

# The child as a subject of rights, autonomy, protection against violence, discrimination, religions and sanctions, and common sense.

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## Context

The following opinion is in response to a request for an expert opinion on a decision by the State Administrator in Oslo and Viken (Norway), arguing that the exclusion of baptized minor members of a religious movement is to be regarded as negative social control and a violation of children's rights according to Article 19 of the UN Convention on the Rights of the Child and Section 6, first paragraph of the Religious Communities Act. This decision was taken in Norway, the religious movement is Jehovah's Witnesses, and the form of exclusion is Jehovah's Witnesses' sanction, a removal from the religious community, sometimes called *shunning*<sup>3, 4</sup>.

The aim here is not to make a critical assessment of each of the arguments to which the State Administrator refers but instead to give an objective reading of children's rights, to recall the founding principles of the Convention on the Rights of the Child, particularly from the point of view of the evolution of children's capacities, and to address possible conflicts about freedom of thought, conscience, and religion and the autonomous exercise (or not) thereof. This opinion also addresses the issue of child protection against all forms of violence. In the second part, the opinion focuses on religious disciplinary measures, in particular practices of exclusion, and the impact of these practices on children and adolescents. It ends with a conclusion on what the children's rights approach underpins, particularly in relation to the issues at hand.

The following opinions are given in my personal capacity. Therefore, they should not be construed as the expression of any public or private organization or academic bodies I belong to or have directed. I would also like to point out that I have no connection whatsoever with the religious community of Jehovah's Witnesses and that I am expressing a secular opinion here, as I have no in-depth knowledge of this religion or the history of the religions.

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<sup>2</sup> With sincere thanks to Prof. Dr. Roberta Ruggiero for her invaluable collaboration.

<sup>3</sup> The term "*shunning*" is not really a term used by Jehovah's Witnesses to describe their religious practice. They describe their belief more as '*limiting contact*' with a former congregant.

<sup>4</sup> See also Chu & Peltonen: the exclusion is a "curtailment of socializing" and not "total isolation from the community", (Chu Jolene, Peltonen Ollimatti, Jehovah Witnesses, Elements new Religious Movements, Cambridge University Press, 2024, p. 43)

## I. Introduction

The UN Convention on the Rights of the Child<sup>5</sup> of November 20, 1989 (hereinafter referred to as the CRC or the Convention) has radically altered the legislative landscape of every State that has ratified it<sup>6</sup>, hence the fact that the Convention is universal in scope so that the same definitions, principles, and provisions apply throughout the world.

As in other countries and legal cultures, Norway's ratification of this binding treaty marked the beginning of a shift in the authorities' perception of children from a paternalistic approach to recognition of their status as subjects of rights. Of course, the children continue to benefit from essential services such as education, healthcare, nutrition, culture, leisure, and sports due to their dependence. Additionally, due to their dependence status, they are entitled to protective measures against exploitation, manipulation, violence (sexual, physical, or psychological), as well as abandonment or neglect, given their inherent vulnerability. Adherence to the Convention has transformed the children's perception from *quasi-adults* into *full persons* in their own right. These full persons are not the property of their parents, their community, and still less of the State; moreover, they hold rights that they will gradually be able to exercise autonomously or by representation (which will not necessarily be exercised by their parent(s)). In essence, the child has evolved from being viewed merely as an object to being recognized as a full individual with their own rights.

The legal issues arising from this change in status are manifold, both procedural and substantive. While the risk of conflicts between children's rights and those of other entities (parents, adults, communities, State...) is becoming increasingly frequent, relying on dogmas to give a stereotyped answer seems complicated, as their resolution depends on many factors.

I'll return to a specific situation later, referring more specifically to religious freedom and protection against violence. However, before analyzing this situation, I'd like to remind you of children's rights, according to the Convention.

## II. Rights at stake

### 1. Children's rights

#### 1.1 UN Convention on the Rights of the Child

The child's status as a *subject of rights* is not expressed as such in the Convention. This new status of rights-holder and not just beneficiary of protection and recipient of benefits

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<sup>5</sup> Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49. [www.ohchr.org/sites/default/files/crc.pdf](http://www.ohchr.org/sites/default/files/crc.pdf)

<sup>6</sup> To date, 196 States, except one, have ratified this treaty, including Norway in 1991.

and care, derives from its four general principles<sup>7</sup>, and other provisions such as Articles 5 (evolving capacities), and from what we call “civil rights and freedoms” i.e., the block consisting of articles 13 (right to freedom of expression), 14 (right to freedom of thought, conscience, and religion), 15 (right to freedom of association and peaceful assembly), 16 (right to privacy) and 17 (right to information and protection from harmful content).

For the remainder of this opinion, I shall confine myself to the significance of the two "flagship" articles that embody this new status of the child: Article 3 par. 1 CRC (the right of the child to have his/her best interests taken into account in any decision affecting him/her) and Article 12 CRC (the right of the child to express his/ her views and have them given due weight). These two articles are complementary; they combine and complement each other and must be read in conjunction with Article 5 CRC (evolving capacities), which is the instrument for measuring the child's autonomy in exercising his/ her rights.

### *1.1.1 The child's right to have his or her best interests considered<sup>8</sup>*

The concept of the child's best interests has been criticized as an empty shell, an umbrella concept, a magic formula, conceptual vagueness, and so on. Moreover, it has regularly been confused with the child's good or well-being<sup>9</sup>, and sometimes even with the child's happiness.

I won't enter into the details of this debate. Still, it is worth reminding you that Article 3.1 CRC speaks of the ‘best interests of the child’ and deals with a child's right: the right of every child whose case is at stake to have his/her personal situation examined individually (or collectively if it concerns a group of children) and to know that all possible solutions to the problem at hand will be examined, to choose the one that will best promote his/her harmonious development (Article 6 CRC), mainly when different interests are at stake. The decision-maker called upon to determine the best interests of the child concerned must follow three concrete steps:

- Assessment of the child's personal situation,
- The search for all possible solutions to the question posed,
- Choosing the most favorable measure or solution.

These three stages transform the child's best interests into a right to personalized, case-by-case care tailored to each individual child's unique needs.

Therefore, Article 3.1 creates a direct obligation for States to ensure that interventions carried out by judicial, administrative, or social authorities (not to mention political authorities), integrates these three stages into the decision-making process, and explains

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<sup>7</sup> The best interests of the child, non-discrimination, child participation and the right to life, survival and development (Article 2, 3 par. 1, 6 and 12 CRC).

<sup>8</sup> Article 3 par. 1 UNCRC

<sup>9</sup> The well-being of the child is defined by the Committee on the Rights of the Child as an ideal to be achieved: "The notion of the well-being of the child, in the broadest sense, encompasses the satisfaction of his or her material, physical, educational and emotional needs, as well as his or her needs for affection and security." (General Comment No. 14 of the Committee on the Rights of the Child, 16 CRC/C/GC 14, 2013).

how the best interests have been assessed, what solution has been chosen and why. The right to have one's best interests considered can be invoked before a court or any other body and should be directly applicable (self-executing)<sup>10</sup>. Thus, Article 3.1 of the CRC affirms that the Convention places the child at the heart of all decisions concerning them, making this principle neither abstract nor vague. It represents an explicit acknowledgment of the child's central importance in our society.

### 1.1.2 *The child's right to be heard*<sup>11</sup>

Article 12 of the CRC establishes the child's right to participate as an active agent. It grants the child a dual right: to express their opinion on matters affecting them and to have that opinion taken seriously, in accordance with their age and maturity. This right creates a duty for States to recognize and implement it, without imposing an obligation on the child to express an opinion. Decision-makers must respect the child's choice, avoiding coercion. The Article sets no age limit, presuming a child's capacity to form views, with the burden of proof for incapacity resting on decision-makers.

The expression "*capable of discernment*" in Article 12.1 CRC has often been the subject of debate, with some people wishing to apply the strict criteria of discernment (the intellectual faculty to appreciate the scope of the act and the faculty to determine freely to this act) to Article 12. In the case of such an interpretation, the child's right would be severely limited, to such an extent that the Committee on the Rights of the Child, in its General Comment No. 12, settled this question clearly, stating that:

*"it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of appropriately forming her or his own views on the matter"*<sup>12</sup>.

Children's right to express their opinion depends not only on their ability to express an opinion, but, above all, on their ability to form an opinion, mature or otherwise.

Thus, the child's right to be heard does not only apply to the emblematic cases of divorce and separation, where children are the first to be affected by judges' decisions. Indeed, the child has the right to express his/her opinion on all kinds of other decisions as soon as they directly or indirectly impact him/her (education, health, protection, religion, leisure, sports, etc.). But also, and perhaps above all, in the context of ordinary family relationships, where it is felt that the opportunity for the child to express his/her point of view regularly can help foster personal development, family relationships and facilitate the socialization of children.

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<sup>10</sup> Ruggiero, R. (2022). Article 3: The Best Interest of the Child. In: Vaghri, Z., Zermatten, J., Lansdown, G., Ruggiero, R. (eds) Monitoring State Compliance with the UN Convention on the Rights of the Child. Children's Well-Being: Indicators and Research, vol 25. Springer, Cham. [https://doi.org/10.1007/978-3-030-84647-3\\_3](https://doi.org/10.1007/978-3-030-84647-3_3)

<sup>11</sup> Article 12 UNCRC

<sup>12</sup> General Comment n° 12, para. 21 CRC/C/GC/12. Lansdown, G. (2022). Article 12: The Right to Be Heard. In: Vaghri, Z., Zermatten, J., Lansdown, G., Ruggiero, R. (eds) Monitoring State Compliance with the UN Convention on the Rights of the Child. Children's Well-Being: Indicators and Research, vol 25. Springer, Cham. [https://doi.org/10.1007/978-3-030-84647-3\\_5](https://doi.org/10.1007/978-3-030-84647-3_5)

### 1.1.3 The close relationship between Article 12 and Article 3.1 CRC

From the explanation of these two articles, the child must be heard to determine the child's best interests, but who is better placed to assess the child's situation and find the most favorable solution than the child himself/herself, the first person affected by the decision? Article 12 and Article 3.1 CRC are complementary and function as a duo in decision-making. Article 3.1 gives effect to Article 12, which offers an indispensable instrument for determining the solution to promote the child's development. Above all, considering these two provisions as interdependent ensures the child's right to influence his/her best interests and, therefore, the decision to be made, which means his/ her current existence and future.

But beware: despite the interdependence of the two articles, they should not be confused: in many situations, the child's right to be heard is a crucial element of the judicial or administrative process, but the child's voice will not be decisive in relation to other interests or may even be contrary to the child's interests. We also need to consider situations where the child's subjective wishes do not correspond to his/her best interests.

### 1.1.4 Children's evolving capacities

Article 5 CRC, which in my opinion should have been considered as a fifth general principle, prescribes that:

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

This provision deals with the relationship between parents and children (rights and duties) and the necessary guidance that parents (in the broadest sense) must provide to children so that the latter can exercise their rights.

While the Convention reaffirms the principle of respect for autonomy and the primacy of the rearing role of parents in relation to their children, Article 5 CRC stipulates that the rights and responsibilities of parents must be directed towards realizing their children's rights while respecting their developing capacities. Therefore, this provision goes beyond a literal reading of the Convention, establishing the principle of the progressive development of the child's capacities (*evolving capacities*)<sup>13</sup>: it describes a growing curve of the child's autonomy. In other words, the older they grow, the more their capacities

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<sup>13</sup> Lansdown, G. (2005). The Evolving Capacities of the Child, *Innocenti Insights*, n° 11. Lansdown, G. (2022). Article 5: The Right to Parental Guidance Consistent with the Evolving Capacity of the Child. In: Vaghri, Z., Zermatten, J., Lansdown, G., Ruggiero, R. (eds) *Monitoring State Compliance with the UN Convention on the Rights of the Child. Children's Well-Being: Indicators and Research*, vol 25. Springer, Cham. [https://doi.org/10.1007/978-3-030-84647-3\\_13](https://doi.org/10.1007/978-3-030-84647-3_13)

develop, to the point where they can progressively enjoy their rights until they become autonomous in exercising them.

In assessing a child's capacity to exercise his/her rights, the two criteria cited in Article 12 CRC come into play: age and maturity. Age alone (an objective element) cannot determine a child's capacity. Therefore, the criterion of maturity (ability to form an opinion on one's own) must provide the necessary complement to assess whether the child can exercise his/her rights, partially or totally, or whether he/she needs to be represented to do so. The criteria to be considered in judging the child's degree of maturity are based on his/her degree of physical, affective, cognitive, and social development.

We might even add here that Article 5 provides a better understanding of Article 12, which transfers the exercise of their rights to children (and justifies the absence of a universal age limit in the CRC) by recognizing that children can acquire sufficient maturity at a very young age.

**In short, the child's voice, best interests, age, maturity, and evolving capacities are the attributes of the child's new status as a subject of rights.** This implies that, for every child living in particular circumstances or experiencing difficulties and at a time when decisions must be taken in his/ her regard, every decision-maker must concretely:

- Proceed with the hearing,
- Evaluate the impact of his/her words,
- Determine the personal situation (family, school, health, relationships, vulnerability, etc.) and
- Choose the measure that best serves his/her interests while balancing these against other interests at stake and inform him/her of the action taken in response to his request.

This complex and, where possible, multidisciplinary approach requires a case-by-case process that considers each child's uniqueness and the fact that his /her development must be at the heart of all concerns.

#### *1.1.5 Norway's commitment to strengthening children's rights*

It is to be welcomed that Norway's authorities are aware of the CRC Convention's importance and have adopted legal provisions to enable them to fulfil their obligations under this binding treaty.

For example, in 2014, the protection of children's rights was strengthened by adopting a new Section on children's rights in the Constitution<sup>14</sup>. There it has now been established that children have a right to be respected for their human dignity, that children have the right to be heard in matters that concern them, and that their opinion must be given due weight in accordance with age and development. It also follows that children have the right to protection of their personal integrity, and that the child's best interests must be a

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<sup>14</sup> Art. 104 of the Constitution

fundamental consideration that must be taken as a basis in all actions and decisions affecting children<sup>15</sup>.

Provision of art 104 reads:

*"Children have a right to respect their human dignity. They have the right to be heard in matters concerning themselves, and their opinion shall be given weight in accordance with their age and development.*

*In the case of actions and decisions affecting children, the child's best interests must be a fundamental consideration.*

*Children have the right to protection of their personal integrity. The national authorities must create the right conditions for the child's development, including ensuring that the child receives the necessary financial, social and health security, preferably in his own family."*

## **2. The right to freedom of religion**

### *2.1 The right under Article 14 CRC*

Religion is undoubtedly a complex and controversial phenomenon, from a cultural point of view, but also from the point of view of respect for children's autonomy. In the following lines, I will only discuss the right to religious freedom, without dealing with freedom of thought and conscience. The Convention, in its article 14, defines it as a civil, subjective and absolute right enshrined in numerous international instruments (first Article 14 CRC, but also Article 9 and Article 2 of Protocol no. 1 ECHR of 4.11.1950, Articles 18 and 27 ICCPR, Article 13.3 CDESCR...)<sup>16</sup>.

Thus, international law proclaims the child's right to religious freedom, after a long debate between the recognition of an individual right of the child and the protection of the parents' right to the religious education of their offspring. Nevertheless, the subject goes beyond the legal question and becomes even more difficult if we tackle the aspects linked to sociology, philosophy, psychology, and ethics. Moreover, this freedom involves several actors: the child, the parents, the religious communities, and the State.

### *2.2 Nature of the right*

It is important to note that this right is *family-related*, given the impact of religious beliefs on constructing a child's identity. It is a given that when a child is born, he/she does not have the necessary maturity to make a religious choice, and it is quite natural for the child to develop within the religious and cultural milieu of his/her parents. Therefore, concerning religion, parents are seen as shapers of the child's visions and identity. Their participation in the construction of the child's religious personality is essential.

Indeed, this was the view of international law before adopting the CRC. In fact, until the adoption of the CRC, international law ignored the direct legal challenge between the child's right and that of his/her parents regarding the right to practice religion. Since then,

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<sup>15</sup> Act on communities of faith and beliefs (Communities of Faith Act), Page 49-50

<sup>16</sup> Zermatten J. in Droits de l'enfant et croyances religieuses, Jaffé Ph, Lakatos O, Langenegger-Roux N., Moody Z. Nanchen Ch. Zermatten, J. 8-14, CIDE-IDE, Sion, 2019, ISBN 978-2-9701189-6-1

there have been two approaches: one as *family-related* for immature children who still passively assimilate religious elements, and the other "*individualistic*", for children who can form their own opinions. The Convention modifies this right's familial nature in favor of the individualistic approach, accepting it as soon as the child is capable of religious self-definition. So, while freedom of religion in principle grants parents the right to give their children a religious upbringing that conforms to their own convictions, international law since 1989 has also provided that children may choose their religion and adopt the religious practices that suit them when they are able to do so. Thus, for example, children have the right to object to being forced to participate in their parents' religious practices, as they also enjoy freedom of religion.

During the debate, many fears were expressed that recognizing the child's right to religious freedom would weaken parents' responsibility to socialize the child<sup>17</sup>. While some fears may be justified, it should be said that Article 14 also empowers children and their parents to defend themselves against any undue interference by the State in the area of religious convictions, particularly about families belonging to minority religious groups, e.g. by combining the effects of Articles 30 and 14 CRC<sup>18</sup>.

### *2.3 Relationship between children's rights and parents' rights in religious matters*

To go further in the relationship between children's rights and parents' rights, we need to link Article 14 CRC to Article 18.4 ICCPR, which provides that the States parties "... *Undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*". For my part, I read Article 14.2 CRC and Article 18.4 ICCPR as a kind of continuum. They are not mutually exclusive but complementary. We could also speak of the rights of children and parents being in a relationship of principal right to accessory right, as Eva Brems does in her commentary on Article 14, based on the preparatory work for the CRC<sup>19</sup>.

Furthermore, I note that the parents' freedom to provide their children with religious education is not abolished by Article 14 CRC since parents can still guide their children in their steps towards progressive autonomy (evolving capacities of Article 5 CRC). In addition, the CRC assumes that parents have their children's best interests at heart and

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<sup>17</sup> This has led several States to express reservations about this article, notably the Islamic States.

<sup>18</sup> Article 30 UNCRC "*In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.*"

<sup>19</sup> E. Brems, in her commentary on Article 14, defines the parental right outlined in Article 14(2) as an 'accessory to the child's right, rather than an autonomous right on an equal footing'. Quoted in Ruggiero, R., Volonakis, D. et Hanson, K. (2017). The inclusion of 'third parties': The status of parenthood in the Convention on the Rights of the Child. In E. Brems, W. Vandenhoe and E. Desmet (dir.), *Children's Rights Law in the Global Human Rights Landscape: Isolation, Inspiration, Integration?* (p. 75-78). London, United Kingdom: Routledge.



that children benefit from growing up and developing in their family's environment. While this principle is upheld in most cases, it does not rule out situations of conflict of interest or even abuse and mistreatment of children by parents.

#### 2.4. *The child's progressive autonomy as the key to the problem*

The child's right to religious freedom can coexist with the parents' right to religious education through the concept of evolving capacities, as outlined in Article 5 of the CRC. As children develop, they can decide either to embrace or reject religious practices and teachings. The challenge lies in assessing the child's capacity to make such decisions. Comprehensive information beyond parental guidance is essential to support their choices. The CRC does not set a specific age for religious autonomy, recognizing that even young children can form valid opinions, though some countries, like Norway, have established a religious age of majority<sup>20</sup>.

In this regard, it is worth to quote the following related to Norway in the context of the Children's Act's revision and the determination of age, limits and self-determination for children in areas where this is necessary (civil and criminal law, medical interventions, religious autonomy, etc.)<sup>21</sup> :

*“The Commission believes that the religious age of majority should be seen in the context of the Commission's proposal for a twelve-year limit for joining and leaving associations. In the Commission's view, membership and withdrawal from associations have clear parallels to membership and withdrawal from religious and belief-based communities. Many of the arguments put forward by the Committee in favour of lowering the age limit for children's legal age of majority to 12 years also apply to the assessment of the age of religious majority. The Committee sees that the parents' duty of care may justify certain restrictions on children's right to decide for themselves whether to participate in religious and belief-based organizations. At the same time, the assessments regarding enrolment and withdrawal from associations indicate that the two age limits should coincide, and the Committee believes that this is something that should be considered more closely.”*

Indeed, the Committee on the Rights of the Child, in its General Comment No. 12, imposes the following consideration as a rule for States:

*"The more the child himself or herself knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for the child have to transform direction and guidance into reminders and advice and later to an exchange on an equal footing. This transformation will not take place at a fixed point in*

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<sup>20</sup> In the case of Norway, Articles 2 and 3 of the Faith Communities Act is the main legal basis for setting the age of religious majority at age 15, ensuring that teenagers at this age can freely choose their religion or belief.

<sup>21</sup> NOU 2020:14—Report of the Law Committee on a New Children's Act, under Section 17, the Report includes comments regarding age limits and the maturity of minors. (cf. para. 17.2.7.3.3)

*a child's development but will steadily increase as the child is encouraged to contribute his or her views.*"<sup>22</sup>

Finally, let's end with a clarification provided by the Committee on the Rights of the Child in its General Comment No. 20<sup>23</sup>, which not only asks States parties to withdraw their reservation to Article 14 CRC, but above all States:

*"...it is the child who exercises the right to freedom of religion, not the parent, and the parental role necessarily diminishes as the child acquires an increasingly active role in exercising choice throughout adolescence. Freedom of religion should be respected in schools and other institutions, including with regard to choice over attendance in religious instruction classes, and discrimination on the grounds of religious beliefs should be prohibited".*

About the child's capacity to form his/her own opinion, we therefore return to the issues discussed earlier, such as the child's right to be heard and the child's right to have his/her best interests considered as a primary consideration, consent, or capacity to discern.

### **3. The right to be protected from all forms of violence**

After analyzing Article 19 and its scope of application, this paragraph examines whether the exclusion of an adolescent from a religious community constitutes mental violence. It analyzes the issue legally, referencing Articles 19 and 14 of the CRC, concluding that exclusion may not qualify as psychological mistreatment. Psychologically, while exclusion can cause distress, parents and communities must support the adolescent. Ethically, the *shunning* policy does not interfere with family ties; legally, religious communities have the right to exclude members. The paragraph suggests that facing the consequences of exclusion can foster personal growth rather than being viewed as violence.

#### *3.1 The right under Article 19 CRC: generalities*

Can we say that protecting children from violence is an obsession for adults, parents, communities, States, and the UNCRC Committee? Probably.. In any case, it's an article that is emblematic of Protection when we describe the CRC as that of the 3 P's (Prestations = Benefits, Protection, Participation). The legislators of the 1989 Convention on the Rights of the Child, or Eglantyne Jebb, as far back as 1924 with Article 4 of her modern centenary Geneva Declaration<sup>24</sup>, saw protection as one of the pillars of all actions and interventions for children. This, of course, follows from the obvious observation already made in the Preamble to the CRC that the child is vulnerable and that, alas, children have always been either exploited (notably through work) or mistreated (particularly by those close to them). So, it's hardly surprising that the CRC devotes several provisions to protection, articulated around Article 19, which reads as follows:

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<sup>22</sup> General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12 para. 84.

<sup>23</sup> General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 016, para. 43.

<sup>24</sup> <https://www.humanium.org/en/geneva-declaration/>

*“1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”*

Certainly, this provision can be seen as an expression of the situation of the child victim, who must be protected and cared for; it would, therefore, refer to the classic and long-established position of the child as a simple beneficiary of protection rather than in his or her new position as a subject of rights. But to see only this “classical” position would be to forget that with the Convention, the angle of view has changed and that what is crucial is certainly to consider the child as vulnerable and immature, but above all as a person with his/her own rights, characterized by his/her dignity and entitled to rights, first and foremost that of having his/her physical and mental integrity respected. With a reminder of the world study on violence against children<sup>25</sup>, and the lapidary conclusion:

*“Violence against children is never justifiable. Nor is it inevitable. If its underlying causes are identified and addressed, violence against children is entirely preventable”<sup>26</sup>.*

It can, therefore, be said that, although Article 19 has many links with other provisions of the Convention, in particular with Articles 5, 9, 18, and 27, it nonetheless constitutes the core of the Convention's ambition to combat and eliminate all forms of violence as far as possible.

Moreover, we must not ignore the fact that while Article 19 is linked to the general principles of the Convention (Article 2, 3 par 1 and 12), its relationship with Article 6 CRC and the harmonious development of the child is crucial. Indeed, the consequences of violence directly affect the child's right to life, survival, and, above all, development, understood in its broadest sense, embracing the child's physical, mental, spiritual, moral, psychological, and social development.

### *3.2 Article 19: scope of application*

The Committee on the Rights of the Child has consistently emphasized the need to protect children, as shown by its adoption of two Optional Protocols in 2000: one on the involvement of children in armed conflict, and another on the sale of children, child prostitution, and child pornography. It also initiated the 2006 Global Study on Violence Against Children and issued General Comment No. 13 on child protection against violence.

Article 19 applies to all children under a State's jurisdiction and covers all forms of violence, including direct, indirect, neglect, or abandonment, regardless of frequency or the perpetrator's intent.

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<sup>25</sup> <https://violenceagainstchildren.un.org/>

<sup>26</sup> Global Report on Violence Against Children, Foreword, Koffi Anan, UN General Secretary, 2006

### 3.3 The GC no 13

The Committee on the Rights of the Child has deemed it necessary to publish a General Comment, “*The right of the child to freedom from all forms of violence*”<sup>27</sup>, with the primary goal of eradicating violence against children. It provided a legal analysis of Article 19 and defined violence in line with the 2006 UN study, including all forms of physical, mental, and sexual abuse, neglect, and exploitation. The Committee stressed that violence encompasses both physical and psychological harm, whether intentional or due to negligence.

In the interest of this opinion, we focus on the issue of psychological abuse, often also referred to as mental abuse. Although the two terms can be used interchangeably in certain contexts, psychological abuse is more precise and more frequently used in academic, legal, and psychological studies to designate emotional abuse. Mental abuse has a more general scope and is less commonly used, although it is often used to refer to actions that have an impact on a person's mind or mental well-being. For the remainder of this text, we use the terminology of **mental violence**, as adopted by the CRC Committee<sup>28</sup>.

It is defined in the following comprehensive manner:

*“‘Mental violence’, as referred to in the Convention, is often described as psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect and this can include:*

*(a) All forms of persistent harmful interactions with the child, for example, conveying to children that they are worthless, unloved, unwanted, endangered or only of value in meeting another’s needs;*

*b) Scaring, terrorizing and threatening; exploiting and corrupting; spurning and rejecting; isolating, ignoring and favouritism;*

*(c) Denying emotional responsiveness; neglecting mental health, medical and educational needs;*

*(d) Insults, name-calling, humiliation, belittling, ridiculing and hurting a child’s feelings;*

*(e) Exposure to domestic violence;*

*(f) Placement in solitary confinement, isolation or humiliating or degrading conditions of detention; and*

*(g) Psychological bullying and hazing by adults or other children, including via information and communication technologies (ICTs) such as mobile phones and the Internet (known as “cyberbullying”).”*

### 3.4 Mental violence and social exclusion practices

The question that arises, in this case, is whether the fact that an adolescent is punished for a fault, a serious offense, or even a defection, possibly an apostasy, and suffers punishment as a result (in this case, removal from the religious community) can be

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<sup>27</sup> Idem footnote 24: CRC/C/GC/13

<sup>28</sup> CRC GC 13, para 21

considered as mental violence. This is a complex question which depends on several perspectives.

Legally, reference must be made to Article 19 of the Convention and to the definition referred to above (CRC GC 13, para. 21), which could constitute what is known as psychological mistreatment through the effect of rejection and isolation and fall under litt. (b) - of the said definition, the other situations described in litt. (a) and (c) to (f) being explicitly excluded, as they concern situations other than those referred to above.

In the present case, being excluded from the religious community does not necessarily mean rejection or isolation, even if the adolescent is, in fact, distanced from the other members, but not necessarily from everyone and not from his/her family. The decision was clear in a Belgian case concerning *shunning*.

*“As far as excluded minors are concerned, the shunning policy appears to be limited to no longer allowing the minor to actively participate in the daily family Bible study. It is doubtful whether the minor concerned will experience this as a serious ordeal”<sup>29</sup>.*

Moreover, from a legal point of view, it is inevitable that if the child/adolescent has the autonomy to choose his/her religion per Article 14 as described above, which includes, as I said, the right to practice a religion or the right to leave a religion, he/she also should assume the consequences of his/her choice. This can mean happy consequences: flourishing in religious practice. Still, it can also have less pleasant consequences, such as incurring a disciplinary measure or a religious sanction, however severe the latter may be. In this case, we cannot speak of mental violence or negative social control.

Recognition of children's right to religious freedom entails recognizing their responsibility for their choices in complete autonomy. The duty of the State, as a party to the CRC Convention, is to enable children to make these choices independently.

Psychologically, the religious community in question is accused of causing social isolation (which would be contrary to the rights of the child), which has not been proven, and also of negative social control. However, this notion is not spelled out but can be understood as the community's control over the behavior of adolescents through the threat of exclusion, or disfellowshipping.

There is no doubt that for a teenager, being excluded from a religious community, which is often a central part of his or her social, family, and identity network, can cause the loss of a network of friends and support and a certain amount of distress if he/she does not understand the reasons for his/her exclusion or if he/she does not yet have the emotional maturity to deal with these feelings. It is, therefore, crucial that parents and the religious community act in the young person's best interests, taking into account their psychological and emotional well-being. Exclusion, when applied, should be accompanied by support and dialogue to minimize any adverse effects.

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<sup>29</sup> Ghent Court of Appeal decision: C/797/2022, 7 June 2022, (paragraph 2.12.7)

From an ethical point of view, if we refer to the values underpinning the religious movement of Jehovah's Witnesses:

*“... the shunning policy in the context of close family ties does not interfere with the marriage relationship and that the normal ties of affection between close relatives, such as those that bind parents and children, are not affected. ... They expressly state that the shunning policy must not result in any infringement of the bonds of marriage between spouses or of the obligations of parents towards their minor or adult children.” (paragraph 2.12.7)<sup>30</sup>;*

it would appear that the children's relationship with their parents is not affected and that any social isolation would only concern other community members.

Furthermore, a religious community has the right to react against criminal acts or apostasy and to protect religious conduct that leads to conflict or alienation in a family or social context. Article 9 of the ECHR clearly gives a religious community the right not to tolerate criticism and to exclude those who no longer agree with the community's doctrines. In such cases, the right referred to in Article 14 of the CRC is exercised by the adolescent concerned with the possibility of leaving the religious community. Consequently, it cannot be said that the ‘shunning policy’ would have automatically such an effect that the child's religious autonomy (or his/her right to choose his/her religion freely by opting in or opting out) would be threatened and that the child would be ‘negatively controlled’, i.e. would be prevented from leaving the community, because the effects of his/her exclusion would be such that he/she could not bear them.

More pragmatically, it is recognized that a child's harmonious development cannot only be achieved through happy, peaceful, and trouble-free events. Children/adolescents learn from their mistakes, the difficulties they face and the consequences of their actions, whether positive or negative. The fact that they must ‘pay a certain social price’ following their exclusion from a religious community cannot be arbitrarily qualified as mental or psychological violence against them; on the contrary, it can also be considered as an opportunity given to them to confront real life, the consequences of their actions and the possibility of overcoming this ordeal.

To believe that any form of confrontation between a child and the reality of social life would be violence against him/her would go against the idea of the child as an actor in his/her own life and as the holder of rights, including the right to make mistakes or to choose a path that is not that of his/her religious community.

#### **4. A possible discrimination**

State subsidies and registration have been denied to the Jehovah's Witnesses Community by the Norwegian authorities on the basis that the latter community seriously violate the rights and freedoms of others (cf. section 6 of the Religious Communities Act) through the use of the removal from the religious community which would prevent the right to free withdrawal and expose baptized children to psychological violence and negative social control. The fact of limiting the decision to one religious community using

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<sup>30</sup> Idem footnote 29

this form of excommunication but not to other communities using similar forms of expulsion/exclusion (Christianity, Judaism, etc.) could constitute discrimination against this group of children/adolescents, but also against their parents and their community.

International law is aware of discrimination, and all human rights treaties have a specific provision devoted to this question: Article 2.1 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) are prominent examples. So, in principle, children are covered by the provisions of these two Treaties. Yet, their unique position and dependence have opened the question of whether children are sufficiently protected by these general provisions against the actions or omissions of the State, their parents, or persons in charge of their protection. Moreover, their special status as children of ... means that they are often discriminated against because of their parents' special position (foreigners, unemployed, members of a minority, for example a religious minority, prisoners, etc.).

It was for this reason that the international community decided in 1989 to legislate specifically on discrimination against children, by enshrining article 2 of the CRC, a very important article which the Committee on the Rights of the Child has established as a general principle<sup>31</sup> and which reads as follows:

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

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

This provision, although like the major texts cited above, is indeed very specific. In fact, Article 2.1 protects children in their capacity as children, i.e. with all their characteristics as human beings different from other human beings; but it also protects them, via 2.2, against discrimination linked to their parents or "legal guardians, or family members". In fact, children are often doubly discriminated against because they are children, and because they belong to a family or group of people that is itself discriminated against.

In this case, the critical issue is whether the Norwegian authorities' decision, which specifically targets the Jehovah's Witnesses religious movement and indirectly impacts adolescent members who choose to disfellowship, constitutes discrimination. These adolescents, compared to their peers in other religious communities, are placed in an

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<sup>31</sup> Lansdown. G. (2022). Article 2: The Right to Non-discrimination. In Z. Vaghri, J. Zermatten, G. Lansdown and R. Ruggiero (Ed.), *Monitoring State Compliance with the UN Convention on the Rights of the Child* (p. 11- 19). Cham: Springer.

unfairly disadvantaged position. This decision creates an imbalance, subjecting them to consequences that others do not face under similar circumstances.

Moreover, the State's action appears disproportionate. There is no clear evidence of any imminent threat of mental violence or negative control within this group. Without any compelling proof that these adolescents are at risk, the decision seems excessive and unnecessary, unfairly stigmatizing one community without justification.

It appears that the Jehovah's Witnesses community may be the target of discrimination, as it is being denied public subsidies for a practice (removal from the religious community) that is comparable to excommunication in other religious communities—practices which remain unchallenged under the Religious Communities Act §§ 2 and 6. This inconsistency raises serious concerns about fairness and equal treatment. Consequently, the State, which by ratifying the Convention should respect, protect, and fulfill the right to non-discrimination, could find itself complicit in a case of double discrimination—both against the religious community and its adolescent members.

## **5. Child Development and Sanctions**

This paragraph explores the role of sanctions in maintaining social order, highlighting how they have evolved with human rights, particularly children's rights, which have abolished degrading punishments. It discusses various sanctions applied to children and adolescents, including legal, social, and religious penalties, stressing the importance of respecting their dignity.

Focusing on religious sanctions, such as excommunication, the paragraph compares these to civil sanctions in juvenile justice systems. Both systems consider the child's age, maturity, and responsibility, aiming for correction rather than punishment. It concludes that civil or religious sanctions are a part of an adolescent's growth, teaching them about the consequences of their actions while ensuring that their rights are upheld.

### *5.1 Disciplinary measures in general*

Sanctions have long been used to regulate behavior and maintain social order, evolving with political, social, and religious systems. Human and children's rights have led to the abolition of punishments that undermine dignity. Sanctions, which can be legal, social, religious, or disciplinary, aim to correct behavior and uphold norms, applying to both adults and children, with age limits for criminal penalties. For children, sanctions include legal penalties, school or sports-related measures, social reactions, or religious sanctions like excommunication. The CRC addresses sanctions in juvenile justice, notably in Articles 37 and 40.4, stressing that they must respect human and children's rights and democratic values<sup>32</sup>.

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<sup>32</sup> Article 40 para 4. "A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other



## 5.2 Sanctions in Religious Contexts<sup>33</sup>

Monotheistic religions (Judaism, Christianity, Islam) all have established systems of religious sanctions. The most obvious example is excommunication (expulsion or exclusion from the religious community). Religious sanctions vary according to religious traditions, historical doctrines, and practices in a changing world. They apply principally to adult adherents of a religion.

For children and adolescents, the sanction can be applied if the child/adolescent has reached the age of moral or religious responsibility. For adolescents, for example, excommunication or expulsion is possible, but this depends on several factors, including the specific religion, practices, and circumstances surrounding the reprehensible act. For example, in the Catholic Church, the age of religious responsibility is generally considered to be around 7, the age at which a person is supposed to be able to distinguish right from wrong. However, excommunication is a severe sanction reserved for major reprehensible acts, such as apostasy, heresy, or actions seriously contrary to the faith and morals of the Church. Therefore, even if excommunication could be pronounced for an adolescent, it is very rare in practice; it will be considered the age, maturity and circumstances surrounding the person's behavior. If the adolescent is deemed incapable of fully understanding the seriousness of his/her actions, another form of correction or spiritual discipline may be preferred.

Here's a brief overview of sanctions in some major religions.

In Christianity, religious sanctions vary according to branch (Catholic, Orthodox, Protestant<sup>34</sup>, etc.). Still, there are three of them: *excommunication*, the most severe sanction, which excludes a person from communion and participation in the sacraments. This can be imposed for serious crimes such as heresy, schism or major immoral acts; *penance* and *suspension* or *ban* (for certain clergy members who have committed crimes).

In Islamic law (sharia), penalties for crimes are sometimes determined by hudud or fixed penalties for certain serious crimes such as theft, adultery or apostasy. For example, for theft, Sharia law sometimes provides for the cutting off of the hand; *qisas* or retributive or compensatory penalties (an eye for an eye); and *ta'zir*, discretionary penalties decided by the judge for crimes not covered by hudud or qisas.

In Judaism, some of the penalties laid down in the Torah are rarely, if ever, applied in modern societies, mainly because of historical changes and legal developments. Civil

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alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”.

<sup>33</sup> The following descriptions are taken from “L’Histoire des Religions”, Baubérot J. Que-sais-je, Payot, 2018

<sup>34</sup> Norway is a secular state, with freedom of religion guaranteed by the constitution. Lutheranism remains in the majority, however, the Church of Norway retains an important cultural role, even though it no longer has privileged official status.

penalties have replaced lapidation, flogging, and other corporal punishments, but excommunication (*Herem*) or exclusion of a person from the Jewish community remains.

In Hinduism, religious sanctions vary according to the seriousness of the crime and the social context and are excluded from caste or social ostracism for morally reprehensible actions; purification ritual (*Prāyaścitta*): (fasts, prayers, offerings).

In Buddhism, religious sanctions mainly concern members of the sangha (monastic community) and are *expulsion from the sangha*: and confession rituals.

Regarding the age at which one of these sanctions can be applied, here's how it works for some significant religions<sup>35</sup>:

In the Catholic Church, the age of religious responsibility is generally considered to be around 7, the age at which a person is supposed to be able to distinguish right from wrong. However, as said above, excommunication is an extremely severe sanction reserved for major reprehensible acts.

In Islam, there is no formal excommunication similar to that of Christianity; for adolescents, Sharia law generally considers that from puberty onwards, a person is responsible for his/her actions. However, the severity of punishments and the application of sanctions are often adjusted according to age, maturity, and understanding of the religious implications.

In Judaism, from the age of bar-mitzvah (13 for boys, 12 for girls) onwards.

In traditions such as Hinduism and Buddhism, sanctions are rarely applied to adolescents, except in extreme cases. Generally, a pedagogical and benevolent approach is preferred.

Finally, one constant is that religious communities, whatever their tradition, often consider the age, maturity, and intention of the child/adolescent. Corrective measures such as penance, education, or dialogue often replace sanctions, rather than definitive exclusion, even if the latter remains theoretically applicable.

### *5.3 Constants and relations with the subject*

Sanctions in major religions evolve over time, influenced by social values and human rights, leading to the abandonment of practices that compromise dignity or integrity. A common sanction across religions is exclusion, where members guilty of serious moral or religious offenses, such as adultery or heresy, are expelled from the community. Most religions maintain the privacy of those excluded and do not publicly disclose the reasons for their expulsion. The practice of removal among Jehovah's Witnesses aligns with similar exclusionary practices seen in other religions.

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<sup>35</sup> Ibidem footnote 31

As a result, the practice of removal among Jehovah's Witnesses does not seem extraordinary and resembles in every way the exclusionary practices of the other religions described above.

With regard to the age at which a minor member of Jehovah's Witnesses may be expelled from the religious community, the following practice is emphasized: excluding baptized adolescents for serious offenses (apostasy, theft, use of drugs or alcohol, and other behavior considered immoral by Jehovah's Witness standards), is nothing else than an “excommunication” from the community, that may be imposed, including to an adolescent<sup>36</sup>.

But if an adolescent is involved, two elders would meet with the parents and the adolescent to see if the parents have the matter in hand. If the parents do, then the elders would leave it at that without taking any further steps. It would only be in the very rare case, where the parents are not addressing the matter or the adolescent is not receptive to the parents’ guidance, that the elders would proceed with the next step and form a “*committee of elders*” to meet with the adolescent and his parents, in order to assess whether the adolescent shows signs of repentance, taking account of age and maturity in the decision. It would be rarer still for the “committee of elders” to then decide to expel the adolescent. Jehovah's Witnesses insist on repentance: if an adolescent shows signs of sincere regret and wants to change his behavior, he/she can avoid exclusion. If not, exclusion may be imposed<sup>37</sup>. In fact, according to Chu and Peltonen<sup>38</sup>, baptized minors that commit a serious sin are rarely expelled<sup>39</sup>.

Exclusion entails a form of ostracism. The excluded person is cut off from the community and its members, sometimes including his or her own family (although this may be more flexible for children still living under the family roof). Parents can continue to live with their excluded child but limit unnecessary contact. However, according to Chu & Peltonen, removal from the Congregation “does not mean total isolation from the community. The individual is welcome to continue attending congregation meetings”<sup>40</sup>.

#### *5.4 Civil society sanctions against children and adolescents: the example of Juvenile Justice*

It is universally recognized that young people who commit criminal offences should be punished, but that their offenses should be dealt differently to those committed by adults, due to their progressive development, inexperience, and

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<sup>36</sup> In their appeal against the decision, the Jehovah’s Witnesses noted that in the last five years in Norway only one minor had been disfellowshipped, at the age of 17 (quoted by Introvigne)

<sup>37</sup> Chu Jolene, Peltonen Ollimatti, Jehovah Witnesses, Elements new Religious Movements, Cambridge University Press, 2024, p. 43

<sup>38</sup> Ibidem : “*Baptized minors that commit a serious sin are rarely expelled. Instead, two elders will meet with the minor and his Witness parents or guardians to discuss the steps that parents are taking to assist the minor. If the minor has a good attitude and the parents are assisting the minor, then the two elders may decide not to take the matter any further. It is the parent’s Scriptural responsibility to provide loving assistance to their children*”

<sup>39</sup> See also *The Watchtower*, issue of August 2024, page 25, paragraph 18

<sup>40</sup> Ibidem

immaturity. Children under the age of 18 are then in conflict with the law, and a specialized legal and judicial system is set up to deal with their delinquent behavior. This system is organized around special and specialized courts, with specific procedural rights, special procedures and professionals belonging to several disciplines (social workers, psychologists, educators...). Most countries have enacted special criminal laws for this purpose, with the aim of protecting and re-educating young people in conflict with the law, considering their age, psychological development, and potential for reintegration into society.

To tie in with our subject on religious sanctions, in particular exclusion, juvenile justice has also drawn up a catalog of possible sanctions, which are graded and range from a simple reprimand to deprivation of liberty, which is a way of temporarily excluding the child from society, removing him/her from his/her family or substitute environment and enabling him/her both to “pay” for the offence offense committed, but above all to redeem himself /herself with a view to reintegration into the society from which his/her behavior has alienated him/her.

Deprivation of liberty is considered a serious measure and, like removal, only comes into play when the offenses are serious, and lighter, educational measures are not inappropriate. Otherwise, alternative measures (community service, educational follow-up, rehabilitation programs, etc.) are preferred.

It is very important to mention here that the Convention on the Rights of the Child, in its Articles 34, 37 and 40, has enshrined the child's right to a specific form of justice adapted to the child's development and which, in its Article 37, linked to Article 19, clearly expresses that punishment and its unpleasant effects on the child, is admissible, including in its most severe form which is deprivation of liberty. In this way, the Convention recognizes the legitimacy of States to punish children, to bring them before specialized courts, to confront them with their fault, and to make them assume the penal cost of their act, as well as the social cost (removal, exclusion, deprivation of liberty) linked to it, and sometimes the family cost, when they are separated from their natural environment (various placements and custodial sentences).

When it comes to age, there is a great deal of diversity among countries for setting the minimum age of criminal responsibility, on the one hand, and on the other, the age at which a person becomes a criminal adult. In some countries, there is no lower age limit; in others, it fluctuates between 7, 8, 10, 12, 14, or 15... The Committee on the Rights of the Child saw the need to give guidelines to States on juvenile justice and devoted an entire chapter to this question in its General Comment no. 24 on Juvenile Justice<sup>41</sup>. Few States intervene in criminal matters before the age of 12, just as few have set the limit for the excuse of underaged before the age of 18. It should be noted that some countries, such as Switzerland, have set a particular age limit at 15 years for deprivation of liberty<sup>42</sup>.

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<sup>41</sup> General comment No. 24 (2019) on children's rights in the child justice system, Chapter C, Article 20 to 37 CRC/C/GC/24

<sup>42</sup> Loi fédérale régissant la condition pénale des mineurs (DPMIn), Article 25, RS 311.1

The minimum age of criminal responsibility in Norway is 15<sup>43</sup>. Juvenile justice applies to minors up to the age of 18. After this age, young people are tried as adults in the ordinary criminal justice system. However, there are specific arrangements for young adults (aged 18 to 21), who can benefit from more flexible measures depending on the circumstances. Prison sentences for minors are possible from the age of 15, but are seen as a last resort<sup>44</sup>, with a preference for alternatives more suited to young people's development.

Another example is the work being done to revise the Children's Act on the question of the minimum age of criminal responsibility and the justification for the existence of deprivation of liberty in the arsenal of sanctions<sup>45</sup>:

*“The Criminal Law Commission agrees that the minimum criminal age should be 15 in our country, as in the other Nordic countries. [...] Even if the personal maturation takes place gradually and not equally quickly for everyone, it is common to set the limit for criminal law's equal sanity at a certain age (“the criminal minimum age”).*

*[A]mong the young people there are some of the most active offenders in the country, and some show strongly deviant behavior which entails danger both for themselves and others. In the face of such strongly deviating law breakers, there may be a need to implement coercive measures depriving of liberty.”*

## 5.5 Similarities

It is very interesting to note the identical elements that exist between the official sanction of the juvenile penal system and the religious sanction imposed by the various religions, here in the concrete case by Jehovah's Witnesses.

First, children/adolescents are treated differently from adults, because their age and degree of maturity dictate a different and less severe intervention than that applied to adults. This is perfectly understandable and accepted in all countries and religions.

Similarly, judges and religious authorities consider not only the act committed, but also the will, determination and conscience to achieve a given result; and they determine the degree of responsibility and the type of punishment after hearing the offender.

Different countries have set specific age limits to enable the State to intervene and punish. Religions, too, have set age limits which may vary according to their disciplinary prescriptions, but which are modelled almost exactly on civil limits.

Juvenile justice systems have established a range of sanctions, from the most lenient to the most severe; similarly, religions also have a variety of responses, which are administered according to the degree of seriousness of the offence committed (against faith, or against civil law).

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<sup>43</sup> Article 20 du Code pénal norvégien (Strafeloven Article 20)

<sup>44</sup> Article 33 du Code pénal norvégien (Strafeloven Article 33)

<sup>45</sup> NOU 1983:57 (Age of Criminal Responsibility)

Civil law reserves the most severe penalty (deprivation of liberty) for children/adolescents of a certain age who have committed a particularly serious offence; similarly, religions reserve the most severe sanction (excommunication) for the most serious situations.

The procedures, without being totally superimposable, are based on hearing the child, assessing his/her personality, determining discernment, as well as the child's ability to amend and correct himself/herself.

It should be noted that there is always a phase, in both civil and religious cases, when the child is asked to express his/her intentions and regrets, and to make promises about his/her future behavior. The type, severity and duration of the disciplinary measure will also depend on this “mediating” approach.

In most situations, the parents' role will be to accompany the child before both civil and religious courts.

It should be remembered that the aim of juvenile criminal law is at once educational (to make the child understand that his/her behavior is wrong and has consequences) and corrective (to amend/correct the child /adolescent); the same applies to the aims of religious law.

Table no. 1 illustrates how both systems incorporate considerations of age, intent, and severity of the offense into their sanctioning processes, with both aiming toward rehabilitation, be it social or spiritual.

<b>Table no 1: Similarities between the juvenile penal system and religious sanctions</b>		
<b>Aspect</b>	<b>Juvenile Penal System</b>	<b>Religious Sanctions (e.g., Jehovah’s Witnesses)</b>
<b>Age Consideration</b>	Treats children/adolescents differently due to their developmental stage.	Similar age considerations for disciplinary actions.
<b>Assessment of Intent</b>	Judges assess the offender's will and responsibility.	Religious authorities assess intent and determination.
<b>Type of Sanctions</b>	Range from community service to deprivation of liberty.	Range from admonishment to excommunication.
<b>Severity of Offenses</b>	Severe penalties like deprivation of liberty for serious offenses.	Excommunication reserved for severe violations.
<b>Hearing Process</b>	Legal hearings involving assessment of the offender's personality.	Spiritual hearings to evaluate the offender’s spirituality and behavior.
<b>Age Limits for Sanctions</b>	Specific age limits set by the state for penal interventions.	Age limits may vary but are generally aligned with civil standards.
<b>Rehabilitation Focus</b>	Aimed at reintegration into society and correction.	Focus on spiritual redemption and reintegration into the religious community.

It is therefore hard to see why the State, which punishes adolescents from the age of 15, including depriving them of their liberty, with the effects of severing links with family and friends and isolating them, should be able to do so without being accused of committing an offense qualified as mental violence, whereas a religious community which could, by hypothesis, take disciplinary action of disfellowship or *shunning* for adolescents from the same age would be accused of committing mental violence?

This would raise the question of the State's duty to denounce the religious movement of Jehovah's Witnesses as perpetrators of mental violence to the Norwegian criminal prosecution authorities!

#### *5.6 Impacts on adolescents. A matter of common sense?*

Rules on exclusion, suspension, fines, and similar sanctions exist in virtually all public organizations (particularly in schools) and private associations in all areas where several or many people co-exist (professional associations, leisure, sports and hobby clubs, political parties, cultural foundations, etc.). The loss of membership in such cases can also have significant consequences for the individual, including when he/she is an adolescent. Effects of exclusion or sanction are personal, social, professional, economic, and even family-related, etc...

Therefore, if the child, adolescent, or adult cannot bear the effects of the disciplinary decision, which are often unpleasant, we might think that divorce (or breaking off an engagement for an adolescent) constitutes mental violence; similarly, leaving a political party or breaking off a friendship...

In my opinion, anyone with a shred of common sense knows very well that it is impossible to eliminate what I call the 'exit costs' which summarize what the person leaving an organization must endure due to their departure. They are an inevitable feature of organized social life. If adolescents are mature enough to understand their obligations when they are baptized - and there is no evidence that this is not the case - they are aware of the costs of leaving in the same way as adults.

I think that it is also wrong to say that a young boy or girl has no experience of the costs of going out: they may decide to break off a relationship with a boyfriend or girlfriend, leave a group of friends, leave a sports club or even, in extreme cases, leave their family and go and live somewhere else. All these experiences have painful exit costs. Removal from the religious community is particularly painful for them, who appear fragile; this statement may seem correct, as may the affirmation that they are also much more flexible than adults when it comes to socializing; in fact, they quickly find their networks. Because they attend public school or in training, it is easier for them to relate to their fellows of the same age.

Finally, the CRC Convention does not ignore the impact of these sanctions on the juvenile. Still, it recognizes that they are surmountable and not contrary to children's rights insofar as they must take into account the age and maturity of the "offender", the degree of awareness (responsibility) of the act, the proportionality between the act committed and the societal response, and the support of adults (legal representatives or various professionals) in the rehabilitative process.

## 6. Conclusions

### 6.1 From the children's rights perspective

In my opinion, it is appropriate here to return to the children's rights fundamentals in particular Articles 3(1), 5, 12, and 14, and to note:

- that the child's right to religious autonomy is not called into question in the situation invoked by the Norwegian authorities and that Article 14 of the United Nations Convention on the Rights of the Child is not under attack;
- that this autonomy is linked to the age and maturity of the young person concerned, as required by Article 5 CRC;
- that this right to religious autonomy includes not only the right to choose whether or not to practice a religion but also the right to leave that religion and accept the consequences;
- that the protection of children against violence is not systematically compromised by the practice of *shunning*, even if, on a case-by-case basis, undesirable emotional effects could be observed. To date, however, this has only been speculated upon and cannot be assumed to be true in the absence of any proven case;
- that in every situation where the question of a child's exclusion from a religious community arises, the child/adolescent must be heard in accordance with his/her age and degree of maturity, and due consideration must be given to his/her opinion; consulting children is not only a best practice, it is a matter of simple justice;
- that the child's right to have his/her best interests considered must be applied in the same way in all decisions likely to lead to exclusion, whether taken by civil or religious organizations;
- that any discrimination based on religion is prohibited.

### 6.2 Reflecting on the broader implications

Following this analysis of Norway's decision to punish the Jehovah's Witnesses community by withdrawing public subsidies due to their practice of Shunning, I feel uneasy. Instead of focusing on the child's harmonious development and well-being, as outlined in Articles 6 and 27 of the CRC, the practice is simply labeled as harmful without



a deeper examination of the Convention's provisions or recognition of the child as a rights holder.

Articles 13 to 17 of the Convention recognize a new child endowed with rights and civil liberties that make him/her a dignified and responsible person. It would be wrong to consider this case only from the angle of Article 14 or Article 19 of the CRC and to focus on possible threats to the children of the community in question. In contrast, their status as developing adolescents who are able to choose a religion or not to choose one, or if they have chosen a religious practice, to abandon it of their own free will must be taken into account. This is vital, just as it is vital that adolescents can grow up taking responsibility for any mistakes they make and learning from them that there are two sides to every decision: the advantage gained and the price to be paid.

Common sense and simple logic dictate that if we continue along the Norwegian path, any action that causes the slightest discomfort to the adolescent should be outlawed and its perpetrator prosecuted... I'm convinced that no one wants this outcome.

A handwritten signature in black ink, appearing to read 'Jean Zermatten', with a stylized flourish at the end.

Sion, 21st October 2024

Jean Zermatten