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## The Danubian States Concern over the Solution of Cases with Minors

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**Abstract:** Throughout the time, the growing number of international couples has led to the appearance of an impressive amount of litigation involving minors, which also represent the most difficult legal issues. In order to solve them, the Member States make every effort to align with the relevant legislation. Managing such an international process is a great challenge for legal specialists. At European level, this challenge is exacerbated by both the high standards and the guarantees provided to the parties in both international and Community civil proceedings. In the past, children's rights were not completely approached in the European Union. The only legislative framework was the regulation of large-scale economic and political issues affecting children. At present, there is a macro level concern about children projection, including the protection of all their rights and freedoms. There is an ongoing important role in the cases concerning minors within the European Court of Justice. Until recently, the Court had resolved only a few such cases. As new, much clearer legislative measures have been adopted regarding the children's rights, the cases resolved by the court have skyrocketed. Many of these decisions refer to children's rights in terms of free movement.

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In the light of the European legal norms, children are entitled to rights, enjoying absolutely all acknowledged human rights, while enjoying their specific regulations as well.

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Taking into account the fact that they have limited legal capacity, a large part of the litigations concerning minors are promoted by their parents or legal representatives. Parents or guardians play an important role in respecting the rights and freedoms of the children, a responsibility regulated by the UN Convention on the Rights of the Child (CRC) 1.

In 2006, the program “Building a Europe with and for children” was promoted - in order to address children's problems, the manner and the tools towards solving them at international standards level.<sup>1</sup>

The aim of this program is promoting non-discrimination, the appreciation by the decision-makers of the best interests of the child as the number one priority, the right to a balanced life and harmonious development and the right to be heard whenever necessary.

The program covers four key areas:

- the exclusion of any form of violence against children;
- development of services in the best interest of the children;
- ensuring the rights of vulnerable minors;
- the exclusion of any form of violence against minors.

Particular attention is paid to the treatment to be enjoyed by an unaccompanied minor who is more likely to encounter more problems than minors accompanied by parents or legal representatives. This is, in essence, a child who may be in danger, and for him, it is not the immigration service, but the child protection service that must be the basis of all actions of the European states in solving such problems, thus respecting the supreme interest of the minor. When the immigration service deals mainly with their problems, we will find ourselves in the situation in which these children who should be protected end up by being treated as criminals not complying with the migration legislation.

In order to legislate and develop plans for the integration of minors in their country of origin or in the country of destination, it is necessary to research the family and personal history of the minor in order to establish the environment they come from.

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<sup>1</sup> <http://www.coe.int/t/dg3/children/>.

Constant efforts are being made to adapt and standardize the legislation of the European states in order to protect minors in all cases involving both civil and criminal disputes involving minors.

In the hierarchy of legal norms applicable in a state, the Constitution holds the highest rank. Everything that involves the rule of law and its application must be in accordance with the Constitution principles.

When analyzing the relationship between domestic law versus EU law, we refer to the primacy of EU law. If domestic law provides for provisions contrary to the EU law, following the accession to the EU, international law will apply, in accordance with the provisions of the Act of Accession on fundamental freedoms.

Infringements of Community law are committed when the court order under appeal infringes the case-law of the European Court of Justice.

In the event of an infringement of the Community law, the Member State will be liable for the damage caused by the infringement of the Community law, the infringement being imputed to the Member State.<sup>1</sup>

Thus, both the EU Member States and the third parties engage in resolving conflicts involving minors. In terms of free movement, The Court of Justice of the European Union has resolved the overwhelming majority of cases with minors. In these cases, in particular, the social and educational rights of minors were recognized, as well as the right of independent residence.<sup>2</sup>

Following the analysis of these situations, the European Parliament points out that the consistent fight against human trafficking is a necessary and important step, as minors are vulnerable and they are increasingly victims of human trafficking, gender-based violence, exploitation, sexual, emotional and physical abuse in particular.

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<sup>1</sup> The order of 30 September 2003 in the case of Gerhard Köbler v. Republic of Austria (Case No C-224/01 Case law 2003 2003 I-10239).

<sup>2</sup> See CJEU, C-413/99, Baumbast and R/Secretary of State for the Home Department, 17 September 2002; CJEU, C-200/02, Kunqian Catherine Zhu and Man Lavette Chen/Secretary of State for the Home Department, 19 October 2004; CJEU, C-148/02, Carlos Garcia Avello v Belgian State, 2 October 2003; CJEU, C-310/08, London Borough of Harrow/Nimco Hassan Ibrahim and Secretary of State for the Home Department [GC], 23 February 2010; CJEU, C-480/08, Maria Teixeira/London Borough of Lambeth and Secretary of State for the Home Department, 23 February 2010.

Specialists are constantly working on the development of effective mechanisms in the prevention, location, reporting, investigation, prosecution of those responsible for human trafficking, physical and sexual exploitation, psychological abuse.

Girls in particular face greater problems, as they are extremely vulnerable to specific risks and they are often the perfect victims of sexual exploitation and abuse.

Over the time, statistics showed that measures taken in both the Member States and in the third countries are effective due to the vigilance and the implementation of the Directives on preventing and fighting human trafficking and protecting its victims, fighting sexual abuse and sexual exploitation of children and child pornography, as well as the establishment of minimum regulations on the rights, support and protection of crime victims and the imposition, where possible, of appropriate sanctions on smugglers.

With a view to complying with these Directives, it is necessary to strengthen the police and judicial cooperation as well as the cooperation with the EU Anti-Trafficking Coordinator to uncover the potential victims by stimulating raising public awareness in the fight to eradicate human trafficking despite the fact that the child protection institution is generally underfunded.

At the same time, situations of juvenile delinquency and the ways to solving them must be taken into account.

At first glance, the situation seems to be quite easy to manage. However, if the person being tried is not an adult, a number of exceptions to the general rules of law are applicable to the case.

Even if the minor must be treated broadly according to the same legal norms, the age and the subsequent consequences on the child must be taken into account. Such trial must have as a basic principle the best interests of the minor, the treatment applied to such an individual should be governed by dignity and respect. The special needs they have will be taken into account, as well as all aspects related to their psychological and physical development.

Even the terminology to be used must include “minor” or “child” as the phrase “minor offender” is increasingly questioned both in practice and by the doctrine due to a harsh, even erroneous approach, sometimes because Art. 6 para. 2 and 48 of the ECHR provide as follows: “Any person accused of a crime is presumed innocent until their guilt is legally established.”

By using the phrase “minor offender”, the legislator assigns rights that they do not enjoy and attributes the guilt not yet established to the convicted person.

This wording produces social consequences, the general public is erroneously induced the idea that a minor who is the subject of a criminal trial is undoubtedly a criminal, which is a conclusion to be avoided in a European country of the year 2021. Thus the hope is born that in the future, the legislator will take into account the approach of a form adapted to the legislative and social framework both in doctrine and in practice.

In the resolution of all cases, the best interests of the minor must be taken into account. This principle must guide the procedure in its entirety, a procedure whose foreground is dominated by the minor. According to some institutions, this approach has a triple value. First of all, it is a procedural norm, it is a material right and last but not least, a fundamental principle.

By analyzing these principles in stages, it can be seen that the best interests of the minor are applied and invoked in particular, directly before the courts, interpreted in the sense of maximum efficiency of child protection, these being a guarantee in the decision making process. This approach is determined by the conceptual complexity and it requires the establishment of the content with certainty in each case, without establishing a general formula. For this, the point of view of the minor will be taken into account, as well as maintaining their family environment, their education, all the ensemble that can establish their identity, religious and sexual orientation, educational stage and origins respectively<sup>1</sup>.

An easy practice has been adopted in Germany, the Berlin Bar and family law courts implementing in family law cases, in order to hurry them, a joint project analyzing the time needed to complete cases and possible differences between parents. This procedure brings forward a concrete and organizational analysis at the level of the institutions involved, magistracy, social assistance and bar respectively.

Through a common intervention approach, professionals belonging to all these institutions help parents to determine what their children's needs are and at the same time to find the fastest and most effective solutions in these cases.

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<sup>1</sup> Aurora Ciucă, *The best interest of the child. New meanings of a “magic formula”*, U.J. Mag (<https://www.universuljuridic.ro/interesul-superior-al-copilului-noi-sensuri-ale-unei-formule-magice/>).

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