, Romania, Serbia, Slovenia, Sweden, Switzerland, Turkey, Ukraine.

²³⁷ Azerbaijan, Art.52(II); Denmark, Art.29(2); Netherlands, Art.59; Slovak Republic, Art.21(3); Spain, Arts.68-70.

²³⁸ Austria, Art.26(1).

²³⁹ Albania, Andorra, Armenia, Azerbaijan, Bulgaria, Croatia, Estonia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Macedonia, Poland, Portugal, Moldova, Romania, Serbia, Slovak, Slovenia, Spain, Turkey, Ukraine.

²⁴⁰ O'Mahony, *The Promises and Pitfalls of Constitutionalising Children's Rights*, 2019, p.4.

²⁴¹ Malta, Arts.41 and 42.

²⁴² Andorra, Azerbaijan, Belgium, Croatia, Cyprus, Estonia, Germany, Hungary, Ireland, Italy, Lithuania, Macedonia, Poland, Portugal, Moldova, Romania, Serbia, Slovak, Slovenia, Spain, Turkey.

²⁴³ ICCPR Art.18(4), Protocol No.1 to the ECHR Art.2.

²⁴⁴ Croatia, Art.63.

²⁴⁵ Cyprus, Art.18(7).

After examining the limitations of CoE Member-States' constitutions in endorsing children's participation rights, the following subsection sets out how and to what extent these rights have been constitutionalised in Europe.

5.3. Constitutional recognition of child-specific participation rights that are protected under the international children's rights framework

Determining whether child-specific participation rights are constitutionalised is a complex task as the scope and means of this recognition highly vary among CoE Member-States. Nevertheless, it is possible to group Member-States' approaches under five categories: 1. Constitutionalisation of children's right to participate similarly to CRC Art.12(1), 2. Constitutionalisation of children's right to participate in only some issues that concern them, 3. Recognition of children's evolving capacities at a constitutional level, 4. Recognition of the best interest principle at a constitutional level, 5. Other constitutional provisions that support children's participation.

5.3.1. Constitutionalisation of children's right to participate in a similar way to CRC Article 12(1)

Constitutional recognition of children's right to participate has become an increasingly common practice in Europe. Currently, 6 CoE Member-States have a provision similar to the CRC Art.12(1) in their constitutions.²⁴⁶ To examine further to what extent the Member-States followed the wording of the CRC Art.12(1), it is possible to divide it into sections that provide information regarding the subject, substance, scope and duty-bearer of the right:

	CRC	Armenia	Austria	Belgium	Finland	Norway	Poland
Subject	the child who is capable of forming his or her own views	a child	each child	each child	children	children	
Substance	the right to express views freely and the views of the child being given due weight in accordance with the age and maturity of the child	the right to express his opinion freely, which shall be taken into consideration in accordance with his age and maturity	the right to adequate involvement and consideration of his/her opinion in a manner that is commensurate with his/her age and development	the right to express his or her views and the views of the child being given due weight in accordance with his or her age and maturity	shall be allowed to influence to a degree corresponding to their level of development	have the right to be heard and due weight shall be attached to their views in accordance with their age and development	shall consider and, insofar as possible, give priority to the views of the child
Scope	in all matters affecting the child	in matters concerning the child	all matters affecting the child	in all matters affecting him or her	matters pertaining to themselves	in questions that concern them	in the course of establishing the rights of a child
Duty-bearer	States Parties						organs of public authority and persons responsible for children

²⁴⁶ Armenia, Art.37(1); Austria, Art.4; Belgium, Art.22bis(2); Finland, Art.6; Norway, Art.104; Poland, Art.72(3).

The similarity of the constitutional provisions of Armenia, Austria, Belgium, Finland, and Norway with the CRC Art.12(1) is undisputable. They recognised children's right to participate in all matters affecting them as a standalone right. By comparison, the wording in Poland's constitution is slightly different. Art.72(3) of the Polish constitution appeals to authorities that have to give primary importance to children's views while providing their rights. Although this wording makes one think about whether it can cost a narrower interpretation of the scope of children's right to participate, O'Mahony raises a case where the Constitutional Court of Poland interprets the provision in a paternalistic manner due to another reason. Accordingly, the Court interprets Art.72(3) as a limitation clause that states children can enjoy their CPRs conditional to their intellectual capacities and degree of maturity, although the provision does not explicitly refer to children's age and capacity, unlike its counterparts. The Court reaches this conclusion by stressing the welfare approach to children's rights as a fundamental value of the Polish legal order.²⁴⁷

5.3.2. Constitutionalisation of children's right to participate to a limited number of issues that concern them

The constitution of Ireland contains a provision that recognises children's right to participate with a quite narrower scope compared to CRC Art.12(1). Hence, "views of the child shall be ascertained and given due weight having regard to the age and maturity of the child" only in proceedings concerning the adoption, guardianship or custody of, or access to, any child.²⁴⁸ Accordingly, this provision is more similar to CRC Arts.9(2), 12(2) and 21(a) and insufficient to ensure children's participation rights fully.

Another constitutional provision that recognises children's participation rights only regarding freedom of thought, conscience and religion can be found in the Slovenian constitution. This provision appears more like a counterweight to the constitutionalised parental rights that can hinder children's enjoyment of CPRs. The first sentence of Art.41 of the Slovenian constitution is similar to the constitutional provisions mentioned in subsection 3.4.2.2. It states that "Parents shall be entitled to give their children a moral and religious upbringing which accords with the beliefs of the parents." However, the second sentence of Art.41 provides a constitutional basis to see children as rights-holders by stating that "The religious and moral training given to a child shall be such as is appropriate to his age and to his level of maturity as well as being in accordance with the child's free conscience and religious and other beliefs or convictions."

5.3.3. Recognition of children's evolving capacities at a constitutional level

4 CoE Member-States recognise children's evolving capacities in their constitutions.²⁴⁹ All of these provisions have similar wording. At the bottom-line, they state that children shall enjoy all human rights and freedoms consistent with their age and maturity. Only the provision in the Swiss constitution slightly distinguishes among them as it not only recognises children as rights-holders but also stresses that they may exercise their rights "independently" to the extent of their capacities.

5.3.4. Recognition of the best interest principle at a constitutional level

7 CoE Member-States constitutionalised the best interest principle in one way or another. Only the Norwegian constitution recognises the best interest principle similarly to CRC Art.3(1), stating that "the best interests of the child shall be a fundamental consideration" in all "actions and decisions that affect children". 5 CoE Member-States' constitutions refer to the child's best interest regarding the decisions

²⁴⁷ Case K 16/10 of Constitutional Court of Poland, in O'Mahony (2019), at footnote 155.

²⁴⁸ Ireland, Art.42A(4)(2).

²⁴⁹ Montenegro, Art.74; Serbia, Art.64; Slovenia, Art.56; Switzerland, Art.11.

on deprivation or limitation of parental rights, guardianship, adoption, and/or contact rights with the parents.²⁵⁰

An interesting referral to the child's best interest can be found in the constitution of Portugal. Art.68(4) of the Portuguese constitution states that legislators should regulate the matter of parental leave from work in accordance with the interests of the child. This provision seems like a constitutional basis for a mandatory children's rights impact assessment as being repeatedly recommended by the CRC Committee for legislating issues concerning children,²⁵¹ which can also be a basis for children's participation in legislative decision-making as the Committee also states that children's participation is an indispensable element of CRIA.²⁵²

Another constitutional provision that is presented as constitutional recognition of the best interest principle in academic literature is Art.76(3) of the Icelandic constitution. Iceland made a constitutional reform in 1992, immediately after ratifying the CRC. Authors refer to the preparatory work to suggest that the provision is inspired by CRC Art.3 and intends to place the burden on the legislator to ensure the protection and care of children by law.²⁵³ They also claim that with a dynamic interpretation, this provision can be interpreted as a participation right.²⁵⁴ However, it mostly reflects the prevailing idea at the beginning of the CRC's entry into force that sees children as a vulnerable group of people, rather than autonomous rights-holders entitled to participate.

5.3.5. Other constitutional provisions that support children's participation

When examining the CoE Member-States' constitutions, it is possible to encounter several other constitutional provisions that have the potential to support children's participation rights. The most frequent type of provision is regarding promoting the participation of children and youth in political, economic, social and cultural life. These provisions are designed more often as an ESCR, the realisation of which depends on the extent of the State's powers and possibilities, than a CPR as in Armenia.²⁵⁵ However, there is an apparent difference between such provisions between different constitutions. While some Member-States choose to clearly state the political aspect of children's participation in their constitutions,²⁵⁶ others do not.²⁵⁷

Some constitutional provisions seem more like compensation for excluding children from their CPRs. For instance, under the Portuguese constitution, the State is under obligation to foster and support youth organisations.²⁵⁸ Although, this can still be interpreted as a weakly enforceable constitutional provision as it is regulated under the chapter of social rights and duties, the first Youth Participatory Budget Program in the world where young people aged between 14-30 can participate in decisions on public investment projects is established with the purpose of implementing Art.70(3) of the Portuguese constitution.

In Greece, children's freedom of assembly is recognised in the constitution, albeit limited to their participation in the youth sections of political parties because they "have not yet acquired the right to

²⁵⁰ Armenia, Art.36(2); Ireland, Art.42A(2)(2); Serbia, Art.65; Slovenia, Art.54; Turkey, Art.41.

²⁵¹ CRC/C/CG/5, paras.45-47.

²⁵² CRC/C/CG/14, 29 May 2013, paras.35, 53, 99.

²⁵³ Gísladóttir, Children's Right to Participation in Iceland, 2020, p.250; Kilkelly&al., p.290.

²⁵⁴ Gísladóttir, p.249; Kilkelly&al., p.291.

²⁵⁵ Armenia, Article 86/12, 87/1.

²⁵⁶ Romania, Art.49(5); Spain, Art.48; Switzerland, Art.41(1)(g).

²⁵⁷ Moldova, Art.50(5).

²⁵⁸ Portugal, Art.70(3).

vote".²⁵⁹ It is, therefore, possible to argue that this constitutional guarantee plays a balancing role for children who are excluded from the main means of participation in democratic decision-making.

The Spanish constitution contains a particular provision on children's right to participate in the administration of public education centres that states that pupils shall share the control and management with teachers and parents "when appropriate" and "under the terms to be laid down by the law".²⁶⁰

Lastly, it is necessary to draw attention to Art.2(4) of the Swedish constitution, which states that "[t]he public institutions shall promote the opportunity for all to attain participation and equality in society and for the rights of the child to be safeguarded." This provision was given as an example of constitutional recognition of children's participation rights in O'Mahony's research.²⁶¹ Still, it is difficult to read it as a child-specific provision without further interpretation as the subject of the right is "everyone" and not specifically "children".

5.4. Conclusion

In this Chapter, CoE Member-States' constitutions have been examined with a comparative methodology and from a children's rights perspective to understand the extent and means of constitutionalising children's right to participate.

First, no CoE Member-State constitution has been found to include child-specific recognition of participation rights protected under both international human and children's rights frameworks in a similar way to international provisions.

Second, several constitutional provisions have been found in CoE Member-States' constitutions that may potentially impede children's participation rights, either by providing a limitation ground for States' interference with children's CPRs or by endorsing the rights of families and parents.

Third, mapping the CoE Member-States' constitutions has shown how fragmented Member-States' approaches are when constitutionalising children's participation rights. While some States constitutionalise children's right to participate like CRC Art.12(1), there are other States that constitutionalise children's right to participate on a limited number of issues or children's evolving capacities or the best interest principle. Promoting the participation of children and young in political, economic, social and cultural life as an ESCR is one of the most common other types of constitutional provisions supporting children's participation.

²⁵⁹ Greece, Art.29.

²⁶⁰ Spain, Art.27(7).

²⁶¹ O'Mahony, 2019.

6. Is there a need for constitutional reform in CoE Member-States to ensure children's participation in democratic decision-making more effectively?

On the basis of this study, it is evident that there is a trend to constitutionalise children's rights, including participation rights. Taking into account the increasing attention for children's participation at the international level and the highlight given to participation rights in current CoE and EU strategies, it is time to discuss whether a constitutional reform is required in Europe to recognise children as independent rights-holders who are entitled to participate in all decisions affecting them.

Recognising children as autonomous rights holders and making them visible in law and policymaking are among the indicators of successful incorporation of the CRC.²⁶² Constitutional reform is one of the most potent means of supplementing the visibility of children and promoting the rights-based approach of the Convention.²⁶³ According to the Child Participation Assessment Tool prepared by the CoE, "reference in the Constitution to the child's right to participate offers a particularly strong indicator of the Member-State's commitment" to implement children's participation rights.²⁶⁴

Mapping the CoE Member-States' constitutions from a children's rights perspective proved that constitutional recognition of children's participation rights has many different forms. Only Armenia, Austria, Belgium, Finland, Norway and Poland constitutionalised children's right to participate similarly to CRC Art.12(1). Ireland recognises children's right to participate; Armenia, Serbia, Slovenia and Turkey incorporate the best interest principle recognised in CRC Art.3(1) at a constitutional level but solely regarding matters that fall under the scope of CRC Arts.9(2), 12(2) and 21(a). No child-specific constitutional provision found in CoE Member-States that constitutionalises children's participation rights similarly to CRC Arts.13, 14, 15, 17. Slovenian constitution contains a child-specific provision regarding freedom of thought, conscience and religion, but with a narrower scope that covers only the assessment of the appropriateness of the religious and moral training given to the child. Montenegro, Serbia, Slovenia, and Switzerland ensure in their constitutions that children shall enjoy human rights and freedoms consistent with their evolving capacities, which can be read as a reflection of CRC Art.5.

Children's right to participate as a group is even more neglected at the constitutional level in CoE Member-States. Spain recognises children's right to participate collectively in the administration of public education centres at the constitutional level. The Portuguese constitution requires children's best interest assessment while regulating the matter of parental leave. Greece constitutionalised children's freedom of association to participate in youth sections of political parties. Constitutions of Armenia, Moldova, Portugal, Romania, Spain and Switzerland promote children's collective participation in political, economic, social and cultural life, but either as an ESCR or as a social goal for the government.

These findings show the diversity of approaches taken by Member-States when constitutionalising children's participation rights. While constitutional recognition of children's right to participate with a provision that mimics CRC Art.12(1) raises the question of whether it really has a legal and practical value, other existing forms of constitutional recognition are way more limited to serve as a robust foundation for the realisation of children's participation rights.

²⁶² KilKelly&al., p.348.

²⁶³ Ibid, p.350.

²⁶⁴ Council of Europe, Child Participation Assessment Tool, 2016, p.8.

6.1. The value and shortcomings of constitutionalising children's right to participate in a similar way to CRC Article 12(1)

The main value of introducing a provision similar to CRC Art.12(1) in national constitutions can be seen as a way to explicitly recognise children as autonomous rights-holders and not as human-becomings in need of only protection and care. Its relevance is directly related to three attitudes that are traceable through the mapping of CoE Member-States' constitutions. First, 27 out of 44 Member-States constitutions contain an explicit provision that endorses parental rights or parental power in decision-making regarding children.²⁶⁵ Second, constitutions often do not provide child-specific protection for CPRs. Additionally, different types of limitation clauses on freedom of expression, right to information, right to a fair trial and freedom of association are detected in 6 different Member-States' constitutions.²⁶⁶ Third, the constitutionalisation of children's protection and provision rights are more prominent than the constitutional recognition of child-specific participation rights.

These attitudes carry the risk of establishing and maintaining a paternalistic constitutional legal order. A constitutional provision which recognises children's right to participate in all matters affecting them similarly to CRC Art.12(1) can serve as a counterweight to balance the paternalistic or welfare approaches. It can constitute a foundation for not only developing holistic rights-based approaches in the legislative, executive and judicial branches of a State, but also for balancing the State's respect for the rights of families and parents with its respect for the rights of children as independent rights-holders.

Although incorporating CRC Art.12(1) in national constitutions can be seen as a shortcut to providing children due agency in all areas of need thanks to its broad scope, this massive scope also constitutes one of its most significant shortcomings. CRC Art.12(1) can serve well as an international human rights provision for children as it introduces their right to participate generically. However, implementing a similar provision at a national level is difficult and depends on correct interpretations. For instance, Norwegian and Finnish constitutions contain provisions almost word for word the same as CRC Art.12(1). Still, children's constitutional right to participate is considered primarily as an individual right and does not provide a constitutional basis for children's participation as a group.²⁶⁷ Hence, generic recognition of children's right to participate does not necessarily ensure constitutional protection for their participation in all spheres and matters affecting them.

6.2. The need for constitutional recognition of children's right to participate in democratic decision-making

For several reasons, recognising children's right to participate in democratic decision-making as a standalone right at a constitutional level is just as important as constitutional recognition of children's right to participate generically. First, examples of Norway and Finland show that constitutional recognition of children's right to participate in a generic manner like CRC Art.12 is not enough to ensure children's collective participation, including the right to participate in democratic decision-making.²⁶⁸

Second, Tobin argues that constitutional recognition of children's rights legitimises political discourse on children.²⁶⁹ O'Mahony agrees that constitutionalising children's rights can positively impact the legitimisation of political discourse but also states that complete legitimacy is not possible as long

²⁶⁵ See, subsection 5.2.2.

²⁶⁶ See, subsection 5.2.1.

²⁶⁷ Nylund, p.230.

²⁶⁸ Ibid.

²⁶⁹ Tobin, 2005, p.126.

as children have no agency to advocate for their rights independently.²⁷⁰ The right to participate in democratic decision-making is a constitutional law matter that legitimises the activities of a State's legislative and executive branches, where children are excluded from the main means of participation. Even if children's right to participate in other matters can be regulated in statutory laws, the basis of their right to participate in democratic decision-making should be in the constitutions to balance the fact that children are categorically excluded from the right to vote in 37 CoE Member-States' constitutions.

Third, recognition of children as independent rights-holders requires a change of culture. Eliminating historically rooted deprivation of children from agency in democratic decision-making can trigger this change significantly. Recognition of children's right to participate in democratic decision-making through a constitutional reform has greater potential to initiate this change because its realisation requires a higher consensus and a more widespread public debate.

Last, recognising children's right to participate in democratic decision-making at the highest level of a legal order would give children stronger visibility in law and policymaking and reduce the risk that implementing this right would be subject to constant changes of political will.

Despite all these reasons, no CoE Member-State recognises children's right to participate in democratic decision-making as a standalone right. Moreover, international and regional bodies, such as the CRC Committee, the CoE and the EU, do not advocate for the separate and constitutional recognition of this right. This lack of attention can be attributed, among many other reasons, to the weak conceptualisation of children's right to participate in democratic decision-making.

6.3. Risks of constitutional recognition of children's right to participate in democratic decision-making

Due to the lack of a concrete example, it is not possible to show on the basis of this research that the recognition of children's right to participate in democratic decision-making at a constitutional level contributes to children's enjoyment of their participation rights more effectively in practice. Therefore, at the very least, it is crucial to consider whether the constitutional recognition of this right poses any risks before taking a strong stand for advocating for it.

The first risk that comes to mind regarding constitutional recognition of children's right to participate in democratic decision-making is the risk of it remaining a mere symbol. States' responsibility to ensure children's right to participate in democratic decision-making will not be fulfilled by constitutional recognition alone, and further measures would be required for effective enforcement. Wide dissemination of new constitutional provisions, collaboration with stakeholders and monitoring of implementation are among the necessary post-constitutional reform measures to turn constitutional provisions into living tools.²⁷¹ However, the risk of symbolic recognition should not be a reason to sit back and take no action. Although limited, even purely symbolic constitutional provisions may have benefits. They can trigger a positive change in attitudes, especially for the groups who have been historically excluded from society and democratic decision-making processes.²⁷²

Second, constitutionalisation of children's right to participate in democratic decision-making without taking further steps to set a functioning accountability mechanism runs risk of resulting in tokenistic children's participation without giving due weight to their views. In Hart's ladder of participation, tokenism is a form of non-participation that should be avoided. However, Lundy's more recent research shows

²⁷⁰ O'Mahony, 2019, p.410.

²⁷¹ UNICEF, 2008, p.160.

²⁷² Lino, *Written Constitutions and the Politics of Recognition: Symbolism and Substance*, 2014, p.12, 13.

that although tokenistic approaches are unacceptable in decision-making processes regarding an individual child, they are not always negative in the context of collective participation. Both children and adults can learn from the experience and improve the participation process along the way. She argues that "[p]articipation should not be rarefied to the point that it is considered unattainable".²⁷³

Even if the risks of symbolic recognition and tokenistic participation happen, the constitutionalisation of children's right to participate in democratic decision-making can be a starting point. Of course, mere symbolic recognition or tokenistic children's participation is not ideal, but idealising children's right to participate should not create a chilling effect against rights-based initiatives. While there is no need for a constitutional provision so idealised as to preclude constitutional reform, a constitutional provision recognising children's right to participate in democratic decision-making should meet some standards, at least to the extent that it does not reinforce paternalistic constitutional interpretations. Therefore, a more severe risk of constitutionalisation would be the introduction of a poorly drafted provision following a non-participatory drafting process that reinforces paternalistic approaches.

Constitutionalisation of children's right to participate in democratic decision-making with a provision that does not embrace core values of children's right to participate, namely that does not place children as rights-holders entitled to the due agency, may cause more harm than benefit. To avoid poorly drafted constitutional recognition, children's right to participate in democratic decision-making needs to be strongly conceptualised as a standalone right. A solid understanding of the scope and nature of the right reflected by a careful selection of words is indispensable. The preparatory work for Art.104(1) of the Norwegian constitution has been criticised for lacking clear indications about the scope and discussions on how to ensure direct participation for older children, establish support mechanisms for younger children or children with disabilities, and oblige authorities to support collective participation.²⁷⁴ Such ambiguity prevents the creation of constitutional provisions with more nuanced wording and higher potential to more effectively ensure children's participation in democratic decision-making. Strong preparatory work, which clearly shows the aim of the constitutional amendment as transforming the welfare approach into a rights-based one, can play an essential role in preventing the provision from continuing to be interpreted in a static way in practice, as in Poland.²⁷⁵

The provision that recognise children's right to participate should be drafted in rights-based language. While the Portuguese example shows that even a constitutional provision that is limited in scope and that codifies children's right to participate as an obligation of the government rather than children's rights can serve as a basis for the development of mechanisms to enable children's democratic participation,²⁷⁶ a clear and rights-based provision would better serve to ensure that such initiatives take place independently of political will. Stressing in the constitutional provision that children's right to participate in democratic decision-making is a CPR, realisation of which is independent of the availability of resources and establishment of an accountability mechanism to ensure that decision-makers give due weight to children's views are also essential to tackle down this risk. As an example of the importance of proper drafting of legal provisions, the Icelandic Youth Act has been criticised for discriminating against children living in rural areas, as the wording of the Act does not impose a binding obligation on authorities to ensure children's participation.²⁷⁷ It has been observed that when there is no binding requirement, only municipalities with higher financial resources establish youth councils.²⁷⁸

²⁷³ Lundy, In defence of tokenism? Implementing children's right to participate in collective decision-making, 2018, p.351.

²⁷⁴ Nylund, p.207, 208.

²⁷⁵ See, subsection 5.3.1.

²⁷⁶ See, subsection 5.3.5.

²⁷⁷ Gísladóttir, p.254.

²⁷⁸ Ibid, p.255.

Similarly, during constitutional reforms, stakeholders must agree on what mechanisms will be used to hold governments accountable to their constitutional obligations.²⁷⁹

Finally, Tobin argues that the success of constitutional recognition depends on the participatory drafting process, and the contrary would cause further division within the general population of a State.²⁸⁰ The participatory drafting process is crucial when it comes to the constitutionalisation of children's rights to participate in democratic decision-making not only because it can be a golden opportunity to trigger the culture change to recognise children as independent rights-holders. Especially children's participation in drafting a constitutional provision that recognises their right to participate in democratic decision-making is indispensable as constitutional recognition authored and imposed by adults would contradict the core values of the right. To ensure children's participation in the drafting process, already existing child participation structures can be used if they conform to international standards, or special commissions for children can be created.²⁸¹

In conclusion, as long as constitutional reform is carried out through a constitutional provision that is strongly conceptualised, clearly worded and the result of a participatory drafting process, constitutional recognition of children's right to participate in democratic decision-making processes can be as an opportunity rather than a risk to ensure children's participation in democratic decision-making more effectively.

6.4. Conclusion

Whilst constitutional provisions that mimic CRC Art.12(1) enhance children's status as independent rights-holders by recognising their right to participate, generic recognition of this right at the national level is insufficient to protect every element protected under its broad scope. The children's right to participate in democratic decision-making is one of the children's rights that should be recognised in constitutions as a standalone right to balance the fact that children are categorically excluded from the main means of democratic participation in most of the CoE Member-States' constitutions. Moreover, a constitutional reform on this matter may trigger a more significant change of culture toward children's rights and ensure the visibility of children in law and policymaking regardless of changing political will.

However, CoE Member-States, as well as the CRC Committee, the CoE and the EU, appear to be inconsiderate about the separate and constitutional recognition of this right. This can be attributed, among many other reasons, to the weak conceptualisation of children's right to participate in democratic decision-making.

Although it was not possible to demonstrate with a concrete example that constitutional recognition of children's right to participate in democratic decision-making contributes to children's more effective exercise of their right to participate in practice, whether constitutional reform would pose any risks was examined. In the end, it is concluded that constitutional recognition of children's right to participate in democratic decision-making can do more benefit than harm, as long as constitutional reform is carried out through a constitutional provision that is strongly conceptualised, provides binding accountability mechanisms and is the result of a participatory drafting process.

²⁷⁹ UNICEF, 2008, p.142.

²⁸⁰ Tobin, 2005, p.123.

²⁸¹ UNICEF, 2008, p.168.

7. Recommendations and the way forward

This research puts forward the potential contribution of constitutionalising children's right to participate similarly to CRC Art.12(1) to support children's status as independent rights-holders as most of the CoE Member-States constitutions contain provisions to protect the rights of parents, families, and States over children. However, it also shows that generic constitutional recognition of children's right to participate is not enough to ensure all forms of children's participation, including the right to participate in democratic decision-making. Despite the growing interest in children's participation rights globally and in Europe and the continuing trend towards the constitutionalisation of children's rights, children's participation rights are not automatically part of constitutional reforms. This disconnect needs to be overcome as the trend continues.

The research question of this thesis is whether there is a need for constitutional reform in CoE Member-States to ensure children's participation in public, national, and democratic decision-making more effectively? After considering the arguments in support of advocating for constitutional reform and the risks that the reform may entail, it can be concluded that the constitutional recognition of children's right to participate in democratic decision-making has a great potential to ensure more effective protection of children's right to participate as a group, to reassure their historically deprived agency in democratic decision-making, to better protect children's interests through law and policies, to provide legitimacy to any democratic decision that affects children, and to trigger a broader change of culture to recognise children as independent rights-holders. Such reform, however, must be accomplished through a participatory drafting process, with a constitutional provision drawn up with a strong understanding of what children's right to participate in democratic decision-making entails.

In Europe, the CRC Committee, the CoE and the EU can play an essential role in encouraging and guiding States to give constitutional status to children's rights to participate in democratic decision-making. However, in doing so, they should provide a more detailed conceptual framework for children's participation rights as a standalone right. In this process, the provision of detailed guidelines on children's public participation as a group should not be neglected.

Constitutional recognition of children's rights is not an obligation under the CRC but affording constitutional status to only the protection and provision rights of children can be a barrier to the holistic implementation of the Convention at the national level.²⁸² Hence, the CRC Committee should conduct a more scrutinised analysis of constitutional provisions in States-Parties reporting processes than just welcoming the constitutional recognition of children's rights.

Although the right to vote does not appear to be the best means to accommodate the broad scope of children's right to participate in democratic decision-making, the CRC Committee should clarify whether Art.12(1) gives children the right to vote, and if not, or not for all, propose an alternative accountability mechanism for children who cannot participate in democratic decision-making through elections. Thanks to OPIC, a decision by the Committee on this matter seems imminent. If the Committee decides that Article 12(1) covers the right to vote for children, it is possible that a similar application will be made to the ECtHR. In the European context, it is of great importance that the Court does not hide behind the Contracting-State's wide margin of appreciation but interprets Art.3 of Protocol No.1 to the ECHR taking the Committee's views into account. Otherwise, the ECtHR's judgments contradicting the Committee's interpretations are being used by States-Parties as an argument for non-compliance with the Committee's decisions.²⁸³

²⁸² See subsection 4.2.

²⁸³ UN Committee on the Rights of the Child, Case R.H.M. on behalf of Y.A.M. v. Denmark, CRC/C/86/D/83/2019, 5 March 2021, para.6.2.

The CoE and the EU make more explicit references to the importance of constitutional recognition of children's participation rights²⁸⁴ and children's right to participate in democratic decision-making.²⁸⁵ Since the cultural sensitivities would be more similar,²⁸⁶ it may be easier to make more concrete suggestions at the regional level on constitutionalising children's right to participate in democratic decision-making and creating an accountability mechanism that ensures views of all children are given due weight. Therefore, while implementing their current strategies, the CoE and the EU should work with children, experts and Member-States to develop means and methods that can be incorporated into constitutions, allowing all children to gradually access their right to participate in democratic decision-making in line with their evolving capacities.

Indirect participation means and children's parliaments can easily fall short of ensuring the full realisation of children's right to participate in democratic decision-making and it is time to move beyond them. A constitutional requirement to conduct well-structured CRIAs in all democratic decision-making processes could provide an alternative way of ensuring this right for all children. The views and interests of very young children can be gathered through their parents, legal representatives and experts, and children can gradually begin to represent themselves through more direct means of participation. As the CRIA is essentially a best interest assessment, children's participation rights should be emphasised in such constitutional provision to prevent this instrument from becoming a trump card to override children's views. A robust accountability mechanism should be established to ensure that children's views have a significant impact on the outcome of the CRIA and that the CRIA has a significant impact on law and policymaking.

Ultimately, the way forward is to recognise children as independent rights-holders entitled to due agency in all decision-making processes affecting them, including democratic decision-making. To access these rights, children do not need to be able to exercise their rights in the same way as adults, but they do need the same level of protection. Child-specific constitutional recognition of this right and the development of child-friendly means and methods that can adapt to different stages of childhood is a necessity, not a burden. It is part of children's rights and States' responsibilities.

Constitutional reform is the beginning of the journey to implement children's right to participate in democratic decision-making more effectively. Constitutional recognition should be supported by providing access to effective remedies to make it enforceable.²⁸⁷ While there is a wide range of mechanisms in CoE Member-States with different remedial powers, it is argued that the most significant impact of constitutionalisation is seen in the presence of a constitutional court that can issue binding judicial decisions in cases of violations and a tradition of challenging children's rights violations under the constitution.²⁸⁸ Additionally, Member-States should do their utmost to ensure that constitutional reform follows a participatory drafting process and that post-constitutional reform measures, such as children's rights training and awareness-raising for all relevant parties, are in place. If Member-States undertake the constitutional reform with a sincere intention to commit themselves to the obligation to give due weight to the views of children in democratic decision-making and ensure the enforceability of constitutional recognition, the risks of symbolic recognition and tokenistic participation will largely be eliminated.

²⁸⁴ Council of Europe, Committee of Ministers, Recommendation Rec(2012)2.

²⁸⁵ EU strategy on the rights of the child, COM(2021).

²⁸⁶ In this context, cultural sensitivity can be related to traditions and attitudes towards both children and the State administration.

²⁸⁷ CRC/GC/2003/5, para.24.

²⁸⁸ O'Mahony, 2019, p.431; Kilkelly&Liefwaard, 2019, p.528, 529.

Bibliography

Books, Book Chapters and Articles

- Alston P., *Promoting human rights through bills of rights: comparative perspectives*, Oxford University Press, 1999.
- Assim U.M., *Civil Rights and Freedoms of the Child*, in *International Human Rights of Children*, Springer Singapore, 2019.
- Doek J.E., Foreword, in: *Children and citizenship*, Sage, Thousand Oaks, 2008.
- Doek J.E., *The Human Rights of Children: An Introduction*, in *International Human Rights of Children*, Springer, Singapore, 2019.
- Driskill S.T., DeFalco P.L., Lang J.H., Habashi J., *Constitutional Analysis: A Proclamation of Children's Right to Protection, Provision, and Participation*, *The International journal of children's rights*, 18(2):267–90, 2010. (Habashi&al.)
- Erdoğan B., Tahiroğlu B., *Roma Hukuku Dersleri, Der Yayınları*, 11. Basım, İstanbul, 2016. [Roman Law Lectures]
- Fenton-Glynn C., *Children and the European Court of Human Rights*, Oxford University Press, 2021.
- Freeman M., *Children's education; a test case for best interests and autonomy*, in *Listening to children in education*, London, 1996.
- Freeman M., *Law and Childhood Studies*, Oxford University Press, Oxford, 2012.
- Gísladóttir E., *Children's Right to Participation in Iceland*, in: *Children's Constitutional Rights in the Nordic Countries*, Leiden: Brill Nijhoff, 2020.
- Hammarberg T., *The UN Convention on the Rights of the Child – and How to Make it Work*, *Human Rights Quarterly*, 12/97, 1990.
- Hanson K. & Lundy L., *Does Exactly What it Says on the Tin?: A Critical Analysis and Alternative Conceptualisation of the So-called "General Principles" of the Convention on the Rights of the Child*, *The International Journal of Children's Rights*, 25(2), 2017.
- Hanson K., *Schools of Thought in Children's Rights*, Children's Rights Unit, University Institute Kurt Bosch, 2008.
- Hart R.A., *Children's Participation: From tokenism to citizenship*, Innocenti Essay no. 4, 1992.
- Hopman M.J., *Looking at law through children's eyes*, Intersentia, January 2021.
- Kilkelly U., Liefwaard T., *International Children's Rights: Reflections on a Complex, Dynamic, and Relatively Young Area of Law*, in *International Human Rights of Children*, Springer, Singapore, 2019.
- Kilkelly U., Liefwaard, T., *Legal implementation of the UNCRC: lessons to be learned from the constitutional experience of South Africa*, *De Jure Law Journal*, 52(SPE), 2019. (Kilkelly&Liefwaard, 2019)
- Kilkelly U., Lundy L., Byrne B., *Incorporating the UN Convention on the Rights of the Child into National Law*, Intersentia, Cambridge, 2021. (Kilkelly&al.)
- Kilkelly U., *The UN Convention on the rights of the child: incremental and transformative approaches to legal implementation*, *The International Journal of Human Rights*, 2019.
- Krappmann L., *The weight of the child's view (article 12 of the convention on the rights of the child)*, *International Journal of Children's Rights*, 18(4), 2010.
- Lansdown G., *Can You Hear Me? The Right of the Child to Participate in Decisions Affecting Them*, Working Paper 36, The Hague, Netherlands: Bernard Van Leer Foundation, 2005.
- Lansdown G., *Promoting children's participation in democratic decision-making*, No. innins01/9, 2001.
- Liefwaard T., *Juvenile justice from an international children's rights perspective*, in *Routledge international handbook of children's rights studies*, 234, 2015.
- Lino D., *Written Constitutions and the Politics of Recognition: Symbolism and Substance*, 22 July 2014.
- Lundy L., *In defence of tokenism? Implementing children's right to participate in collective decision-making*, *Childhood*, 25(3), 2018.
- Lundy L., *'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child*, *British Educational Research Journal*, 33(6), 2007.
- Maksudyan N., *'Revolution is the Equality of Children and Adults': Yaşar Kemal Interviews Street Children, 1975*, *International Journal of Middle East Studies*, 1-2, 2021.
- Mihăilescu M. E., *On Participatory Democracy and Citizen's Involvement in Europe And in The World*, *Jurnalul de Drept si Stiinte Administrative*, 1(9), 2018.
- Nolan A., *Children's socio-economic rights, democracy and the courts*, Hart Publishing Ltd, London, 2011.

- Nolan A., *Children's Economic and Social Rights*, in *International Human Rights of Children*, Springer, Singapore, 2019.
- Nolan A., *The child as 'democratic citizen'—challenging the 'participation gap'*, *Public law*, 2010.
- Nylund A., *Children's right to participate in decision-making in Norway: Paternalism and autonomy*, in: *Children's Constitutional Rights in the Nordic Countries*, Leiden: Brill Nijhoff, 2020.
- O'Donnell D., *The Right of Children to be Heard: Children's Right to Have Their Views Taken Into Account and to Participate in Legal and Administrative Proceedings*, Florence: UNICEF Innocenti Research Centre, 2009.
- O'Mahony C., *Constitutional Protection of Children's Rights: Visibility, Agency and Enforceability*, *Human rights law review*, 19(3), 2019.
- O'Mahony C., *The Promises and Pitfalls of Constitutionalising Children's Rights*, in *The Oxford Handbook of Children and the Law*, Oxford University Press, 2019.
- Parkes A., *Children and International Human Rights Law the Right of the Child to be Heard*, Routledge, London, 2013.
- Plato, *The Republic*, Türkiye İş Bankası Kültür Yayınları, İstanbul, 2016.
- Shier H., *Pathways to participation: Openings, opportunities and obligations*. *Children & society*, 15(2), 2001.
- Sloth-Nielsen J.J.&Oliel M., *Constitutionalising children's rights and domestic courts of member states of the Council of Europe*, *Constitutionalising children's rights and domestic courts of member states of the Council of Europe*, 2019.
- Tobin J., *Increasingly Seen and Heard: The Constitutional Recognition of Children's Rights*, *South African journal on human rights*, 21(1):86–126, 2005.
- Tobin J., *Justifying Children's Rights*, *International Journal of Children's Rights* 21, 2013.
- Vandenhole W., Türkelli G.E., Hammonds R., *Reconceptualizing human rights duty-bearers*, *SAGE Handbook of human rights*, 2014.
- Vandenhole W., Türkelli G.E., Lembrechts S., *Children's Rights*, Cheltenham, UK: Edward Elgar Publishing, 2019.
- Verhellen E., *The Convention on the Rights of the Child: reflections from a historical, social policy and educational perspective*, in *Routledge International Handbook of Children's Rights Studies*, Routledge, New York, 2015.
- Wall J., *Democratising democracy: the road from women's to children's suffrage*, *The International Journal of Human Rights*, 18(6), 2014.

Thesis

Erec O., *Lowering the Voting Age from Children's Rights Perspective*, *The Master of Laws: Advanced Studies in International Children's Rights*, Leiden Law School, Leiden University, 2018.

Case law

- European Court of Human Rights, *Anatoliy Marinov v. Bulgaria*, Application no. 26081/17, 15 February 2022.
- UN Committee on the Rights of the Child, *Case D.C. v. Germany (case nr. 60/2018)*, CRC/C/83/D/60/2018, 10 March 2020.
- UN Committee on the Rights of the Child, *Case R.H.M. on behalf of Y.A.M. v. Denmark (case nr. 83/2019)*, CRC/C/86/D/83/2019, 5 March 2021.

Documents of International Organizations

UN Committee on the Rights of the Child

- UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, 1 March 2016.
- UN Committee on the Rights of the Child, *Concluding observations on the combined sixth and seventh periodic reports of Chile*, CRC/C/CHL/CO/6-7, 22 June 2022.
- UN Committee on the Rights of the Child, *Concluding observations on the sixth periodic report of Hungary*, CRC/C/HUN/CO/6, 3 March 2020.
- UN Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Austria*, CRC/C/AUT/CO/3-4, 6 March 2020.
- UN Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Luxembourg*, CRC/C/LUX/CO/5-6, 21 June 2021.

UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Switzerland, CRC/C/CHE/CO/5-6, 22 October 2021.

UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Poland, CRC/C/POL/CO/5-6, 6 December 2021.

UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of the Kingdom of the Netherlands, CRC/C/NLD/CO/5-6, 9 March 2022.

UN Committee on the Rights of the Child, Day of General Discussion, The Child and the Media, UN Doc CRC/C/50, 7 October 1996.

UN Committee on the Rights of the Child, Day of General Discussion, Children's Rights and the Environment, 23 September 2016.

UN Committee on the Rights of the Child, Day of General Discussion, Protecting and Empowering Children as Human Rights Defenders, 2018.

UN Committee on the Rights of the Child, General Comment No. 12 on the right of the child to be heard, CRC/C/CG/12, 1 July 2009.

UN Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/CG/14, 29 May 2013.

UN Committee on the Rights of the Child, General Comment No. 5 on general measures of implementation of the Convention on the Rights of the Child, CRC/C/CG/5, 27 November 2003.

UN Committee on the Rights of the Child, General Comment No. 7 on implementing child rights in early childhood, CRC/C/CG/7/Rev.1, 20 September 2006.

UN Committee on the Rights of the Child, General Comment No.21 on children in street situations, CRC/C/CG/21, 21 June 2017.

UN Committee on the Rights of the Child, General Guidelines for Periodic Reports, UN Doc CRC/C/58, 20 November 1996.

UN Committee on the Rights of the Child, General Guidelines regarding the Form and Content of Initial Reports to be submitted by States Parties under Article 44, paragraph 1 (a), of the Convention, CRC/C/5, 30 October 1991.

UN Committee on the Rights of the Child, Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, CRC/C/156, 10 September 2019.

UN Committee on the Rights of the Child, Open Letter to the Authors of the Sacchi et al v Argentina and four similar cases, online at:https://www.ohchr.org/sites/default/files/2021-12/Open_letter_on_climate_change.pdf. (last seen: 28 May 2022)

UNICEF

UNICEF, "Handbook on legislative reform: realising children's rights", vol. 1, New York, 2008, available at:http://www.unicef.org/crc/files/Handbook_on_Legislative_Reform.pdf.

UNICEF, Report "Our Europe, Our Rights, Our Future", Children's and young people's contribution to the new EU Strategy on the Rights of the Child and the Child Guarantee, online at:<https://www.unicef.org/eu/reports/report-our-europe-our-rights-our-future>. (last seen: 28 May 2022)

UNICEF, The State of the World's Children, 2003.

Other UN Organisations

United Nations General Assembly resolution, Youth and Human Rights: Annual Report of the United Nations High Commissioner for Human Rights, A/HRC/39/33, 28 June 2018.

United Nations High Commissioner for Human Rights, Legislative History of the Convention on the Rights of the Child, New York and Geneva, 2007.

United Nations, Office of the Secretary-General's Envoy on Youth, If I Disappear: Global Report on Protecting Young People in Civic Space, 2021.

Documents of Regional Organizations

Council of Europe

Council of Europe Strategy for the Rights of the Child (2022-2027).

Council of Europe, Children's Rights Division and Youth Department, Child Participation Assessment Tool, March 2016.

Council of Europe, CM/Rec(2018)4.

Council of Europe, Committee of Ministers, Guidelines on Child Friendly Justice, 17 November 2010.

Council of Europe, Committee of Ministers, Recommendation Rec(2012)2 on the participation of children and young people under the age of 18, 28 March 2012.

Council of Europe, Minister Deputies, Decision CM/Del/Dec(2022)1428ter/2.3, 16 March 2022.

European Court of Human Rights, The European Convention on Human Rights – A Living Instrument, 2021.

Handbook on European law relating to the rights of the child, European Union Agency for Fundamental Rights and Council of Europe, 2015.

Venice Commission, Constitutions available in CODICES in English, online at: https://www.venice.coe.int/WebForms/pages/?p=01_CODICES_constitutions&lang=EN. (last seen: 22 June 2022)

Venice Commission, European Commission for Democracy through Law, Report on the implementation of international human rights treaties in domestic law and the role of the courts, Council of Europe, Strasbourg: 2014.

Venice Commission, Report on Constitutional Amendment adopted by the Venice Commission at its 81st Plenary Session, CDL-AD(2010)001-e, Venice, 11-12 December 2009.

Venice Commission, Report on the Protection of Children's Rights: International Standards and Domestic Institutions, adopted by the Venice Commission at its 98th Plenary Session, CDL-AD(2014)005-e, Venice, 21-22 March 2014.

European Union

Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, EU strategy on the rights of the child, COM(2021) 142 final, 24.03.2021.

Communication from the Commission, Towards an EU strategy on the rights of the child, COM/2006/0367.

European Commission, Directorate-General for Communication, The European Union: what it is and what it does, Publications Office, 2020.

European Commission, Study on Child Participation in EU political and demographic life, Final Report, April 2021.

European Union Agency for Fundamental Rights, Overview, online at: https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/fra_en. (last seen: 28 May 2022)

Handbook on European law relating to the rights of the child, European Union Agency for Fundamental Rights and Council of Europe, 2015.

Listen-Act-Change, Handbook for professionals working for and with children on children's participation, October 2020.

Others

Deutsche Welle, Germany Ponders Giving Children the Right to Vote, 09.07.2008, online at: <https://www.dw.com/en/germany-ponders-giving-children-the-right-to-vote/a-3470938>. (last seen: 12 June 2022)

Children's Global Consultation on Sustainable Development and Economic, Social and Cultural Rights: Support Children's Engagement!, online at: <https://childrightsconnect.org/childrens-global-consultation-on-sustainable-development-and-economic-social-and-cultural-rights/>. (last seen: 28 May 2022)

#ChildRightsEnvironment: Children and Young People's Online questionnaire on draft general comment No. 26, online at: <https://www.ohchr.org/en/events/events/2022/childrightsenvironment-children-and-young-peoples-online-questionnaire-draft>. (last seen: 28 May 2022)