



**Protecting Children's Rights:
A Comparative Analysis between Vietnam and
the Legal Models of the European Union and Hungary**

by
Huynh Thi Truc Giang
Supervisor: Prof. Dr. Eszter Cs. Herger

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1. INTRODUCTION

1.1. THE NECESSITY OF THE RESEARCH TOPIC

At the international level, *Lars-Goran Sund and Marie Vackermo* have stated that “there are solid grounds to be seriously concerned about children's rights. More than one billion people are living in staggering poverty. The children affected face enduring malnutrition, poor housing, a lack of sanitation, etc. They have no or limited access to information, medical care, and education. These factors lead to diseases, which increase the likelihood of a bleak future. Under such conditions, where are hope and other incentives to strive for a better life? Furthermore, if such basic needs are not met, the problem will overshadow other, more complex interests, such as having a loving environment. Children who live in a more affluent environment face other types of hardship. Exploitation and abuse are not uncommon. Additionally, not all parents can give their children the support and encouragement they need. Illness, dependence on drugs, and other mind-narrowing interests (e.g., focusing on a career, etc.) may lead to neglect and, thus, pose tragic barriers to the child's future. Not only parents can have shortcomings; schools can also provide discouraging experiences for children”¹.

In Vietnam, children are facing a similar situation. In 2016, the child population stood at 24,776,733 individuals, accounting for 25.75% of the total population. Among them, male children amount to 12,915,365 (52% of the total child population), while female children number 11,861,368 (48% of the total child population). Specifically, the malnutrition rate among girls under 5 years old is 11.7%, and among boys under 5 years old, it is 11.3%².

Huynh Nam Phuong posits that “stunting malnutrition, viewed not merely as a physical manifestation of stature, holds greater significance in its impact on a child's intellect. Failure to address stunting may subsequently impair a child's cognitive abilities, potentially influencing future job prospects and income levels”³. Regarding the issue of protecting children from violence, abandonment, and neglect, the Department of Children's Affairs (DCA)⁴ noted that in the year 2020 and the period from 2016 to 2020, there were instances of concerning and alarming cases of school violence and child sexual abuse within educational institutions. These incidents have raised public outrage and concern. Additionally, there were reports of ethical misconduct by educators. In some private schools, there were lax procedures for student pick-up, and cases of students being forgotten on transportation led to fatalities. Furthermore, certain vehicles used for transportation were found to be outdated and lacked safety measures⁵. *Lesley Miller*, the deputy chief representative of the United

¹ SUND - VACKERMO, The interest theory 752.

² The general statistics office of Vietnam, The results of the population and housing census as of April 1, 2016.

³ HÀ - TRẦN - HUỖNH, The nutritional status and some related factors of H'mong ethnic children under 5 years 517.

⁴ The department of children's affairs (DCA) is an agency under the Ministry of Labour, Invalids and Social Affairs, with the responsibility of assisting the Minister in carrying out the states management function related to children within the scope of the Ministry's responsibilities.

⁵ DCA, The situation of children in 2020.

Nations children's fund in Vietnam, claims in 2022 that “every year, nearly 2,000 children are abused and violated. It is just the tip of the iceberg because Vietnam still has many unreported cases”⁶.

According to the report from the criminal police department, Ministry of Public Security, in 2020, “nationwide statistics revealed the identification of 2,209 individuals involved in the abuse of children, marking a decrease of 110 individuals compared to 2019. The reported cases involved the victimisation of 2,008 children, indicating a reduction of 109 cases compared to the preceding year. Specifically, incidents of child sexual abuse accounted for 1,583 offenders and 1,576 victims. Additionally, children subjected to other forms of abuse amounted to 626 offenders targeting 432 children”⁷.

The multi-dimensional issue of child poverty in Vietnam is also a cause for concern. “According to the Ministry of Labour, Invalids, and Social Affairs, there are currently more than five million poor children in multi-dimensional poverty. The poverty rate is highest in entertainment, health, and water. Children's enrollment rate in preschool is low, especially children from poor households and children in extremely difficult communes in ethnic minority and mountainous areas. Children's knowledge in the extremely difficult communes of ethnic minorities and mountainous areas remains low. Most of the extremely difficult communes lack play spots for children”⁸. In the context of education, overall, across all educational levels, children from the poorest households exhibit completion rates below the national average⁹. Conversely, children from the wealthiest households demonstrate completion rates above the national average¹⁰.

The provided information indicates that safeguarding children is an urgent and pressing need. However, are the protection of children and the legal regulations regarding children's rights independent or interrelated issues? According to *JM Kruger*, historically, in certain countries, “children are legally perceived as lacking the capacity of adults, thereby restricting their full participation in political, legal, and societal processes. Instead of possessing most rights, children are granted specialised protection by the States”¹¹.

The author firmly believes that these two elements are intimately intertwined. Specifically, safeguarding children will be a goal for nations, and legally recognising children's rights serves as a means to achieve this. Delineating children's rights ensures that children are officially protected and obligated, rather than relying solely on the morality, awareness, and financial capacity of their parents. In other words, these regulations on children's rights have laid the groundwork for children to exercise their entitlements and precisely delineate the responsibilities of relevant parties. For instance, children have the right to be cared for and nurtured. Therefore, it becomes the duty of parents to provide for and care for their offspring. Failure to comply may lead to legal consequences.

In addition, regulations regarding children's rights will establish standards for child protection. Firstly, this involves informing relevant parties, such as parents, schools, and social organisations, about

⁶ ĐỖ, Nearly 70% of Vietnamese children have ever experienced violence or abuse.

⁷ DCA, The situation of children in 2020.

⁸ HỒ, The situation of children experiencing violence and sexual abuse is still complicated.

⁹ UNICEF, Summary report on education in Vietnam for the 2022.

¹⁰ Ibid.

¹¹ KRUGER, The philosophical underpinnings of children's rights theory 436.

their responsibilities in specific areas of child development. Subsequently, the children themselves, having gained sufficient awareness, will autonomously determine actions in accordance with legal provisions. Therefore, after recognising the importance and urgency of conducting a detailed study on the legal framework and practical implementation of child protection in Vietnam, this dissertation will approach the issue from the perspective of children's rights. Subsequent analyses will systematically elucidate topic-related aspects, including the fundamental concepts of the dissertation, the scope of the research, an overview of the literature, research objectives, research questions, and research methodology.

1.2. SOME FUNDAMENTAL CONCEPTS OF THE RESEARCH TOPIC

1.2.1. The Concept of Children

From a social perspective, “a child is a human being between birth and puberty”¹². According to some medical information, puberty varies between girls and boys. For girls, puberty is 15 years of age, and for boys, it is 16 years. Thus, the concept of children socially has not shown consistency and clarity. From a legal perspective, “before the convention came into existence, the concept of children in international law was relatively ambiguous. Two declarations on the rights of children in 1924 and 1959 can be mentioned as the groundwork for drafting the convention, but neither provided a clear definition of children”¹³. Finally, with the advent of the United Nations Convention on the Rights of the Child (CRC)¹⁴, this limitation was addressed. In Article 1, the CRC stipulates: “A child means every human being below the age of 18 years”. This provision indicates that age is considered the criterion for determining whether an individual qualifies as a child. This means that anyone below this age limit is considered a child, while anyone above this age limit is no longer regarded as a child. “In other words, this is the criterion for determining the subjects entitled to the rights recognised in the convention. This point is particularly important because the rights in the convention are characterised and closely related to the childhood stage, as clearly evidenced in the emphasis on the “vulnerability in physical and intellectual aspects of children, which need special care and protection” more than that of adults”¹⁵.

The definition of children in Vietnamese law is similar to that of the CRC, which uses age limits to determine children. However, the age limit for determining children in Vietnamese law is 16 years of age¹⁶. Therefore, persons under the age of 16 will have the rights and obligations of children under the Children Act 2016, while those aged 16 years and older do not have the rights and obligations of children but will enjoy citizens' rights and responsibilities. In addition to the concept

¹² NGUYỄN, Analysis of policies to support children with disabilities to access social security.

¹³ NGUYỄN - HÀ - HOÀNG, A comparative study of the concept of the child in the UN Convention 36.

¹⁴ The United Nations Convention on the rights of the child (CRC), which was adopted on November 20, 1989, at the United Nations General Assembly in New York city. It is a comprehensive international treaty that outlines the rights of children and sets out the obligations of governments to ensure the well-being and development of all children.

¹⁵ NGUYỄN - HÀ - HOÀNG, A comparative study of the concept of the child in the UN Convention 36.

¹⁶ Article 1 of the Children Act No 102/2016.

of children, Vietnamese law also defines the concept of minors. According to Article 21(1) of the Civil Code 2015, a minor is a person under 18 years of age¹⁷.

In Hungary, according to the Child Protection Act¹⁸, children are defined as individuals under the age of 18. Therefore, compared to Vietnamese law, Hungarian legislation demonstrates a complete alignment with the CRC regarding the concept of children. It is essential to emphasise that although the age of children under Vietnamese law may not entirely match the CRC's definition, it does not mean that Vietnam has violated commitments regarding the determination of who qualifies as a child. The CRC defines children as “persons under the age of 18”, allowing member states the flexibility to set their own age limits as long as they meet the upper threshold criterion of being “under 18”. *Stefanie Schmahl* supports this perspective, stating that “countries are authorised to establish a legal age lower than 18”¹⁹.

The criteria used to determine the terms of children under Vietnamese law²⁰ is age. Accordingly, if an individual has surpassed the recognised age for being considered a child - 16 years old - even if incapacitated due to illness, they are not considered a child. For instance, a 20-year-old with a mental illness leading to a loss of cognitive capacity and behavioural control is deemed to be a person lacking the capacity for civil conduct according to the provisions in Article 22 of the Civil Code 2015.

The age of children is determined by a birth certificate, which is only issued to individuals after they have been registered. This regulation raises the question of whether a child is entitled to the rights of a child if their birth is not registered. One of these rights is the children's right to education. According to the provisions in Article 13 of the Education Law 2019²¹: “Learning is the right and obligation of citizens. Every citizen, regardless of ethnicity, religion, belief, gender, personal characteristics, family origin, social status, or economic circumstances, is equal in all aspects of learning opportunities”. “Thus, learning is a natural right of citizens, and there is no reason why someone should not attend school, whether they have a birth certificate or not, as the possession of a birth certificate affects the exercise of the citizen's right to education”²².

On the other hand, Clause 1 Article 19 of the Citizen Identification Law 2014²³ also stipulates: “Vietnamese citizens aged 14 years and over will be granted citizenship”. Thus, when citizenship is granted, for many reasons, the date of birth on the child's birth certificate may differ from the date of birth on the citizen's identity. For example, on the birth certificate, the person is still under 16 years old, but the person is over 16 years old based on citizenship identification. In this case, which age will be chosen? A solution to this problem must be based on the legal validity of the two above papers. Documents that have legal value in determining an individual's date of birth will be selected as a basis for determining the child's age. Clause 1, Article 14 of Citizen Identification Law 2014 and Article 6 of Decree 123/2015/ND-CP is the original civil status papers of an individual regarding the legal

¹⁷ Section 1, Article 21, Civil Code of 2015 No 91/2015.

¹⁸ Hungarian Child Protection Act, §5(a), and Hungarian Civil Code, §2:10(1).

¹⁹ SCHMAHL, United Nation Convention on the rights of the child: Article-by-Article commentary 34.

²⁰ HUỖNH, The legal concept of child and children's rights in Vietnam 113.

²¹ The Education Law 2019 No. 43/2019.

²² Legal advisory department, Can I go to school without a birth certificate?

²³ The Citizen Identification Law No. 59/2014.

value of a birth certificate. Thus, each individual's age will be determined based on that person's birth certificate, not on their citizenship identity, in case there is a disparity between these two documents.

A foetus is not considered a child under Vietnamese law. This also remains a contentious issue in international law. During the drafting of the CRC, the Vatican, Malta, and some predominantly Catholic countries proposed including protection for the unborn in the Convention's activities. They suggested that Article 1 of the CRC should define the moment of conception as the commencement of life. In contrast, other countries opposed this definition, not only because it lacked a scientific basis, but also because it would imply that abortion must always and unconditionally be considered a violation of a child's right to life. The drafting committee ultimately remained silent on this matter, leaving the decision entirely to member states²⁴.

Within the legal framework of Vietnam, this question remains unanswered in the Children Act 2016. Nevertheless, the entitlement to education suggests that children must be born to enjoy children's rights. The rights of children to alternative care and adoption are not exceptions. Specifically, the Adoption Law 2010²⁵ stipulates that adoptive parents must have the birth certificate in the adoption dossier upon completion of the adoption process. Moreover, Article 21, Clause 4, of the Adoption Law also specifies that "biological parents can only give a child up for adoption 15 days after the child's birth". Concerning the legal capacity of individuals, the Civil Code 2015 also stipulates in Article 16, Clause 3: "The legal capacity of an Individual begins at birth and terminates upon death". It can be concluded that, according to current Vietnamese law, a foetus is not considered a child.

On the other hand, under the provisions of Article 1, Section 44 of the Health Law 1989²⁶, it is stated that women have the right to abortion based on their own will. *Nguyễn Tiến Đức*²⁷ argues that "this is the legal basis for asserting the viewpoint in Vietnamese law that the foetus does not possess the full attributes of a human being and that women have the right to make decisions regarding their bodies in relation to the foetus". However, Vietnamese law also has strict regulations prohibiting the termination of a foetus for gender selection reasons, as stipulated in Section 2, Article 7 of the Population Ordinance 2003. Additionally, abortion is prohibited for foetuses over 22 weeks old. In cases of violation, penalties will be imposed in accordance with the provisions of Article 84 of Decree No. 176/2013/ND-CP²⁸, with different administrative penalty levels depending on the nature of the act. In summary, although based on the spirit of humanism, "these prohibitions on abortion do not imply that the law recognises the right to life of the foetus. These provisions serve to protect the health of pregnant women while also balancing other public objectives pursued by the States. Overall, these regulations are relatively in line with international standards and ensure a balance between the right to life and the interests of pregnant mothers and their foetuses"²⁹.

As *Herger* states, "one of the dark spots in the development of European law is that, for centuries, among the peoples and nations that populated Europe after the fall of the Roman Empire,

²⁴ SCHMAHL, United Nation Convention on the rights of the child 37.

²⁵ Adoption Law 2010 No. 52/2010.

²⁶ The Health Law No. 21/1989.

²⁷ NGUYỄN, A comparative study of the concept of the child 34.

²⁸ Government Decree 176/2013.

²⁹ NGUYỄN, A comparative study of the concept of the child 34.

abortion was usually only punished if it was carried out by the pregnant woman or by a third party on her behalf without her husband's knowledge"³⁰. "This was a serious contradiction of ideal and reality since the biblical legal culture considered the protection of the life of man created in the image of God (and within this the protection of the life of the foetus) as the primary function of states power"³¹.

The terms "children" and "minors" represent distinct legal concepts in Vietnamese law. Minors are defined in Clause 1, Article 21 of the Civil Code 2015: "A minor is a person under 18 years old" The children's concept in the Children Act 2016 is similar to the juveniles' concept in the Civil Code 2015 in terms of age limit. The next similarity of these two concepts is also shown in the age limit from which the child (Children Act) or juvenile (Civil Code) is the highest. However, these two concepts still differ. While the Children Act 2016 age limit is 16 years old, the age limit in the Civil Code 2015 is 18 years old. This difference has led to the deduction that children are definitely minors, but juveniles are not children. For example, if a person is 17 years old, he is not a child but is still a minor.

Regarding the differences in the regulations on children's age limit and juvenile age in Vietnamese law, as analysed above, the regulations on age to identify children in the law on children or minors in the Civil Code 2015 have certain similarities. Still, these two ways of provisioning meaning are not the same as those in the Civil Code 2015 of age for criminal capacity in the Penal Code³². Specifically, according to the Children Act 2016 and the Civil Code 2015, the age limit is given in the determination criteria to be the highest level. The age used in the penal code to determine criminal capacity is the lowest level. The Penal Code 2015 stipulates the age for criminal capacity in Clause 1, Article 12: "A person aged 16 years or older must bear criminal liability for all crimes, except for another law in this code". It shows that if an individual exceeds the age limit of 16, they must suffer some adverse financial consequences and/or lose their freedom because they have committed a crime. Besides, because of the Children Act's scope, the Civil Code 2015 and the penal code are not the same. When the age requirement to be considered a child or minor is met, they may be recognised and protected by law. Meanwhile, when a person attains the age of criminal responsibility, they must be deprived of some of their interests as a deterrent to their adverse behaviour towards interests protected by the states.

1.2.2. The Concept of Children's Rights

In the world, there are numerous ideological orientations regarding children's rights. This is why *Liebel et al* asserted in 2012 that: "a consensus on the extent, priorities, or even precise content of children's rights is not readily available; children's rights are a morally sensitive domain having to deal with strong and often competing normative and ideological perspectives"³³.

In Vietnam, from the perspective of legal science, the concept of children's rights has recently attracted the attention of legal scholars. According to *Nguyen Thi Van Anh* and *Nguyen Van Nghiep*,

³⁰ HERGER, A conservative version of European family law thinking 308.

³¹ HERGER, A 17. századi protestáns természetjogászok családképe 60.

³² The Penal Code 2015 No. 100/2015.

³³ LIEBEL - HANSON - SAADI - VANDENHOLE - HANSON, Schools of thought in children's rights 67.

“Children's rights are the human rights specifically designated by the law for children, aimed at ensuring that children live and grow up in a healthy and safe manner. In other words, children's rights are the special privileges that children enjoy as stipulated by the law. The protection of children involves implementing appropriate measures to ensure that children live safely and healthily, prevent, stop, and address acts of child abuse, and assist children in special circumstances”³⁴.

From a legal standpoint, despite the existence of formal laws recognising the concept of children, the notion of children's rights remains an open issue within the legal system of Vietnam. However, this does not imply that the legal system in Vietnam lacks provisions to protect children's rights. Therefore, to draw a conclusion on children's rights in line with the spirit of Vietnamese law in protecting the rights of this particular subject, the author will analyse this section with a deductive approach. In doing so, the author will first clarify some fundamental provisions in the constitution and the law on child protection in Vietnam across different periods. Based on this, there will be synthesised observations regarding the concept of children's rights.

After gaining independence thanks to the August Revolution's success in 1945, Vietnam built laws to affirm political, economic, cultural, and social goals. Child protection is a major issue recognized by the States of Vietnam not only in the first Constitution in 1946 but also in the current Constitution. However, the detailed contents of children's rights, the implementation of children's rights, and the determination of stakeholders' obligations to protect children have only been recognized since 1991³⁵, following the passing of the Child Protection, Care and Education. It is a document issued after Vietnam signed the CRC in 1989.

The child protection provisions in the Vietnamese constitution over time are detailed as follows: The 1946 Constitution, the highest legal document of Vietnam at independence, “This is the constitution with the closest approach to human rights”³⁶. This Constitution prescribes the principle of child protection in Article 14: “Children are cared for and educated”. “The excellent core values of the 1946 Constitution have been inherited and promoted in the four subsequent constitutions, namely the 1959 Constitution, the 1980 Constitution, the 1992 Constitution, and the 2013 Constitution. These constitutions are the steps of recognition and development of rights and the mechanism to protect human rights and civil rights in Vietnam”³⁷.

The 1959 Constitution affirmed in Article 24: “The states protects mothers and children's interests and ensures the development of health care homes, daycare centres, and nursery schools”. The 1980 Constitution recognised the protection of children in Article 65: “The states and society attach particular importance to protecting, caring for, and educating adolescents and children, gradually expanding the responsibility of raising children, and making children's living, learning, and maturity guaranteed”. The 1992 Constitution in Article 65, stipulated that “Children are protected, cared for, and educated by the family, the states, and society”. The 2013 Constitution notes in Clause 1, Article 37: “children are protected, cared for, and educated by the states, their families, and society; they are allowed to participate in child issues. Abuse, neglect, labour exploitation, and other acts that

³⁴ NGUYỄN - NGUYỄN, Protecting the rights of children 12.

³⁵ The Child Protection, Care and Education Law 1991 No. 57/1991.

³⁶ HÀ, Recognizing more historical value of the 1946 constitution.

³⁷ HOÀNG, The 1946 constitution: A constitution of democracy and progress.

violate children's rights are strictly prohibited". The Child Protection, Care and Education Law 1991 (the 1991 Law) was approved by the 8th National Assembly of Vietnam on August 12, 1991. According to this law, children are Vietnamese citizens under 16 years old³⁸. The State affirms in Article 3: "The protection, care, and education of children are the responsibilities of families, schools, states agencies, social organisations, and citizens". "The rights of children must be respected and ensured. Any acts violating the rights of children or causing harm to their normal development shall be severely punished"³⁹.

Although the 1991 Law states that children's rights must be respected and upheld, descriptions of children's rights are not recorded in this document. This act only lists some children's rights that are protected by Vietnamese law. They include the right to be cared for and raised for physical, intellectual, and moral development⁴⁰. Children with particular conditions, such as disabled children, are supported by the states and society in treatment and functional rehabilitation to integrate into social life; admission to special schools and classes. Children with no support are taken care of and raised by the State and society (Clause 2 of Article 4 and Article 6). Children have the right to live with their parents. No one has the right to force a child to leave their parents' care, except for the child's benefit.

The 11th National Assembly of Vietnam passed The Child Protection, Care and Education Law 2004⁴¹ (the 2004 Law) on June 15, 2004. According to this law, children as defined herein are Vietnamese citizens under the age of 16 (Article 1). Similar to the 1991 Law, the 2004 Law maintains the concept of children but does not provide a specific elucidation of the notion of children's rights. In addition to some of the fundamental rights of children recognised in the 1991 Law, the 2004 Law further recognised children's rights: The right to birth and citizenship (Article 11), the right to develop talents (Article 18), access information, express opinions, and participate in social activities (Article 20). However, the 2004 Law still has no definition of children's rights.

"After ten years of implementing the 2004 Law, child protection, care, and education have been reformed and have had many achievements. However, the country's socio-economic context has changed many times, leading to the emergence of new problems affecting children and the realisation of children's rights. The 2004 Law's implementation revealed the limitations, shortcomings, and failure to meet the requirements of newly emerging issues that need the law's adjustment. The 2004 Law stipulated that only 10 of the 28 children's rights are recognised in the CRC. The remaining rights have not been regulated or are regulated sporadically in other laws, not clearly expressing the law's spirit"⁴².

The 13th National Assembly of Vietnam passed the Children Act on April 5, 2016. Children were defined as people under 16 years of age. Although the children's ages have not changed from the previous two documents, the subjects considered children under the Children Act 2016 have been broadened. Besides, the rights of children recognised and protected by Children Act 2016 are also supplemented. Specifically, the right to life (Article 12), the right to preserve and promote identity

³⁸ Article 1 of the Child Protection, Care and Education Law 1991.

³⁹ Article 4 of the Child Protection, Care and Education Law 1991.

⁴⁰ Clause 1 Article 6 of the Child Protection, Care and Education Law 1991.

⁴¹ The Child Protection, Care and Education Law No. 25/2004.

⁴² Đỗ, Discussing the draft Child Protection, Care and Education Law.

(Article 18), the right to freedom of belief and religion (Article 19), the right to confidentiality of private life (Article 21), the right to reunite contact with parents (Article 23), the right to protection from drugs (Article 29), the right to protection in administrative proceedings and handling of administrative violations (Article 30), the right to be protected in case of natural disasters, environmental pollution, armed conflict (Article 31), the right to social security (Article 32), the rights of children with disabilities (Article 35), the rights of stateless children, refugees, and refugee children (Article 36).

From the contents of children's rights under the provisions of Vietnamese law mentioned above, three conclusions about children's rights can be drawn as follows: Firstly, from the perspective of human rights, it can be understood that in Vietnam, children's rights are human rights applied to children. Secondly, Vietnamese law has recognised the rights of children from the moment they are born, regardless of their cognitive ability. The recognition of children's rights when children do not have the ability to perceive their rights is still a controversial issue in the world of legal science. There are many different views on this issue, but in general, there are two schools of thought: (i) The views of 17th- and 18th- century philosophers such as *Hobbes, Locke and Mill*. Accordingly, “because of their incapacity for reasoned decision-making, children could not be the bearers of rights. This viewpoint is still found in modern children's rights theory. It forms the basis of the “will theory” of rights (also called the “power theory” of rights)⁴³. (ii) *Freeman's* point of view,⁴⁴ which *has Kruger's* support⁴⁵. Specifically, “In order to enable children to develop into rational, autonomous adults who are capable of making their own decisions, children should initially be protected.” Thirdly, children do not exercise all of their rights by themselves because their parents or guardians support them in exercising some of their rights. For example, the right to birth registration, the right to be cared,. Entities exercising children's rights must ensure it is in the best interests of children. Some views also said that “this ought to be done in a way that encourages the child to develop the capacity step by step to assume responsibilities and exercise rights independently”⁴⁶.

In summary, in Vietnam, children's rights are deemed human rights prescribed by law for children from birth. Parents and relatives of children will help children exercise these rights. During implementation, these subjects must ensure the best interests and comprehensive development of children, physically, intellectually, and emotionally.

1.3. SCOPE OF THE RESEARCH TOPIC

The CRC establishes that children have numerous rights categorised into four groups. Specifically, the first group includes the right to survival, encompassing the right to life (Article 6), the right to a name and nationality (Article 7), the right to preserve identity (Article 8), etc. The second group involves the right to protection, comprising the right to be protected against interference with privacy (Article 16),

⁴³ KRUGER, The philosophical underpinnings of children's rights theory 436.

⁴⁴ FREEMAN, Freedom and the welfare states 71 quoted in KRUGER, The philosophical underpinnings of children's rights theory 437.

⁴⁵ KRUGER, The philosophical underpinnings of children's rights theory 436.

⁴⁶ SUND - VACKERMO, The interest theory 752.

the right to be protected from violence (Article 19), the right to be protected from economic exploitation (Article 32), etc. The third group pertains to the right to development, including the right to be cared for and nurtured for physical, intellectual, mental, and moral development (Articles 6, 7, 9, 10, 18), the right to an adequate standard of living for comprehensive development (Article 27), the right to education (Article 28), etc. The fourth group encompasses the right to participate, such as the right to freedom of expression (Article 13), the right to freedom of thought, belief, and religion (Article 14), the right to freedom of association and assembly (Article 15), etc⁴⁷. All these rights must be applied based on three fundamental principles: non-discrimination (Article 2), the best interests of the child (Article 3), and respect for and consideration of the views of the child (Article 12).

Similarly, Vietnamese law also encompasses provisions regarding children's rights in the Children Act 2016. Simultaneously, mechanisms to safeguard these rights are also delineated in the Civil Code 2015, the Penal Code of 2015, the Nationality Law 2016, the Education Law 2019, and the Domestic Violence Prevention and Control Law 2022.

Within the scope of the dissertation, the author will not analyse all the rights mentioned above. Instead, the author opts to concentrate on specific rights, namely the right to birth registration, the right to education, the right to privacy, and the right to protection from violence for children. However, before delving into a detailed analysis of these rights from an international legal, regional legal (European), and national legal (Vietnamese and Hungarian) perspectives, the author will clarify the fundamental principles in safeguarding children's rights according to the CRC.

In choosing the aforementioned rights as the core focal points for significant research in my academic journey, I believe that the primary and most crucial reason stems from personal concern. As a Family and Marriage Law lecturer at Can Tho University, I dealt with Vietnamese regulations on children's rights, especially within the family context. This exposure consistently led me to ponder: Why does Vietnamese law have numerous mechanisms to protect children, yet children in Vietnam still experience harm, ranging from mental and physical abuse to even threats to life? Many instances involve acts committed by relatives and family members, and numerous cases have left a lasting impact on me⁴⁸. Therefore, when embarking on the selection of the topic for my doctoral dissertation, I promptly determined that it had to revolve around the protection of children's rights, with a specific focus on the right to be protected from violence. It is imperative to further clarify that children may be subjected to violence by various entities, such as teachers or school staff, family members, or other individuals within the community, including friends and neighbours. However, within the scope of this dissertation, the author concentrates on analysing legal provisions and practices pertaining to two cases of violence against children. In the first instance, this study scrutinizes incidents of violence transpiring within the school environment, particularly those instigated by teachers or school personnel. This examination is contextualized within the framework of the child's entitlement to education, as delineated in Article 28 of the CRC. Subsequently, the analysis extends to instances of violence transpiring within the family, aligning within the contextual framework of the child's entitlement to protection from violence, as specified in Article 19 of the CRC.

⁴⁷ TRẦN, Legal framework and international principles on children's rights.

⁴⁸ HÀ - HÀ, A 3-year-old girl was subjected to the insertion of 9 nails into her head; NGUYỄN, The stepmother abused the 8-year-old girl.

Due to the advancement of information technology, coupled with the widespread impact of the COVID-19 pandemic in 2020 in Vietnam - precisely when I travelled to Hungary to pursue my doctoral studies - the education of children in Vietnam faced setbacks due to state policies aimed at curbing the spread of the disease. Subsequently, when online learning solutions were implemented, it was anticipated that Vietnamese children would continue their educational journey. Nevertheless, emerging challenges have surfaced, chiefly stemming from the inadequate technological infrastructure in poor households. This deficiency notably jeopardises the privacy rights of children when utilising these communication channels. Online predators seized the opportunity during the increased use of electronic devices during the pandemic to approach children, extract information, and carry out their criminal schemes. Faced with this situation, I recognised that the rights to education and privacy of children are pressing concerns that require serious investigation to expose the crimes of child predators and provide appropriate recommendations for Vietnamese legislators.

Furthermore, having a strong belief that if the right to education of children is emphasised, it can instil in them an awareness of their rights and the knowledge of self-protection. Education also brings about changes in the mindset of parents and even society regarding issues related to children. Consequently, appropriate actions aligning with children's rights are taken. Therefore, to propose recommendations suitable for the current situation in my country during the process of safeguarding these rights of children, I must engage in serious research and evaluation on this matter.

The right to birth registration of children is a right that I considered last when selecting the rights of children to be studied in my dissertation. It originated when I was searching for relevant literature on the right to education of children and came across information about the case of Vy⁴⁹, a 9-year-old girl. Vy, orphaned at an early age, lives with her grandmother in Ho Chi Minh city. Due to the family's poverty and the absence of a birth certificate, Vy is not allowed to attend school and has to sell lottery tickets to supplement her grandmother's income. On one occasion, while seeking customers, Vy had an accident and had to be admitted to the hospital. The lack of any personal identification documents prevented Vy from receiving support from the State, including health insurance, free education, and, most critically, free medical treatment. This situation has significantly influenced my thoughts. I used to believe that registering the birth of children was a straightforward and quick process due to the simplicity of its procedures. However, reality has shown that this is not a common perception for everyone. Particularly for those in the poor class of society, they face numerous barriers to approaching competent authorities and registering the birth of their children. This could be due to illiteracy, or they may believe that the process is time-consuming and costly. Additionally, they may not perceive the necessity of registering the birth of their offspring. Therefore, I have decided to incorporate this right into my research. Another reason I want to address this choice is for its impact on the realisation of other rights for children. Hence, if I aim to promote the effectiveness of enforcing other rights of children, it is essential to prioritise the implementation of the right to birth registration for children.

In summary, starting from this point onward, the term “children's rights” used in the dissertation will refer specifically to the four selected rights under study, namely: the right to birth

⁴⁹ HÀ, The salvation of the child is impeded by the absence of a birth certificate.

registration, the right to education, the right to privacy, and the right to protection from violence for children.

To establish the foundation for the analysis of children's rights mentioned above, the dissertation will commence with an exploration of the development of Vietnamese law concerning children's rights across different historical periods. Specifically, the study will cover the feudal era, focusing on the enactment of laws during this phase before the French colonial invasion in 1858. Subsequently, it will delve into the period of French colonisation from 1858 until the prelude to the year 1945. The final stage will encompass the period from Vietnam's attainment of independence in 1945 to the present day.

The next two sections of the thesis will focus specifically on the selected rights: the right to birth registration, the right to education, the right to privacy, and the right to protection from violence. Specifically, the analysis will commence with the examination of international texts directly related to children (the CRC). Based on this analysis, I will attempt to identify the criteria and commitments established by the drafters for member countries in ensuring the mentioned rights of children. Subsequently, employing the corresponding criteria for each right, I will analyse and assess the compatibility of legislation in the European region and the specific laws of two countries: Vietnam and Hungary.

Unlike the European region, the legal framework in Asia, specifically Southeast Asia, where Vietnam is situated, has not yet witnessed robust development regarding children's rights, and its influence on national law is not as pronounced as in Europe⁵⁰. Therefore, at the regional level, the thesis will concentrate on analysing the European Union's legislation concerning the protection of children's rights. Another equally significant reason is Hungary's membership in this community. Consequently, studying the European Union's legal framework for protecting children's rights will enable the author to gain profound insights into the principles outlined in Hungary's relevant legislation.

To identify solutions and draw lessons for Vietnam in protecting children's rights, the author has chosen to undertake the research topic comparatively. This involves not only comparing the existing laws of Vietnam and Hungary regarding children's rights but also comparing Vietnamese and Hungarian laws with a common legal standard set by the CRC. Through this approach, the author hopes to identify inconsistencies between Vietnam's laws and international law, specifically European law embodied by Hungary. Simultaneously, positive aspects in the process of internalising relevant international rules in Hungary can be explored. Despite being on different continents, Hungary was once a socialist country, sharing a certain correlation in the approach and resolution of issues with Vietnam. Furthermore, being a more developed country than Vietnam and having more opportunities to engage and collaborate with modern legal thinking from progressive nations, Hungary's legal framework for protecting children's rights is expected to offer valuable learning opportunities for Vietnam.

⁵⁰ PHAN, Children's rights in Asean.

1.4. LITERATURE REVIEW

The rights of children have become a crucial and increasingly prominent topic, drawing extensive attention from both society and political systems. Therefore, clarifying the concept of children's rights is a significant step towards establishing a robust theoretical foundation for the study of this issue.

In the global context, there exists a substantial body of research on children's rights. Notable scholars in this field include *Ursula Kilkelly and Ton Liefgaard*. These authors contend that “children appear in the law from the very beginning of human history. As early as 1870 B.C., the well-known Codex Hammurabi was the first legal document dealing with the position of the child”⁵¹.

The Bible contains numerous regulations pertaining to the relationship between children and parents. For example, the Bible has little to say about children's rights, instead directing instruction to parents about their children's upbringing. Ephesians 6:4 says, “Fathers, do not provoke your children to anger, but bring them up in the discipline and instruction of the Lord”. Many children's rights are embedded within that command, but its focus is not on the child but on the parent. God gives parents strong commands about training their children and holds the parents responsible for following those commands (Deuteronomy 6:1-2). Even when children grow up, God expects parents to set boundaries when it is within their power to do so. In 1 Samuel 3:13, God rebuked Eli the priest because his adult sons were wicked and making a mockery of God's house. Eli knew about it but did not restrain them⁵². Later, Roman law contained various provisions dealing with the position of the child, which clearly saw the child as the property of the parents, with the provision for the father of *ius Vitae ac Necis*, the right to decide on the life and death of the child⁵³.

Regarding the concept of children's rights, *Herger* argues that “it began to emerge in Middle Ages forward, the Western Christian tradition helped to define the basic rights of the child that now appear in the CRC”⁵⁴. The Geneva Declaration on the Rights of the Child (1924) presented a declaration that still holds ethical value today; however, this document has not yet elucidated how children's rights are understood or what rights it encompasses.

The subsequent stride in this developmental trajectory was marked by the 1959 Declaration of the Rights of the Child, proclaimed by the United Nations General Assembly. The Preamble to this Declaration identifies the rationale: “Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth” and “whereas mankind owes to the child the best it has to give”⁵⁵.

In 1983, *Freeman et al.* published a significant work that played a crucial role in shaping the conceptualization of children's rights. In this work, he presents a framework for children's rights, categorising them into welfare rights, protective rights, adult rights, and rights against parents⁵⁶.

⁵¹ DOEK, The human rights of children, in Killely - Ton (Eds). International human rights of children 4.

⁵² Got questions, What does the Bible say about children's rights?

⁵³ DOEK, The human rights of children, in Killely - Ton (Eds). International human rights of children 4.

⁵⁴ HERGER, Natural law interpretation of the legal relationship, presented at Cracow, 20 October 2023.

⁵⁵ Cited from: VON BERNSTORFF, The changing fortunes of the universal declaration of human rights 913.

⁵⁶ GILES - HARISON - CREBER - SMITH - FREEMAN, Developmental and contextual aspects of children's language attitudes 143.

Generally speaking, during the 19th century, children were often perceived as the “subject” of their families and societies, lacking the right to autonomously determine their own lives. They were typically seen as successors, trailing behind adults, and were not afforded the authority to participate in decisions that affected their lives. *Philippe Aries* posited that the concept of childhood began to develop with the increasing recognition of the importance of education, coinciding with the decline of the agrarian economy⁵⁷. However, in the early stages, as observed by *F. Pollock and F. W. Maitland*, children within families were primarily restricted to inheriting and safeguarding property rather than being considered and acknowledged as having rights and responsibilities⁵⁸.

Similarly, *John Eekelaar* argued that “it is not too much of an exaggeration to say that the social role of the child was primarily seen as promoting the interests of the family group overall and, over time, through the preservation and potential extension of the family's land-holding rights”⁵⁹. Another study conducted by *Matthews, H. and M. Limb* suggested that children were seen as adults-in-waiting, lacking the capacity of adults, and experiencing their status passively⁶⁰. Therefore, *Such and Walker* noted that children without capacity were not entrusted with any responsibilities⁶¹. However, *Benporath* observed that, due to their vulnerability, a separate world for children was established in the early 20th century in many Western countries through the enactment of early legislation concerning children⁶².

In Vietnam, according to *Nguyễn Hồng Phong*, influenced by Confucianism, specifically the “Hiếu đễ” perspective of Confucius, children in Vietnamese families are expected to love and respect their parents, particularly their fathers. Therefore, children are not encouraged to express their opinions on any matter related to themselves. Instead, they are expected to comply with every decision made by their fathers⁶³.

The influence of Confucianism on the culture and society of Vietnam is undeniable; however, alongside this, Confucianism also had significant impacts on the legal system of Vietnam during the feudal period, specifically the Hong Duc Code under the Lê dynasty and the Gia Long Code during the Nguyen dynasty. According to the assessment of *Phan Dang Thanh and Phan Thi Hoa*, “the Hong Duc Code and the Gia Long Code deserve to be historical milestones, significant contributions of the Vietnamese people to the noble human rights values of humanity”⁶⁴. However, these studies have not clarified whether the rights of children were recognised and protected in feudal Vietnamese law. In the colonial legal period, *Vu Van Mau* provided detailed analyses of provisions on civil and family marriage in Vietnam's legal codes in the North, Central, and South, yet still did not elucidate the concept of children's rights and the position of children in the legal system of that time⁶⁵.

Therefore, in order to fill the research gap concerning the protection of children's rights in Vietnamese law during the feudal and colonial periods, the next chapter of the thesis will elucidate two related questions: firstly, at what stage were children's rights first recognised in Vietnamese law?

⁵⁷ Cited from: KING, Concepts of childhood 405.

⁵⁸ Cited from: Ibid.

⁵⁹ Cited from: Ibid.

⁶⁰ MATTHEWS - LIMB - TAYLOR, Young people's participation and representation in society 140.

⁶¹ SUCH - WALKER, Young citizens or policy objects? children in the 'rights and responsibilities' debate 50.

⁶² BENPORATH, Autonomy and vulnerability 135.

⁶³ NGUYỄN, The filial piety in Confucianism 35.

⁶⁴ PHAN - TRƯỜNG, Human rights of the Vietnamese people, 12

⁶⁵ VŨ, Vietnamese law and justice history 127

And secondly, what fundamental rights of children were protected by the law during these two periods?

Since its adoption in 1989, the CRC has focused on emphasising the image of a competent child. This image is considered a reaction against the depiction of children as incompetent, characterised by viewing children as objects in need of protection due to their vulnerability.

Aisling Parker asserts that the CRC represents a “milestone in the United Nations' history of setting standards” as it is the first international document acknowledging the civil, political, economic, social, and cultural rights of children in a single text. This marked a shift in the perception of children, transforming them from mere subjects without a voice to active participants entitled to engage in decisions affecting them. The convention also “represents a new way of thinking about children - a child-centred, child-friendly perspective”⁶⁶.

Hammarberg and *Jupp* observe that the unique aspect of the CRC cannot be denied, lying in its imposition of legally binding standards on member states that have ratified the convention, thereby holding society accountable for implementing children's rights⁶⁷. Similarly, *Mower*⁶⁸ also argues: “The international community becomes a special source of protection for children, as the parties involved also undertake the obligation to submit reports to the bodies of the relevant convention regarding their implementation under this instrument”⁶⁹.

Regarding the concept of children in Article 1 of the CRC, *Stefanie Schmahl* comments that “member states are entitled to establish a legally lower age than 18 years”⁷⁰. In Vietnam, *Nguyen Tien Duc* observes that “before the CRC came into existence, the concept of children in Vietnamese law was relatively vague”⁷¹. The legal system in Vietnam only had provisions explaining the concept of children but did not have an explanation for the concept of children's rights. As a result, the author concludes that “before Vietnam joined the CRC, the 1979 Ordinance defined children as individuals under 15 years old. From the Child Protection, Care, and Education Law 1991 to the Children Act 2016, children are identified as individuals under 16 years old.

The concept of children's rights has been further clarified in legal science in Vietnam through the research of *Nguyen Thi Van Anh* and *Nguyen Van Nghiep*. Accordingly, “Children's rights are human rights specified by the law exclusively for children, aiming to ensure that children live and grow up in a healthy and safe environment. In other words, children's rights are the specific benefits that children enjoy as stipulated by the law. Protecting children involves taking appropriate measures to ensure that children live safely and healthily, prevent, stop, and address acts of harm against children, and assist children with special circumstances”⁷².

Dinh Hanh Nga provided a comprehensive evaluation of Vietnam's policies and laws related to protecting children's rights since the country joined the CRC. She observed that “there has been

⁶⁶ ALDERSON, Young children's rights: exploring beliefs, principles, and practices 20.

⁶⁷ HAMMARBERG, The UN convention on the rights of the child, 99; See more: JUPP, The UN convention on the rights of the child 130.

⁶⁸ MOWER, The convention on the rights of the child 45.

⁶⁹ Ibid

⁷⁰ SCHMAHL, United Nation convention on the rights of the child 189.

⁷¹ NGUYỄN, A comparative study of the concept of the child 22.

⁷² NGUYỄN - NGUYỄN, Protecting the rights of children 10.

consistency in the Party's approach, policies, and adjustments in legal sectors within the legal system of Vietnam regarding the protection of the rights and interests of children throughout various developmental stages of the country.⁷³

The CRC acknowledges the numerous rights of children, and based on this convention, a considerable body of research on the specific rights of children has been conducted by scholars worldwide. The thesis focuses on investigating four rights of children: the right to birth registration, the right to education, the right to privacy, and the right to protection from violence. Therefore, the examination and assessment of relevant literature regarding children's rights in this section are specifically centred around these four rights.

Concerning the right to birth registration of children, experts from UNICEF - *Claudia Cappa, Kendra Gregson, Tessa Wardlaw, and Susan Bissell*⁷⁴ have identified that “birth registration is the shield for children”⁷⁵. This underscores the significance of birth registration in ensuring that children can access their rights and associated benefits. Therefore, the states must take measures to ensure that the right to birth registration of children is implemented promptly and accurately immediately after their birth.

Until the present stage, numerous research documents can be listed worldwide, addressing the right to birth registration for children. These range from studies highlighting the importance of birth registration for children to explanations and clarifications of the content of Article 7 of the CRC, as seen in works by *J Tobin*⁷⁶, *I Ziemele*⁷⁷. However, there are a limited number of documents related to this right in Vietnam.

The concept of birth registration, as discussed by *Duong Thu Huong* in a comprehensive study, encompasses various cases in Vietnam, such as marriage registration, registration of parent-child relationships, and registration of foster care. Consequently, the legal provisions related to birth registration in Vietnam have not been thoroughly analysed by the author⁷⁸. In 2022, *Võ Thị Hồng Duyên* conducted a study on the jurisdiction of birth registration by Commune People's Committees, shedding some light on the characteristics of birth registration. However, establishing a comparative relationship between these Vietnamese regulations and related regulations in international and regional legal frameworks has not received much attention in Vietnam until now⁷⁹. Therefore, to enhance the effectiveness of protecting the right to birth registration of children in Vietnam, this thesis provides detailed analyses of birth registration according to Vietnamese law in Chapter 4. Subsequently, interviews with some officials responsible for birth registration at certain Commune People's Committees in Vietnam were conducted to assess the feasibility of these regulations. This section will be presented in Chapter 6 of this thesis.

⁷³ DINH, Protecting the rights of children in the current legal framework of Vietnam 12.

⁷⁴ CAPP AND ET AL., Birth registration: a child's passport to protection 69.

⁷⁵ Ibid.

⁷⁶ TOBIN, The UN convention on the rights of the child 214.

⁷⁷ ZIEMELE, Article 7: The right to birth registration 212.

⁷⁸ DƯƠNG, The important issues revolving 67.

⁷⁸ VERHEYDE, Article 28: The right to education 106.

⁷⁹ VÕ, Discussion on the content of birth registration.

To underscore the significance of the right to education, *Yves Daudet* and *Kishore Singh* contend that “the right to education, characterised as a fundamental right, can be considered an “upstream” right in the sense that it determines whether other rights can actually be exercised.”⁸⁰

Although the CRC does not explain the concept of education or the right to education for children, through studies by *Mieke Verheyde*⁸¹ and *Jost Delbruck*⁸², these terms have been clarified. Additionally, in conjunction with the research of *C Courtis and J Tobin*⁸³, *K. Tomasevski*⁸⁴, *U Kilkelly*, and *T Liefgaard*⁸⁵, these studies have contributed to elucidating the content of Articles 28 and 29 of the CRC.

Apart from the overview assessment of policies and laws related to education in Vietnam by *Pham Hoang Tu Linh* and *Ali Sorayyaei Azar*⁸⁶, there has not been a detailed study on this issue. Therefore, this thesis will attempt to analyse the regulations of Vietnamese law to clarify the question “Has Vietnamese law truly implemented its commitments to the international community in ensuring the right to education for children?”

The right to privacy has been a subject of concern and discussion throughout the history of international law. However, the concept of privacy in general, and specifically the privacy rights of children, remains an ambiguously defined notion. According to *Adam D. Moore*⁸⁷, “Until the current date, there is little agreement on how to define privacy, but like other contested concepts - such as liberty or justice - this conceptual difficulty does not undermine its importance”⁸⁸. Indeed, the participation of numerous scholars researching this concept sufficiently demonstrates its significance for individuals' lives. Some notable studies include those by *Thomas M. Cooley*⁸⁹, *Samuel Warren and Louis D. Brandeis*⁹⁰, *Cooper*, *Gary R., et al.*⁹¹.

The content of Article 16 of the CRC has been meticulously and specifically analysed in studies conducted by *J. Tobin and SM Field*⁹², *Coutinho de Abreu*, and *Jorge Manuel*⁹³. Through these studies, the author has synthesised and extracted standards and measures, providing a foundation for their comparative research on the compatibility of Vietnamese law with international law regarding the privacy rights of children.

In the legal science of Vietnam, privacy is characterised by *Nguyen Thi Que Anh*, *Vu Cong Giao*, *Ngô Minh Huong*, and *La Khanh Tung* as follows: “Privacy grants each individual a space to be themselves without arbitrary judgement from others, allowing each person to think freely without prejudice or

⁸⁰ DAUDET - KISHORE, The right to education 67.

⁸¹ VERHEYDE, Article 28: The right to education 106.

⁸² DELBUCK, The right to education as an international human right 27.

⁸³ COURTIS - TOBIN, Article 28: The right to education 23.

⁸⁴ TOMAŠEVSKI, The of the right to education worldwide: free or fee? 34.

⁸⁵ LUNDY - O'LYNN, Education rights of children in KILKELLY - LIEFAARD, International children's rights 266.

⁸⁶ PHAM - AZAR, A comparative study of the inclusive education policy in Vietnam and Malaysia.

⁸⁷ MOORE, Privacy, neuroscience, and neuro-surveillance 167.

⁸⁸ Ibid.

⁸⁹ COOLEY, A treatise on the law of torts 45.

⁹⁰ SAMUEL, Warren & Louis D. Brandeis: the right to privacy 193.

⁹¹ COOPER, National conference on privacy, technology and criminal justice information 101.

⁹² TOBIN - SARAH, Article 16: The right to protection of privacy 67.

⁹³ COUTINHO DE ABREU, Right to privacy reserve and shareholder data disclosure duties 14.

discrimination, as well as the ability to control who knows what about oneself”⁹⁴. Regarding the privacy rights of children, *Pham Thi Duyen Thao* and *Phan Thi Lan Phuong* contend that “the privacy rights of children constitute a human right and are an aspect of the right to privacy.”⁹⁵

In 2017, *Nguyễn Đăng Dung* and *Nguyễn Đăng Duy* posit that “privacy rights are understood as the entitlement of each individual to be safeguarded from any form of intrusion, ensuring that every action of the person, or private matters, are not exposed to the public”⁹⁶. Furthermore, the authors also analyse the provisions concerning the protection of individual privacy rights in the Constitution, the Civil Code 2015, and the Penal Code 2015. As a subject falling under the regulation of these documents, the rules for safeguarding privacy rights mentioned above can also be applied to children.

Nguyen Thi Thu Hoai et al. have observed that “in recent years, the legal system of Vietnam has placed greater emphasis on protecting the privacy rights of children through various documents and diverse forms. This contributes to the healthy development of children in a secure environment, shielding them from harm and ensuring their privacy rights are under legal safeguard”⁹⁷. However, these authors also candidly acknowledge that legal provisions related to protecting the privacy rights of children on social media still exhibit many shortcomings, lacking uniformity and consistency. Regulations regarding the responsibilities and authority of different branches and levels in the endeavour to protect children on the digital platform remain unclear and specific. *Ngô Thị Hương*⁹⁸, although not directly researching children's privacy rights, is able to delineate the risks that children may encounter in the online environment.

These studies have, to some extent, clarified the concept of privacy in general as well as the privacy rights of children in particular. They also offer a comprehensive assessment of the existing legal mechanisms safeguarding these rights for children in Vietnam, while identifying certain deficiencies in the legislative process that require improvement. However, these studies have not conducted a detailed analysis of the entities capable of infringing upon the privacy rights of children, nor have they delved into the specific actions that these entities have undertaken or may undertake in the process of violating the privacy rights of children. Additionally, analyses of Vietnam's legal provisions for protecting the privacy rights of children have focused solely on current legislation without delving into the timeline of its inception and development within the legal framework of Vietnam. This would shed light on shifts in the legislative mindset in Vietnam regarding children's rights, as well as the alignment and compatibility of national law with international standards on children's rights in Vietnam.

With the hope of elucidating relevant points that previous studies may have overlooked, the analyses of privacy rights in this thesis will scrutinise the formation and development of Vietnam's legal provisions protecting the privacy rights of children. This examination will span from the first constitution of the Vietnamese State in 1946 to the current effective specialised legislation on children, namely the Children Act 2016. Subsequently, in the chapter addressing the practical implementation

⁹⁴ NGUYỄN - VŨ - NGÔ - LÃ, Right to privacy 13.

⁹⁵ PHẠM - PHAN, Enhancing the legal framework for protecting the privacy rights of children.

⁹⁶ NGUYỄN - NGUYỄN, Building a harmonious society 24.

⁹⁷ NGUYỄN - HÀ - LŨU - DƯƠNG - ĐÌNH - NGUYỄN, The issue of child exploitation.

⁹⁸ NGÔ, Solutions for protecting children's rights.

of these legal provisions, the author will clarify the actors involved and their behaviours that impinge upon the privacy rights of children. Additionally, the thesis will propose potential remedies to address these issues.

The right to be protected from violence is a fundamental entitlement of children, as asserted by *Jaap E. Doek*⁹⁹. This right has only recently garnered substantial attention in the 20th century, particularly since the adoption of the CRC. Nevertheless, after more than 15 years of its enactment, as indicated by *Pinheiro's* research, children in nearly all countries are still awaiting full recognition of their entitlement to dignity and physical integrity, as well as significant investment in preventative measures against all forms of violence perpetrated against them¹⁰⁰.

The right to be protected from violence for children is acknowledged in Article 19 of the CRC. *Stefanie Schmahl* suggests that this provision plays a crucial but not exclusive role, addressing “dissatisfactions within the family, maltreatment within the family, as well as intrafamily harm”¹⁰¹. Through her research, this author has made significant contributions to clarifying the content of this provision. Additionally, studies by *J. Tobin* and *J. Cashmore*¹⁰², *Spratt et al.*¹⁰³ have also contributed to elucidating the preventive measures outlined in Article 19 of the CRC for member states. In identifying and supporting children subjected to violence, *Jonathan Todres* notes that a coordinated approach is necessary to “ensure that children who survive violence receive treatment and necessary support, and appropriate measures are taken to prevent the recurrence of violence”¹⁰⁴.

In Vietnam, according to the research conducted by *Nguyen Thi Van Anh* and *Nguyen Van Nghiep*, the protection of children's rights in Vietnamese criminal law is implemented when children are victims of abuse, and also when children are offenders¹⁰⁵. Specifically, these authors have clarified that “regarding acts infringing on the inviolable rights of children to sexual integrity, the penal code has supplemented additional offences, modified the names of certain offences, and added provisions for “engaging in other sexual activities” alongside the act of copulation in the signs of crimes of rape against persons under 16 years old”¹⁰⁶. These legislative amendments demonstrate the adaptability and responsiveness of Vietnamese legislators to align with the practical situation of child sexual abuse in Vietnam, contributing to better legal protection of children's rights.

1.5. RESEARCH OBJECTIVES AND RESEARCH QUESTIONS

1.5.1. Research Objectives

Child protection is a global trend, and Vietnam is no exception to this overarching theme. To achieve the goal of safeguarding children, Vietnam has enacted numerous legal regulations, ranging from recognising the human rights of this particular group to specifying the mechanisms for implementing

⁹⁹ DOEK, *The human rights of children* 3.

¹⁰⁰ PINHEIRO, *Violence against children* 206.

¹⁰¹ SCHMAHL, *United nation convention on the rights of the child* 71.

¹⁰² TOBIN - JUDY, *Article 19: the right to protection against all forms of violence* 34.

¹⁰³ SPRATT AND ET AL, *Child protection in Europe* 158.

¹⁰⁴ TODRES - DIAZ, *Preventing child trafficking* 34.

¹⁰⁵ NGUYỄN - NGUYỄN, *Protecting the rights of children* 12.

¹⁰⁶ *Ibid.*

these rights. The Vietnamese legislature has demonstrated particular attention to preventive measures and addressing infringements on the rights of children. In pursuit of this objective, Vietnam has put forth various legal provisions that encompass the acknowledgement of the human rights of this specific demographic. These regulations not only recognise the rights of children but also delineate the procedural aspects of implementing these rights. Additionally, there is a distinct focus on preventative measures and addressing instances of violations against the rights of children, reflecting the heightened concern of Vietnamese legislators in this regard.

The Vietnamese government has exerted significant efforts, spanning from the attainment of independence in 1945 to the present, to enhance both the material and spiritual aspects of children's lives. The overarching goal has been to construct a secure and wholesome environment conducive to the comprehensive development of children. However, empirical evidence indicates that children in Vietnam continue to experience daily harm through various means and to varying degrees. Therefore, one of the primary objectives is to identify solutions that would enable the legal system in Vietnam to effectively safeguard children's rights. Secondly, to extract lessons from European law and Hungarian law regarding this issue.

The process of achieving the above objectives is outlined as follows: (i) Synthesising, analysing, and evaluation of legal provisions related to the protection of specific rights in Vietnam. (ii) Collecting, analysing, and evaluating legal provisions from international law, European regional law, and Hungarian law, (iii) Conducting a comparative analysis of Vietnamese legal provisions with international and European laws to identify their progress and rigorously assessing the compatibility of Vietnamese law with these legal frameworks., (iv) Investigating the practical aspects of child protection in Vietnam to identify violations of children's rights, understand their causes, and propose appropriate measures, (v) Finally, propose suitable measures and suggest some lessons learned for legislators and policymakers with the hope of improving the current situation of child protection in Vietnam.

1.5.2. Research Questions

Developed from the research objectives, the dissertation will focus on clarifying the following research questions:

1. At what point in time were the rights of children recognised and protected by Vietnamese law? How did the development of these provisions evolve across different stages of societal development?
2. How are the current legal provisions in Vietnam regarding the protection of children's rights structured? To what extent do these regulations align with relevant international laws?
3. How are the current legal provisions in European regional law and Hungarian law regarding the protection of children's rights structured? To what extent do these regulations align with relevant international laws?
4. How is the current application of legal provisions for the protection of children in Vietnam? What achievements has Vietnam made, and what weaknesses persist in this process? What are the causes of these weaknesses?

5. How do children perceive their rights? What is the perspective of authoritative entities during the implementation of children's rights regarding these perceptions?

6. What solutions can be proposed to overcome the remaining limitations in the legislation enactment and enforcement related to the protection of children's rights in Vietnam?

7. What lessons and experiences can be suggested for Vietnam from the legislation of Europe and Hungary regarding the issue of protecting children's rights?

The subsequent chapters of the thesis will endeavour to effectively address the research questions posed here.

1.6. RESEARCH METHODS

It is challenging to deny the role of research methods in the process of conducting social science research in general and legal research in particular, given their importance and the benefits they bring. Therefore, to approach the issue of protecting children's rights reasonably and systematically while ensuring reliable and relevant research outcomes, the use of research methods in the dissertation is necessary. In this section, the author will present the methods chosen for the study and the investigative process for data collection and processing. It will not only describe the methods used but also provide the rationale behind their selection by linking them to the research objectives. The selection process will take into account available resources, including skills, time, and financial sources, as well as the effectiveness of the methods in addressing the research questions and hypotheses.

1.6.1. Qualitative Research

The qualitative study, as elucidated by *Lawrence F. Locke et al.*¹⁰⁷ is expounded as an experimental strategy methodically designed to address inquiries pertaining to human subjects within a specific socio-cultural context.

Similarly, in elucidating the essence of qualitative research, *Merriam, Sharan B.* posited that “the key to understanding qualitative research lies with the idea that meaning is socially constructed by individuals in interaction with their world. The world, or reality, is not the fixed, single, agreed-upon, or measurable phenomenon that it is assumed to be in positivist, qualitative research. Instead, there are multiple constructions and interactions of reality that are in flux and that change over time. Qualitative researchers are interested in understanding what those interpretations are at a particular point in time and in a particular context. Learning how individuals experience and interact with their social world and the meaning it has for them is considered an interpretive qualitative approach”¹⁰⁸.

The qualitative research approach was employed in the current study to facilitate an in-depth exploration of the situations and experiences of children regarding the exercise of their rights within the social context of Vietnam, Hungary, and Europe at large. Specifically, qualitative research played a crucial role in establishing a robust theoretical foundation for the thesis through an examination of

¹⁰⁷ LOCKE AND ET AL, Proposals that work 96.

¹⁰⁸ MERRIAM, Qualitative research in practice 3.

policies, legal frameworks, and existing studies. This method also enabled the author to delve into researching economic and social factors, cultural values, history, and influential situations affecting children's rights in the mentioned regions. Consequently, it facilitated the identification of similarities and differences in the approaches to and protection of children's rights.

There are various qualitative research methods in social science, depending on the classification and definition of each method¹⁰⁹. For instance, *Tesch*¹¹⁰ provides a classification with 28 approaches, while *W. Lawrence Neuman*¹¹¹ only outlines three approaches. In this study, I have selected the following approaches: interpretative approach, historical approach, narrative research, grounded theory, and case study research.

The interpretative approach is implemented based on the collection and analysis of documents containing philosophical and theoretical assumptions regarding children's rights, particularly those emerging in the 20th century. These insights have aided the author in gaining a deeper understanding of the concept of children and children's rights in society, as well as in legal policies worldwide.

In addition, this approach is also employed by the author in reading, evaluating, and deeply analysing documents related to policies, laws, and academic research materials at the international, regional, and specific national levels. Consequently, it allows for the exploration and interpretation of child protection in these areas, identifying positive and progressive aspects as well as uncovering inefficiencies and feasibility issues within policies and laws regarding child protection in these locations.

By employing this approach towards these assumptions and theories, the author has constructed detailed insights into the concepts of children, children's rights, and child protection at the international and national levels. These results are presented in Chapters 4 and 5. Simultaneously, a systematic synthesis has been achieved, identifying the commitments and obligations of nations to the international community in protecting children's rights and revealing the similarities and differences in relevant legal provisions among nations. The outcomes of this section are presented in Chapter 3 and Chapter 4 of the thesis. The results of this approach are also discussed in Chapter 6 of the thesis regarding some achievements, limitations of Vietnamese law and proposes some solutions for the Vietnamese legal system based on the lessons learned from Europe and Hungary. Because the knowledge and information from these two chapters were also obtained through the interpretative approach after accessing and analysing previous policy, legal, and academic research on child protection.

The historical method is implemented based on the collection and analysis of relevant historical legal sources and data regarding the position of children within families, as well as the rights of children in policies and laws globally and in specific countries such as Vietnam and Hungary. This approach aims to identify the formation, evolution, and impact of history on the enactment and enforcement of laws concerning children's rights in the mentioned regions.

Based on this approach, the author endeavours to fill the research gap regarding the historical development of Vietnamese law on child protection, specifically focusing on the rights examined in

¹⁰⁹ CRESSWELL, *Qualitative inquiry & research design* 32.

¹¹⁰ TESCH, *Qualitative research* 90.

¹¹¹ NEUMAN, *Basics of social research* 46.

the thesis: the right to birth registration, the right to education, and the right to protection from violence. The results of this section are presented in Chapter 2 of the thesis.

The illustrative approach is implemented by selecting case law in Vietnam officially published on the Supreme People's Court's website related to the content of the thesis. Examples include judgements concerning the determination of the primary carer in cases of parental divorce and judgements related to child sexual abuse. Based on this, the author describes the application of Vietnamese child protection laws in these judgements, evaluating the feasibility and effectiveness of these provisions as well as legal compliance by relevant entities such as children, parents, and judicial authorities. The results of this approach are presented in Chapters 4, 5, and 6 of the thesis, highlighting findings relevant to child protection laws in Vietnam.

The qualitative interview method was conducted by posing questions; instead of the author directly recording the questions through face-to-face conversations, the respondents provided their responses in writing via email to the author. The reason for this approach was the geographical distance barrier between the author and the interviewees, including local civil registrars and district court judges, during the interview process. The purpose of the qualitative interview method was to allow the author to capture the perspectives of authoritative figures in their execution of duties related to issues concerning children's rights. Specifically, civil registrars are individuals with legal authority according to Vietnamese law responsible for registering births for children, while district court judges are individuals resolving family-related cases such as divorce, involving children's rights such as the right to participate and the principle of safeguarding the best interests of children. The results of this approach are presented in Chapter 5 of the thesis.

In summary, the separation of approaches and their outcomes in this author's research outlined above is relative, intending to facilitate the identification of the study's limitations for future development. Most of the content in this thesis is, in fact, a synthesis of multiple approaches. For example, the interpretative approach plays a predominant role in shaping the author's understanding of protecting children's rights according to international and national law in Chapters 3 and 4. However, without the historical approach, the author would not comprehend why the protection of children's rights was early recognised in Vietnamese law (in 1945) yet saw slow development until 1991, when specialised legislation on this issue was enacted.

Regarding the ethics of research, I had access to legal documents in Vietnam through the thuvienphapluat.vn website. Concerning legal databases in Hungary, they are available on the uj.jogtar.hu website. Similarly, the author exclusively employs authorised accounts to access legitimate electronic information sources, enabling the retrieval of academic materials relevant to their research topic. When employing qualitative research methods to gather information and data, the author ensures adherence to the principle of not using the real names and affiliations of the participants - the commune-level civil registry officials and district - level judges of the People's Court.

1.6.2. Quantitative Research

To establish a connection between data and conceptual ideas, the author employed a quantitative research method in the study. The chosen methodology is a sociological investigation, and its

implementation adheres to the procedure proposed by *W. Lawrence Neuman*. Initially, the author researched issues related to children's rights in the legal domain and relevant academic studies. Subsequently, a sociological investigation technique was selected to bridge this knowledge with survey data through a questionnaire. Ultimately, based on the collection of data by directly sending questionnaires to relevant subjects, namely children, and processing the data using SPSS software, the author will provide recommendations for Vietnamese legislators to enhance legal regulations concerning the protection of children. The aim is to foster a safe and healthy environment, creating conditions for the comprehensive development of children.

The questions devised by the author within the questionnaire¹¹² are derived from legal regulations, specifically those of Vietnam concerning the right to education, privacy, and protection from violence. Additionally, insights were drawn from pertinent studies such as *Anne B. Smith et al.*¹¹³, *SB Steinberg - Emory Lj*¹¹⁴, and *Catherine Forde et al.*¹¹⁵. The objectives of the questions designed in the questionnaire are to ascertain children's perspectives on relevant legal provisions, the exercise of their rights, and their concerns regarding preventive measures against infringements on their rights. Simultaneously, the questions aim to identify the reasons behind these infringements from the stand point of rights holders.

To achieve these objectives, the questions were structured by the author based on two levels of awareness: yes or no, - showing whether specific legal provisions related to the rights under investigation are known or unknown to the respondents. Subsequently, the author suggested potential reasons synthesised from social observations, information from relevant published academic studies, stories, and publicly disclosed cases in social media that children can choose from. Furthermore, to ensure objectivity in the questions, the author consistently includes a response option in the form of "other opinions". This approach allows children the freedom to express their thoughts and viewpoints.

The geographical areas selected by the author for data collection are Ninh Kieu district and Phong Dien district in Can Tho city, Vietnam. This choice was informed by considerations of accessibility, school cooperation, and the willingness of the students. Additionally, to examine how the influence of sociocultural context impacts children's perceptions, the author chose an urban primary school in Ninh Kieu district, Can Tho city, and a rural school in Phong Dien district, Can Tho city.

In Ninh Kieu district, the survey sample was selected from Doan Thi Diem Secondary School. Ninh Kieu district is the central district of Can Tho city, established by Decree No. 05/2004/ND-CP on January 2, 2004. It serves as the primary hub for governmental agencies and is the economic, cultural, political, and educational centre of Can Tho city. The district houses numerous high schools, colleges, and universities, as well as multi-specialty hospitals and clinics. In the Phong Dien district, the survey sample was chosen from Tan Thoi secondary School. Phong Dien is an agricultural district of Can Tho city, established by the same government decree in 2004. Upon its establishment, most

¹¹² Appendix A.

¹¹³ SMITH - TAYLOR - TAPP, Rethinking children's involvement 231.

¹¹⁴ STEINBERG, Sharenting: children's privacy in the age of social media 885.

¹¹⁵ FORDE - MARTIN - PARKES, Learning from children's voice in schools 500.

educational facilities in the district were outdated and in a states of decline. By 2009, approximately 50% of the classrooms in the district had undergone substantial renovations.

The sample was randomly selected and stratified within the population of children aged 10 to 14 in the two aforementioned regions. This constitutes a group of subjects falling within the legally defined age range for children in Vietnam, characterised by a certain level of cognitive development. Simultaneously, the selection criteria ensured that the chosen subjects possessed the ability to read and write, enabling them to effectively participate in the survey by completing the questionnaires.

The sample size was determined using the calculation formula proposed by *Yamane*¹¹⁶

$$n = \frac{N}{1 + Ne^2}$$

In which:

n = sample size

N = total population

e = permissible error ($\pm 3\%$, $\pm 4\%$, $\pm 5\%$...)

In the Ninh Kieu district, the total population is 19,958 children aged 10 to 14¹¹⁷, and the chosen permissible error is 5%, corresponding to 0.05. Applying this information to the formula mentioned above, the minimum required sample size is 392. In the Phong Dien district, the total population is 7,003 children aged 10 to 14¹¹⁸, with a chosen permissible error of 5%, equivalent to 0.05. Applying the formula, the minimum required sample size is 378. The author distributed 420 survey questionnaires in Ninh Kieu district and 410 in Phong Dien district. After validating the survey questionnaires, the author retained 400 responses for each area and proceeded with data processing using the SPSS software.

Regarding ethical research, in order to access children in the age range of 10 to 14 and implement the sociological survey method, the author adhered to the legal procedures concerning access and consent in Vietnam. Accordingly, the author obtained an introduction letter from the Department of Education¹¹⁹, the specialised agency overseeing local educational management. Subsequently, the author submitted a request for approval to the two secondary schools, namely Doan Thi Diem and Tan Thoi secondary schools¹²⁰, seeking approval from the school leadership to conduct interviews with students in grades 6, 7, 8, and 9 at both schools.

Besides, to ensure the privacy rights of the students, the author refrained from collecting information about their names and addresses, opting instead for data related to age and gender. According to the processing results obtained by the author, among the 400 collected surveys in Ninh Kieu District, the distribution of gender and age of the students is as follows:

¹¹⁶ COCHRAN, Sampling techniques 78.

¹¹⁷ The child population in various areas of Can Tho city was assessed through the population and housing census conducted in April 2019 by the general statistics office of Vietnam.

¹¹⁸ Ibid.

¹¹⁹ Appendix B.

¹²⁰ Appendix C.

Sex	Percent
Male	47.6%
Female	52.4%
Total	100.0%

Table 1: Gender distribution ratio of survey participants in Ninh Kieu district.
Source: *Huynh Thi Truc Giang's* survey.

Age	Percent
11	22.3%
12	21.7%
13	20.1%
14	35.9%
Total	100.0%

Table 2: Age distribution ratio of investigated subjects in Ninh Kieu district.
Source: *Huynh Thi Truc Giang's* survey.

For the Phong Dien district, the gender and age of the students are distributed according to the following ratios:

Sex	Percent
Male	49.5%
Female	50.5%
Total	100.0%

Table 3: Gender distribution ratio of survey participants in Phong Dien district.
Source: *Huynh Thi Truc Giang's* survey.

Age	Percent
11	15.5%
12	25.9%
13	22.0%
14	36.6%
Total	100.0%

Table 4: Age distribution ratio of investigated subjects in Phong Dien district.
Source: *Huynh Thi Truc Giang's* survey.

These figures indicate that the distribution of gender and age in these two areas is not significantly different. This will contribute to evaluating the information on the perceptions of the subjects without substantial bias, thereby enhancing the reliability of the provided information.

2. THE DEVELOPMENT OF CHILDREN’S RIGHTS IN THE VIETNAMESE LEGAL SYSTEM

2.1. PROTECTION OF CHILDREN’S RIGHTS IN THE FEUDAL LEGAL PERIOD

The feudal period constitutes a pivotal epoch in the history of Vietnam. The ethical values, philosophical ideologies, and religious beliefs during this period not only contributed to the formation of societal culture but also played a significant role in the development of the nation's legal culture. Consequently, to comprehend the process of the formation and development of legal frameworks concerning children's rights in Vietnam, researching the protection of children's rights within the feudal legal system is imperative. This investigation is crucial, as it can provide essential insights for shaping contemporary policies and legislation. Drawing lessons from the past will serve as a solid foundation for constructing effective measures to protect children's rights that are both pertinent and adaptable to the modern context. With this objective in mind, this section will analyse the legal provisions regarding the protection of children's rights in the Hong Duc Code and the Gia Long Code during the reigns of the *Le* and *Nguyen* dynasties.

Revisiting the regulations of Vietnamese Law during the feudal period, particularly through the prominent legal documents of the *Le* dynasty, the Hong Duc Code, and the *Nguyen* dynasty, the Gia Long Code, these legal texts not only demonstrate progress in progressive legislative thought but also reflect the humanitarian nature of feudal-era law and encapsulate the cultural essence of the nation. Even though, in the 15th century, the concept of human rights had not yet emerged in Vietnam and was relatively novel worldwide, instead, notions such as royal rights and divine rights prevailed¹²¹. However, it is noteworthy that, as early as the feudal period, Vietnamese law had specific legal provisions concerning human rights, particularly those of children. According to the assessments of *Phan Dang Thanh and Truong Thi Hoa* “the Hong Duc Code and the Gia Long Code deserve to be historical milestones, significant contributions of the Vietnamese people to the lofty values of human rights worldwide”¹²². They laid the foundation for the formation and development of the concept of children's rights and the protection of children's rights in contemporary law.

The right to survival is a fundamental and crucial right of children, prominently reflected in numerous provisions of the Hong Duc Code. Firstly, it encompasses the right to ensure the conditions for the survival and existence of the unborn child. According to Article 680 of the Hong Duc Code¹²³, it stipulates that “If a woman sentenced to death is pregnant, the execution must be postponed until 100 days after childbirth. If the execution is carried out before giving birth, the prison official will be

¹²¹ PHAN - TRUONG, Human rights of the Vietnamese people 12.

¹²² Ibid, 20.

¹²³ Institute of history, Hong Duc Code 130.

demoted¹²⁴ by two ranks, and the prison will be sentenced to hard labour. If the execution is carried out before giving birth, the prison official and the prison will face demotion or punishment. If the woman is subjected to corporal punishment before giving birth, the prison official will be fined 20 official taels, and the prisoner will be whipped with 80 lashes. If corporal punishment leads to serious injury or death, the offender will be charged with the offence of “excessive harm”¹²⁵. This provision demonstrates that even if a woman may face the death penalty, the unborn child she is carrying is not guilty. Therefore, the survival of the child in this scenario requires protection.

Similarly, Article 424 of the Hong Duc Code contains a provision that prohibits the act of “administering abortifacient drugs to induce abortion or being the person who requests such drugs, both will be sentenced to hard labour. If the abortion results in death, the person who provided the drugs will be punished for murder”. The prohibition of administering abortifacient drugs to induce abortion in others, as stipulated in the Hong Duc Code, can be seen as a measure to prevent the use of dangerous methods that may pose a threat to the lives of women and unborn children. This reflects a respect for the right to life of the unborn child on the part of the drafters of the Hong Duc Code.

Therefore, although the two provisions do not explicitly address the right to life of the unborn, or children, in the content of the law, through the analysis of the content of these provisions, it can be observed that the legal framework of Vietnam during the *Hau Le* dynasty ensured the right to life of children even when they were still in the womb of their mothers.

In addition, the right to life of children is also demonstrated in the restriction on applying the death penalty to children. Instead, alternative measures are applied in cases where children commit offences. Specifically, according to Article 16 of the Hong Duc Code¹²⁶: “Those who commit offences and are 70 years old or older, or 15 years old or younger, as well as those who are disabled (meaning those who are deaf, mute, physically disabled, or have broken limbs) and commit offences of theft or robbery, can be redeemed with money¹²⁷. For those who are 80 years old or older, or 10 years old or younger, and those who are seriously ill¹²⁸, if they commit offences of rebellion or murder, which would normally warrant the death penalty, in this case, the decision must be referred to the king. Even if these individuals commit offences of theft or assault resulting in injury to others, they can also seek redemption for their offences; for those who are 90 years old or older, or 7 years old or younger, regardless of committing offences punishable by death, the death penalty shall not be applied”.

The regulations regarding the application of penalties in the Hong Duc Code demonstrate the astuteness of Vietnamese legislators in the 15th century concerning the physical and cognitive limitations of children compared to adults. This led to the non-application of severe physical punishments to children, and the decision to take their lives through the death penalty was also subject to review and determination by the king. Even in the most serious criminal cases, the death penalty

¹²⁴ Demotion is a penalty reducing the status of the offender - for officials, it means demotion or reduction in rank, ranging from one to five rank - VŪ, Hong Duc Code 120.

¹²⁵ Inadvertently causing injury or killing someone - VŪ, Hong Duc Code 125.

¹²⁶ Institute of history, Hong Duc Code 28.

¹²⁷ This is not a monetary penalty akin to modern times; instead, it is understood as redeeming offenses with money - a form of leniency within the feudal legal system for certain offenders - VŪ, Hong Duc Code 127.

¹²⁸ Such as being insane, physically disabled, blind in both eyes - VŪ, Hong Duc Code 129.

was not applied, underscoring the significance of ensuring fairness and humanity in the legal system of that era.

Regarding the right to protection from violence, as analysed earlier, lawmakers during the feudal period recognised the vulnerability of children, both physically and mentally. Children often lack the ability to protect themselves from violence and therefore require protection. This idea was reflected in the legislative process, where the Hong Duc Code included strict provisions prohibiting the use of torture on children. Specifically, Article 665 of the Hong Duc Code stipulates: “Those who are eligible for reduced charges, such as those aged 70 and above, those aged 15 and below, and those with disabilities, shall not be subjected to torture; their charges shall be determined based on the testimonies of witnesses. Any violation of this law shall be considered intentionally framing the individual”¹²⁹.

Furthermore, in the same legal provision, it is also noted that “the law states that individuals aged 80 and above, those aged 10 and below, and seriously ill individuals are not required to testify for each other”. With this provision, children under the age of 10 will not be compelled to testify during legal proceedings. This is because children at this age may not have fully developed cognitive abilities. Therefore, forcing them to testify may exert psychological pressure on them, potentially leading to adverse effects on their mental health.

Similarly, during the *Nguyen* dynasty period, under the Gia Long Code in Article 21, it is stipulated that: “If individuals are 70 years old or older, children aged 15 or below, and disabled individuals, such as blind or crippled, commit offences, they may redeem their offences with money... Individuals aged 80 or older, children aged 10 or below, or those seriously ill who commit murder will be referred to the king for a decision... Individuals aged 90 or older and children aged 7 or below, even if they commit a fatal offence, will not face any penalties...”¹³⁰. This provision continues the trend of recognising the vulnerabilities of specific demographic groups, such as the elderly, children, and individuals with disabilities, and outlines measures to address their unique circumstances within the legal framework of the Nguyen dynasty period.

Article 10 of the Gia Long Code states: “Individuals aged 70 or older (out of compassion for the elderly), 15 years old or younger (due to affection for the young), and disabled individuals (out of sympathy for the disabled) who commit offences shall not be subjected to the penalty of interrogation; their guilt shall be determined solely based on the available evidence”¹³¹. This provision underscores the consideration given to specific demographics, such as the elderly, children, and individuals with disabilities, by refraining from subjecting them to the interrogation penalty and instead relying on the available evidence to determine their guilt.

Regarding the act of abusing and forcibly stripping children, such actions were categorised and prosecuted under the charge of theft and robbery. This indicates that over five centuries ago, the rights of children were rigorously protected by the feudal states through stringent measures. Specifically, Article 435 of the Hong Duc Code stipulates that “Those who take advantage of situations to steal, rob, exploit during floods, fires, or in broad daylight snatch money from others and even resort to

¹²⁹ Institute of history, Hong Duc Code 132.

¹³⁰ NGUYỄN - VŨ - TRẦN, Gia Long Code 15.

¹³¹ NGUYỄN - VŨ - TRẦN, Gia Long Code 8.

violence when stealing are all prosecuted for ordinary theft but with a reduced penalty. Forcibly stripping clothes and belongings from children, mentally ill individuals, or intoxicated persons is penalised with confiscation of the items and a double compensation¹³². This provision highlights how, more than five centuries ago, the feudal states took significant steps to safeguard the rights of children by enforcing strict measures against offenses like theft and robbery, especially in cases involving abuse and the forcible removal of children's clothing and belongings. Indeed, despite being promulgated during different dynasties in feudal society, these two legal codes share similarities when analysed from the perspective of protecting the rights of children. It is evident that the origin of these provisions stems from the humanitarian concerns of the ruling classes during that era towards vulnerable individuals in society, such as children.

The right to substitute care pertains to the entitlement of children to be ensured a safe, nurturing, and comprehensive developmental environment when unable to live with their parents. Under this interpretation, the right to substitute care also serves the purpose of safeguarding the child's right to life. Similar to the other discussed rights, such as the right to life and the right to be protected from violence, the right to substitute care for children is not explicitly articulated in contemporary legal texts concerning children's rights. Consequently, the researcher has determined the intent of the laws within the Hong Duc Code and Gia Long Code to conclude that these are provisions aimed at ensuring the right to substitute care for children.

Specifically, Article 294 of the Hong Duc Code stipulates that “In the capital city, wards, lanes, and villages, if there are sick individuals who have no one to care for them, lying on the roads, bridges, inns, temples, or taverns, then the local authorities there must set up tents to protect, nurture, and provide them with rice, porridge, medicine, and life-saving essentials, and they must not allow them to moan in distress¹³³. According to this provision, those whom the local authorities are responsible for caring for and protecting are “widows, widowers, orphans, the disabled, the impoverished, those without beloved family members to rely on, and those who are unable to sustain themselves¹³⁴.”

In special circumstances where children are unfortunate to have lost their parents and relatives, it is essential to create conditions and ensure that these children are cared for and protected in an alternative environment. Therefore, the feudal legal system had very humane provisions that allowed children to live in substitute families¹³⁵. Article 605 of the Hong Duc Code stipulates that “If anyone finds a lost child, they must report to the authorities with genuine evidence, and if someone comes to claim the child, they are entitled to receive a maintenance fee (five coins per month)¹³⁶.”

To ensure the survival and development of children, the aforementioned regulations have documented the necessary measures to be taken when a lost child is found, namely reporting to the relevant authorities¹³⁷. This helps ensure that children receive timely care and protection from potentially dangerous or difficult situations. Secondly, providing financial support to the carers of these children ensures their financial capability to offer the best possible living environment. Thirdly,

¹³² Institute of history, Hong Duc Code 122.

¹³³ Ibid 62.

¹³⁴ Regulated in Article 295 of the Hong Duc Code - Ibid 56.

¹³⁵ VŪ, Hong Duc Code 220.

¹³⁶ Institute of history, Hong Duc Code 125.

¹³⁷ PHAN - TRUÔNG, Human rights of the Vietnamese people, 22.

enforcing severe penalties for those who mistreat children establishes a deterrent for society at large, thereby curbing behaviours detrimental to children.

Furthermore, in cases where children find themselves without parents or relatives and may resort to selling themselves for support, the law still provides provisions to safeguard the interests of these children¹³⁸. Given that young children cannot protect themselves, any transaction involving their sale without a guardian is deemed illegal and rendered null and void. The guardian in this scenario serves as a representative to safeguard the legitimate rights and interests of the child and assess the new circumstances and environment as a safe haven for the child's well-being. Article 313 of the Hong Duc Code stipulates: “Orphans and women who sell themselves without a guardian, the buyer, the contract writer, and the witness are all subjected to corporal punishment according to the law (women receive 50 lashes, men receive 80 lashes), and the money is demanded back from the buyer, and the contract is annulled. Those who are solitary and destitute, voluntarily selling themselves from the age of 15 and above, are permitted”¹³⁹. Thus, it can be observed that this provision focuses on protecting children from unlawful transactions, while also acknowledging exceptions for individuals aged 15 and above who, in solitary and destitute circumstances, may voluntarily engage in such transactions. However, strict control and supervision are essential to prevent exploitation.

Regarding the right to care, nurture, and education, in both international law and contemporary Vietnamese law, the rights to care, nurture, and education of children are fundamental and hold significant importance for the development and well-being of each child. These rights encompass various facets, such as the right to nourishment, rest, proper education, and the right to reside in a secure family environment.

The feudal legal system of Vietnam also contains provisions reflecting these aspects of the rights to care, nurture, and education of children. Article 36 of the Hong Duc Code stipulates that “parents must provide for their children's food and clothing and should not be angered by their child's refusal to eat in the early morning”¹⁴⁰. In addition to the responsibility of care and nurture, parents are obligated to provide guidance and education to their children. Article 37 of the Hong Duc Code states: “If parents have children but do not know how to teach them, it is the fault of the parents. If a child acts in defiance, the father is liable; if a child steals, the father is held responsible. If the child achieves success, then the father should be rewarded with distinction, so that the world knows how to follow the ways of the father and son, bringing honour to the family”¹⁴¹.

It can be observed that in practice, due to the influence of deeply rooted ancient customs, parents in the feudal period placed significant emphasis on the use of corporal punishment for childrearing¹⁴². While concurring with the perspective of disciplining children, resorting to violence in child-rearing was only deemed acceptable within permissible limits. Should the boundaries of permissibility be exceeded, resulting in severe injury or loss of life to the child, parents would face criminal charges. Article 475 of the Hong Duc Code stipulates: “If descendants transgress the teachings of their grandparents or parents, leading to their death through beating by the parents or

¹³⁸ BÙI - LÊ, Fundamental contents of the Hong Duc Code.

¹³⁹ Institute of history, Hong Duc Code 80.

¹⁴⁰ Institute for the study of Sino - Vietnamese classical literature, Some constitutional and legal texts 454.

¹⁴¹ Ibid.

¹⁴² VŨ, Hong Duc Code 220.

grandparents, the perpetrator shall be punished with the penalty of banishment; if they cause death with a sharp implement, the perpetrator shall be punished as a district military officer; if they intentionally commit murder, an additional level of severity in punishment shall apply. If grandparents, stepmothers, biological mothers, or foster mothers cause the death of their descendants, the offence carries an additional level of severity. Manslaughter does not entail criminal liability”¹⁴³.

This regulation, to a certain extent, established a legal framework to safeguard children from domestic violence. This has had a significant impact on upholding the right to life as well as the rights to care, nurture, and education for children. Concurrently, in order to encourage the use of non-violent methods in child-rearing, the Hong Duc Code implemented stringent measures in dealing with cases involving the use of violence resulting in severe consequences for children during the process of familial child-rearing.

The right of children to be protected from acts of sexual harassment is a highly significant entitlement, globally recognised in contemporary society. This is because sexual harassment of children inflicts profound psychological and physical harm. It not only impacts the physical well-being of the child but also gives rise to psychological repercussions, educational challenges, and social relationship issues.

Over five centuries ago, the feudal dynasties of Vietnam demonstrated a discerning understanding of this issue, establishing a robust foundation in Vietnam's legal culture regarding the protection of children's rights¹⁴⁴. The attention devoted to safeguarding the right to protection from acts of sexual harassment serves not only to preserve the health of children but also to safeguard their dignity and reputation. This can be viewed as a beacon of Vietnam's legal system during the feudal era.

Analysing the provisions of the Hong Duc Code and the Gia Long Code, it is found that both codes have similarities in that they recognise protection for girls under 12 years old. Specifically, in Article 4 of the Hong Duc Code, it is clearly stated: “Fornication with a girl 12 years old or younger, even if the girl consents, is still treated as rape”¹⁴⁵. The law of the Le dynasty clearly stated that, even if a girl under 12 years old consented, the offender would still be charged with adultery and sentenced to the crime of rape, which means the lowest crime level would be imposed. “Remaining guilty” to the highest sentence of “death” in Article 3 of the Hong Duc Code.

Although more than 4 centuries apart, the Gia Long Code also protects girls under 12 years old from sexual abuse. Accordingly, the Gia Long Code in Article 1 stipulates: “Fornication with a girl under 12 years old, even if it is consensual, is also a crime of forcible rape”¹⁴⁶. Still, in Article 1 of the Gia Long Code, it is further stipulated: “Fornicating till the death of a girl under 12 years of age, seducing a girl under 10 years old, and forcing her to commit lewd acts are punishable by death through beheading. Forcibly raping a child 12 years old or younger, 10 years old or older, according to this law, “even if it is agreeable, it is also considered coercion”¹⁴⁷. Thus, the Gia Long Code clearly states that sexually raping a female child to death will, of course, result in the highest level of punishment, which

¹⁴³ Institute of history, Hong Duc Code 94.

¹⁴⁴ BÙI - LÊ, Fundamental contents of the Hong Duc Code

¹⁴⁵ Institute of history, Hong Duc Code 14.

¹⁴⁶ NGUYỄN - VŨ - TRẦN, Gia Long Code 5.

¹⁴⁷ Ibid.

is beheading. As for seducing a girl under 10 years old with “coercive” force, it is considered a crime of robbery and should be beheaded. From the perspective of sanctions, it can be seen in the two laws that the highest penalty can be applied to those who commit sexual abuse against children.

In short, the above regulations demonstrate the humanity of feudal law towards girls under 12 years old. However, these regulations also reveal limitations in ensuring equal rights and protection for male and female children. Because sexual abuse not only affects women but can also happen to male children. However, this can be explained by social attitudes and signs of the times when special attention was paid to protecting the honour and dignity of women.

From the analyses above, it can be firmly asserted that legal measures to protect the rights of children have been documented in Vietnamese Law since the feudal period. Accordingly, some rights of children are acknowledged and safeguarded, including the right to life, the right to care, nurture, and education, the right to substitute care, the right to be protected from violence, and the right to be protected from sexual abuse. The current legal provisions and achievements attained today are the result of formation and development over the course of history. They are the culmination of the confluence of various factors: progress, humanity in legislative thought, and ethical values in the mindset of ancient Vietnamese. Although the legal provisions of the feudal era did not comprehensively and thoroughly record all aspects of children's rights as contemporary law does, they represented an overall recognition of significant rights and demonstrated alignment with the socio-economic development of the feudal period to ensure the best possible life for children. Feudal-era legal provisions also lacked standalone clauses affirming rights exclusively for children as they exist today, but rather, they are interwoven within laws alongside other vulnerable groups. Several legal measures indirectly acknowledged the rights of children through various provisions. Despite this indirect recognition, these provisions collectively establish the groundwork for the creation and evolution of regulations in subsequent stages. However, feudal-era law still grappled with inherent limitations. Firstly, measures to ensure the implementation of children's rights were characterised by a punitive and severe nature, lacking the flexibility and adaptability needed to effectively safeguard children's rights and failing to fully realise the potential of legal safeguarding measures. A prominent feature of feudal-era law, particularly in the realm of criminal law, was its encompassing nature. Hence, it is easily discernible that measures to safeguard human rights in general and children's rights, predominantly took the form of criminal sanctions. This was viewed as the strictest, most effective, and most fitting recourse from the perspective of contemporary legislators. Secondly, feudal-era law, through the two legal codes, still tended to differentiate treatment between male and female children, influenced by Confucian thought as well as the feudal societal perspective. Therefore, in safeguarding male children, a demographic inherently vulnerable both physically and mentally, they too should be afforded legal protection and shelter.

2.2. PROTECTION OF CHILDREN’S RIGHTS IN THE COLONIAL LEGAL PERIOD¹⁴⁸

¹⁴⁸ HUYNH, Beginning of protection of children’s rights 105-118.

This section will concentrate on the continuity and changes in protecting children's rights during the colonial period. Historical, societal, and political factors will be scrutinised to comprehend how the legal system adapted to and reflected trends in safeguarding children during this era. Accordingly, this section will be constructed based on the assumption that the protection of children's rights was acknowledged in the legal framework of Vietnam during the French colonial period. To substantiate this viewpoint, the section examines the laws applied during the French colonial period in Vietnam (1858-1945).

2.2.1. Overview of the Vietnamese Legal System during the Colonial Period

“On September 1, 1858, *Admiral Rigault de Genouilly* brought 14 warships and 3,000 troops to attack Da Nang province and then extended the conquest to southern Vietnam provinces”¹⁴⁹. “Under the increasing pressure of French colonialism, the *Nguyen* dynasty, which governed the territory of Vietnam from 1802 until 1946, accepted the signing of the Treaty of Saigon in 1962. Accordingly, the south of Vietnam became a territory of France and set under full control of the French government”¹⁵⁰. The feudal government of the *Nguyen* dynasty only ruled the North and Central regions afterwards. In 1883, France increased the expansion of its invasion to the North and Central Vietnam. “Due to the weakness of the *Nguyen* dynasty, France forced *King Nguyen* to hand over the North and the Centre to France for protection. The protection meant that the North and Central regions were not only subject to the management of the *Nguyen* dynasty but also under the control of the French colonialists”¹⁵¹. Since the rulers differed in each region, the legal system in each locality was not the same. “In other words, each region was assigned a distinct political status and, by extension, its own Civil Code”¹⁵². “In the South, because it was a French colony, the legislative power at that time belonged to the French”¹⁵³. On October 3, 1883, the president of France promulgated the Civil Code 2015 to apply in South Vietnam. “In terms of form, from its layout to the Articles, this law is identical to the first book of the French Civil Code of 1804. In terms of content, this is a law with a precise personal nature, different from the spirit of the traditional legal spirit of Vietnam, respect for the family”¹⁵⁴. Meanwhile, the north and the centre were both managed by France and the *Nguyen* dynasty. At first, France still applied the law promulgated by the *Nguyen* dynasty, the Gia Long Code, to ensure the people’s stability and consensus.

The Gia Long Code is one of the two most prominent laws of the Vietnamese feudal regime. If Vietnam had the Hong Duc Code in the *Le* dynasty, which was enacted in the 15th century, the Gia Long code in the cursed period was considered a complete version of the old Vietnamese law. This code was applied in the northern provinces until 1931, when France promulgated the Northern Civil Code. The text is written in French and Vietnamese. “In Article 2 of the Decree promulgating the northern Civil Code dated March 30, 1931, the existing civil laws in the north that were contrary to

¹⁴⁹ NGUYỄN, The impact of the French colonial law 70.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ VŨ, Argumentative civil law 167.

¹⁵⁴ Ibid.

this Civil Code were annulled, significantly affecting the Articles in Gia Long code¹⁵⁵. In the centre, Gia Long's code was followed until 1936, when France promulgated the Intermediate-Central Civil Law that was also issued in French and Vietnamese¹⁵⁶. The Northern Civil Code has 1455 Article sections, which were divided into a preliminary section and four volumes. The first provides for the family, the second imposes property, the third defines obligations and contracts, and the fourth stipulates evidence. The first book is more distinctive than the rest because, in this book, it is clear that the legislators made efforts to retain our traditional customs, especially in matters of family organisation and inheritance. However, on many issues, such as parent-child relations and the protection of the person who is unable to defend themselves, it is not defined in our traditional laws. Therefore, its usage must be applied in accordance with European law¹⁵⁷. The Northern Civil Code of 1931 was used as a template by legislators in the central region to compose the central Civil Code, which recorded nearly all the northern law terms, except for a few minor changes.

The Central Civil Code has 1709 Articles. It has more 245 Articles than the Northern Civil Code because the contracting issues in this document were applied according to the French Civil Code, which defined in detail numerous issues about this. In summary, Vietnamese law during the French colonial period includes documents promulgated by the French and those promulgated by the Vietnamese state and used by the French. These documents include the Gia Long Code, the Southern Civil Code, the Central Civil Code, and the Northern Civil Code.

2.2.2. Protection of Children's Rights in the Vietnamese Legal System during the Colonial Period

When analysing the French colonial regulations in Vietnam on the protection of children's rights by comparing them with the current Vietnamese laws, it is easy to find that the children's rights as regulated in the documents are unclear and incomplete. The most noticeable point is the affirmation that the state, family, and society protected children's rights. If this content is recorded in the current Vietnamese constitution, the most valuable legal document in Vietnam, it was absent in the French colonial rules. There are two reasons for this situation. The first is due to the nature of Vietnamese laws during the French invasion. The laws were crafted to serve mainly the interests of the ruling class at that time - the French colonial masters. Besides, Vietnam had a past of being under Chinese domination for thousands of years. As a result, Chinese Confucianism's patriarchal ideology still left a massive mark on Vietnamese law. Therefore, the role of the child in some aspects of society is not respected.

The right to survival is an inherent natural right of children. This right is one of the rights recognised first in the CRC. Regarding the importance of this right, *Blackstone* in the 17th century described life as, "an immediate gift from God, a right inherent by nature in every individual"¹⁵⁸. *Blackstone* further observed that "the right to life is of such high value that it can even supersede murder

¹⁵⁵ VŪ, Vietnamese law and justice history - 1 189.

¹⁵⁶ VŪ, Vietnamese law and justice history - 1 183.

¹⁵⁷ VŪ, Argumentative Civil Law 189.

¹⁵⁸ BLACKSTONE, Commentaries on the laws of England 101.

if committed in self-defence¹⁵⁹. As a member of the convention, Vietnam has also provided this right in the first Article of the chapter on children's rights in the current law. All of this shows that national legislators have recognised children's right to life as of considerable importance. However, this right is not explicitly specified in the Vietnamese laws applied under the French colonial rule: the southern civil law, the civil law of the north, and the central civil law. Only in the Gia Long Code, do we have provisions on the crime of high treason acts recorded. Children under 15 years of age are excluded from the death penalty if they are related to people who have conspired to commit treason¹⁶⁰. Under the provisions of the Gia Long Code, those who have been found guilty of high treason, their relatives will be executed (Article 223). However, this article also stipulates that if the offender's children are under 15 years of age, they will only be enslaved. From the arguments above, it can be concluded that the right of children to life was protected during the *Nguyen* dynasty. The reason for protecting children's right to life here stems from the argument that children under 15 years old are incapable of making sound judgements. Even though they may be living with their parents, whether their parents' behaviour is right or violates the law, children cannot recognise right from wrong. Therefore, the legislators waived the death penalty for them.

In many countries, including Vietnam, a child's right to birth registration is a fundamental right and an essential premise for children to exercise their next rights, namely the right to nationality, the right to education, the right to health care, and the right to assets. This means that if the child does not have a birth certificate, they will not be able to exercise the remaining rights, or it will take a lot of money, time, and effort to do it. However, the absence of a birth certificate often occurs among children who were born into impoverished families in society and whose daily concern is simply food. Therefore, when it comes to complicated legal requirements, they are not concerned, for they have more pressing daily survival needs. The legislators realised the importance of birth registration. Since the French colonial period, Vietnamese law has recognised these rights in all three civil laws in the southern, the northern, and the central. Accordingly, the southern Civil Code stipulated that the time limit for birth registration for a child was eight days after the child's birth. The southern birth procedure was similar to the Northern and Central Civil Code, whereby the registration of birth must include a newborn's presence. If the newborn could not come due to illness, the civil status official would come to the home to verify the birth. The deadline for birth registration for children defined in the Northern Civil Code and Central Civil Code was one month¹⁶¹. If the birth registration was not done on time, a fine would be imposed. It is the regulation stipulated in Article 21 of the Northern Civil Code and the Central Civil Code. In addition, Article 25 of these two documents required that every child be registered at birth, regardless of whether the mother survived the birth or not. If the mother died during childbirth and the father was present, he would handle the registration process. If the father was not present, the same would be done by a relative. Even the law envisages that, in some cases, the registration would be done by a neighbour or the person who witnessed the childbirth. This provision has created conditions for all children to be registered for birth in north and central Vietnam.

¹⁵⁹ Ibid. See also: MCCLOSKEY, The death penalty and the right to life 500.

¹⁶⁰ NGUYỄN, The first step to learn Gia Long Code 45.

¹⁶¹ VŨ, Civil Law review - 1 286.

Moreover, the issuance of birth certificates to children right after completing the birth registration procedure has created favourable conditions for children to enjoy their remaining rights as citizens of Vietnam. This is one of the advantages of Vietnamese law compared to some countries, even developed countries like Australia¹⁶². The child's right to birth registration and the issuance of a child's birth certificate are not the same. As a result, a child may be registered for birth and yet not be given a birth certificate to exercise other rights. This comparison can help us conclude that, although the right to birth registration for a child was merely recorded in the legal documents of Vietnam during the French colonial period, currently, it has been partially implemented to protect children's rights. During the French colonial rule, the birth certificate was also used as evidence to prove the mother-child relationship. The relationship between father and child will be proven based on the mother's marriage certificate¹⁶³. This means that the husband of the woman who gives birth will be the child's father. Since it is only speculative, the paternity under the Northern Civil Law, Central Civil Law, and southern civil law can be denied by the father suing in court. However, this waiver will not be accepted if the husband attended the birth certificate's testimony, signed the deed, or clearly states that the husband did not know sign¹⁶⁴. Thus, the birth registration of a child is essential, particularly if the child's birth registration happens in the presence of the father.

“Nationality is the legal status that defines the relationship between an individual and a particular state. The nationals are subject to the states's absolute jurisdiction and enjoy legal capacity under the protection of the states. Therefore, children, as individuals, will have the right to nationality”¹⁶⁵. In other words, a child's right to nationality creates the legal status for a child to be officially recognised as a citizen of a country. As such, children will enjoy all the rights and have to fulfil citizenship obligations (if any) following the constitution and the law. Besides, children will also receive protection from the states if international legal problems arise. During the French colonial period, in the south, the 1883 Civil Code was rather sketchy, so there was no record of a child's citizenship. Article 13 of the Central Civil Code and the Northern Civil Code provide for the rights of children to have Vietnamese nationality. Accordingly, the determination of the child's nationality will be done according to two principles. First, the child's nationality is determined by the nationality of the parent. Second, the child's nationality is determined based on the territory where the child was born.

Nowadays, in the legal sense, the right to know one's origin is understood in a relatively broad sense. It is the right to know one's parentage, i.e., one's biological family, antecedents, and one's condition of birth¹⁶⁶. In Vietnam, even in the current state, there is not yet a unified and complete concept of the contents of this right. Therefore, the author will analyse this right based on the provisions of Article 7 of the CRC and Article 23 of the Children Act 2016 in Vietnam. Accordingly, the children's right to know about their origin in this Article is the right to know about their parents. During the French invasion, the Vietnamese constitution provided for the right of children to know their parents. During that period, children had a right to know their parents, even if they were born

¹⁶² GERBER - GARGETT - MELISSA, Does the right to birth registration 450.

¹⁶³ VŨ, Civil Law review - 1 227.

¹⁶⁴ VŨ, Civil Law review - 1 259.

¹⁶⁵ ĐINH, Protecting children's rights in current Vietnamese law.

¹⁶⁶ PRELOŽNJAK, Modern challenges in the implementation of the child's right to know his origin 1197.

out of wedlock. However, it is necessary to establish the difference in the enforcement of this right in the current period and during the French colonial period in Vietnam. Specifically, since joining the CRC and the enactment of domestic laws that recognise the child's right to know their parents, this right has been enforced with the primary goal of protecting the child, as an equal subject with other adult subjects. On the contrary, during the French colonial period, as analysed above, due to the paternalist roots¹⁶⁷, permission for children to identify their origins was mainly to protect their parents' interests. The interests of the children in these situations, if any, are secondary. "Although patriarchal ideology has appeared for a long time, its negative influence on the Vietnamese people's spiritual life was still very evident during the French invasion". During the French colonial rule, the right to know one's biological parents was exercised by either the children themselves or their parents. The first is the recognition a child gets from their parents. Parents can recognise their children at the time they register their baby's birth or after birth registration. Article 163 of the Northern Civil Code and Article 162 of the Central Civil Law stipulate that when a father registers a birth out of wedlock and recognizes that child as his own, the birth certificate will be considered evidence of child adoption. The Civil Code 2015 in south Vietnam also has a similar regulation. According to a case on May 25, 1930, in Saigon Court, when parents brought their child to the administrative officer and granted the child use of their surname is considered that the recognition is validated¹⁶⁸. *Vu Van Mau* supposed that "this was a reasonable and humane regulation. If the recognition of the child was required with strict formal conditions, the father of the child could not have done it because he does not understand the law. Therefore, it could damage the interests of the illegitimate child"¹⁶⁹.

Child recognition can still be done after the birth registration is completed. In Southern Civil Law, after the child's birth has been registered, the parent has just recognised the child, and to complete the process, the child recognition must also be done in court. After the court process, the parents would then pass such a case to the civil status official to note their birth certificate's recognition. However, the time limit for recognising a child in court is not regulated in the Southern Civil Code¹⁷⁰. Article 165 of the Northern Civil Law and Central Civil Code states in Article 163 that even though the birth registration is finished, the civil status official has the competence to recognise a child at the request of the parent's child. This deed must be recorded in the civil status register in the presence of two witnesses. Secondly, the right to know parents is exercised by children. Article 74 of the Northern Civil Code prohibits parents' admission by the child because children cannot directly sue their parents. "This provision is intended to avoid damaging filial piety in the Vietnamese family, but the solution is too strict for those born out of wedlock"¹⁷¹. In the Southern Civil Code, if the father recognized an illegitimate child, then the child only needed to prove that they were born by the woman they claimed to be the mother. If the father does not recognise the child, the child must sue for recognition in two stages. The first step is proving they were born by the woman in question and that they and the child the woman gave birth to are the same person¹⁷². Article 176 of the central Civil

¹⁶⁷ Patriarchal ideology has appeared in Vietnam since feudal times due to the influence from China.

¹⁶⁸ VŪ, Civil law review - 1 189.

¹⁶⁹ Ibid 145.

¹⁷⁰ Ibid 227.

¹⁷¹ Ibid 259.

¹⁷² Ibid 241.

Code stipulates that when the child born out of wedlock is a minor and whose mother has not sued to determine their father, that child can also sue when he is mature so that the court recognises who his father is. The deadline is only one year after they attain maturity. After the recognition of a child is completed, Article 184 of the Northern Civil Code and Article 182 of the Central Civil Code stipulate that children will have the obligations and rights to their parents as if they were born in wedlock. The Southern Civil Code does not provide for the status of an illegitimate child who has been recognised by their parents. However, we cannot use theoretical methods to conclude that an illegitimate child will have the same rights as a child in wedlock after being recognized by their parent because, in Chapter VII of the Southern Civil Code, “illegitimate children have only all their rights in wedlock when their parents are married”¹⁷³.

Educational activities in general and education for children in Vietnam have existed since feudal times. “During the French colonial period, Vietnamese education was organised and operated based on Western enlightenment and freedom ideology, with a vocational education philosophy different from the existing Confucian ideology and thousands of years of history. As a result, our country’s education has had a profound change. One of the new features is that women can go to school and participate in teaching and other social work. It can be said, from a cultural perspective, that this is an educational value of this period”¹⁷⁴. In the northern Civil Code and the central Civil Code, when they stipulated about the rights of the patriarch, it also defined that children could study at home or go to school depending on the economic condition of their parents (Article 218 of the northern Civil Code and Article 214 of the Central Civil Code). In the South, in the 1883 Civil Code, there is absolutely no record of the children’s right to education. However, through policies and decrees issued in the Southern Civil Code, it has been shown that children in this region can still be educated in one or two ways. First, study at home and at schools built by French colonial masters. “The French colonialists focused on developing education for fundamental reasons, such as the need to conquer the spirit of the indigenous people after completing the land conquest, the need to train a loyal maid class, the need to create conditions for the French to communicate with the Vietnamese people without going through intermediaries directly. These reasons govern the content of a new education, which is gradually formed and developed in colonial times”¹⁷⁵.

According to *Nguyen Dinh Tu*¹⁷⁶ after the French conquered the South, to protest French colonialism, the teachers did not go to work or go to Hue City¹⁷⁷ and the students quit school to join the army. Faced with this situation, the French colonialists opened schools, granted scholarships, and provided all accommodation facilities, clothes, pants, and books to students. Moreover, the colonialists also allowed the use of Chinese characters in education. The French colonialists did all this with the primary purpose of winning the hearts of the people and having students return to school. After that, on November 17, 1874, the Governor of the southern provinces, *Krant*, issued Decision No. 282 with 4 chapters and 23 articles that laid the first foundation for public education in Cochin China under the new regime. Accordingly, in addition to teaching Chinese characters in primary

¹⁷³ VŨ, Civil law review - 1 267.

¹⁷⁴ NGUYỄN, School for girls under the French colonial period in Vietnam 42.

¹⁷⁵ TRẦN, Confucianism Learning and Public Education 55.

¹⁷⁶ NGUYỄN, French colonial regime in southern Vietnam 287.

¹⁷⁷ The capital of Vietnam at that time. It was also the place ruled by the feudal government of the *Nguyen* dynasty.

school, the students had to learn more Vietnamese characters and French. In the programme from secondary school upwards, they were not taught about Vietnamese geography, but they were taught about French geography and the French colonies. It can be seen that “different from traditional education, the education set up by the French in Vietnam in this period was quite comprehensive. The contents of social sciences, natural sciences, ethics training, and health are included in all educational levels”¹⁷⁸. Although the implementation of French education policies is not to ensure the children’s right to education, the school also contributes to creating a generation of intellectuals, contributing to Vietnam’s education development.

In the three Civil Codes, the right of a child to be adopted is one of the most clearly recognised Vietnamese laws during the French invasion. Under Article 185 of the Northern Civil Code and Article 183 of the Central Civil Code, the adoptive person must be a minor, regardless of whether one is a girl or a boy. In the Gia Long Code, adoption is also provided for in Article 76. Accordingly, a person can adopt a child, whether they are related or not. After being adopted, if the child has a different surname from the adoptive father, the Gia Long Code allows the child to keep its surname unless the adopted child is an abandoned child under three years old, as prescribed in Clause 3 and Clause 5 Article 76 of the Gia Long Code¹⁷⁹. Under the Southern Civil Code, only minors can be adopted. This means that they must not be more than 21 years old. The person adopted can also be a boy or a girl. The adopting person must be over 25 years old, and there is no regulation on the age gap between the recipient and the adoptive child in this code. Although the model for stipulating the Southern Civil Code is derived from the French Civil Code, “compared to the French civil law, the southern civil law is much more accommodating because the French civil law requires the adoptive father or adoptive mother to be over 40 years old. It also stipulates that the adopted child must not be older than 15 years old”¹⁸⁰. In addition to the age condition, the Southern Civil Code stipulates that the custodian can be a man or a woman, and it does not matter whether they are married or not. The Central Civil Code stipulates the adoptive age as above 30 years of age. Besides, Article 185 of the Northern Civil Code and Article 183 of the Central Civil Code do not discriminate against sex or marital status¹⁸¹. According to the Southern legislators, adoption is crucial, so the adoptive child must express their opinion. Meanwhile, the adoptive child’s consent condition was not recorded in the northern civil law or the central civil law.

Vu Van Mau said that the purpose of adopting in this period came from humanity, personal interests, and spirituality. “An example of adopting children out of kindness is when a well-off family adopts the young children of a destitute family. When the aim of adopting children is a personal interest, it means adopting a child to take them to work without a salary. For example, the creditors adopt the debtor’s children for adoption. Then, they will make deductions from the loan amount. Adopting for spiritual reasons means that a well-off but disaster-prone family will adopt a child from a low-income family with many children; let that child take part in the disaster and bring to the recipient’s family a little happiness”¹⁸². Thus, it can be seen that the protection of children’s rights was

¹⁷⁸ NGUYỄN, School for girls under the French colonial period in Vietnam 40.

¹⁷⁹ VŨ, Civil Law review - 1 298.

¹⁸⁰ Ibid.

¹⁸¹ Ibid 306.

¹⁸² VŨ, Civil Law review - 1 294.

not upheld in Vietnamese law during the French invasion period. Among the regulations on adoption, the main provisions are the rights of the child that is being adopted. Specifically, the child must be treated by the adoptive parents' family as a biological child if the adoptive child follows the adoptive father's family name (Article 193 of the Northern Civil Code). However, in the Central Civil Code, it is not necessary to have the same surname as the adopting person for the adopted child to be treated like a biological child. This regulation is genuinely progressive as well as compatible with the current Vietnamese laws. There is also a record that the adoptive parents must nurture, take care of, and educate the adoptive child, but the foster child cannot be completely identical with the biological child¹⁸³. From the case records in the south, *Vu Van Mau* has assessed that "the adoptive children are "other people." They are adopted because of charity or sometimes just because the adoptive person wants to find a friend for his child to play with. Therefore, a son is only considered a kind of house worker who does not have the right to follow up with adoptive parents"¹⁸⁴. Besides, Article 201 of the Northern Civil Code and Article 200 of the Central Civil Code also stipulate that if the adoptive parent lets the adoptive child lack essential needs or cruelly treat the adopted child, the adoptive child or a relative can go to court, and the adoptive parent loses his custody.

In summary, although it was enacted during the period when Vietnam was a divided territory and experiencing political instability, it is incorrect to suppose that Vietnamese laws of the French colonial period were enacted only to protect the interests of the French colonialists because, throughout the provisions of the three Civil Codes of this period, we still noticed that there are provisions that protected the rights of children. The children's rights stipulated during this period were also quite diverse, namely the right to survive, the right to birth registration, the right to have a nationality, the right to be adopted, etc. However, it can be seen that the protection of children's rights in this period did not focus on the rights related to children's spiritual lives, such as the right to study and play, the right to develop abilities, and the right to express their opinions. This is because patriarchy is still too profound in the minds of the Vietnamese people. Besides, protecting children's rights during this period was not the legislator's primary purpose. It means the provisions at such a stage were meant to protect the interests of other subjects and led to children's protection accidentally. In conclusion, although they do not have the same meaning as the rights in current Vietnamese law, these regulations have somewhat taken Vietnamese children at that stage out of some mental and physical abuse.

2.3. PROTECTION OF CHILDREN'S RIGHTS IN THE INDEPENDENCE ERA FROM 1945 TO DATE¹⁸⁵

Since the Communist Party achieved victory in the revolution in Vietnam on August 19, 1945, the Socialist Republic of Vietnam was established. Subsequently, the government issued numerous documents to regulate social relations in the new situation and pursue the goal of developing society

¹⁸³ Ibid 307.

¹⁸⁴ Ibid.

¹⁸⁵ HUỖNH - NGUYỄN, Development of children's rights 218 - 233.

towards socialism. In addition to political, economic, and social security aspects, attention to safeguarding the rights of children is also an important focus of government agencies. This section will examine the development of regulations for protecting children from the establishment of the Socialist Republic of Vietnam to the present.

2.3.1. Protection of Children's Rights in the Constitution

Although the protection of children's rights in an international convention is essential, the question arises whether and how enshrining these rights in national constitutions enhances the level of protection and opportunities for vindication of the rights. Constitutional protection could render visibility to children as rights holders and could avail stronger arguments in favour of treating children as 'fully-fledged human beings'¹⁸⁶.

Whether or not children are explicitly mentioned in the constitution is probably an insufficient indicator of the extent to which children's rights are rendered efficient. A specific provision on children's rights in the national constitution could have mere symbolic value. Conversely, a constitution that remains silent on the issue does not necessarily entail weak protection of children's rights in practice. The provisions on child protection in the constitution in Vietnam over time are detailed as follows: The Constitution of 1946 is the highest legal document of Vietnam after independence. "This is the constitution that has the closest approach to human rights". "This constitution stipulates the principle of child protection in Article 14: "Children are cared for and educated". "The outstanding core values of the 1946 constitution were inherited and promoted in the next four constitutions, namely the 1959 constitution, the 1980 constitution, the 1992 constitution, and the 2013 constitution"¹⁸⁷ The 1959 Constitution affirms in Article 24: "The state protects the rights of mothers and children and ensures the development of health care homes and kindergartens". The 1980 Constitution recognised the right to protect children in Article 65: "The state and society attach special importance to the protection, care, and education of minors and children, gradually expanding the responsibility for raising them and ensuring children's living, learning, and maturation". The 1992 Constitution stipulates that "children are protected, cared for and educated by their families, the state, and society" (Article 65). The 2013 Constitution states in Clause 1, Article 37: "Children are protected, cared for, and educated by the State, family, and society, they are allowed to participate in child-related issues. Torture is strictly prohibited, such as mistreatment, ill-treatment, neglect, labour exploitation, and other acts that violate children's rights". "The 2013 Constitution of Vietnam is the premise and legal foundation for substantive improvements, the breakthrough in childcare and protection"¹⁸⁸.

Thus, the constitutions of Vietnam, over the period, have provisions that explicitly mention the protection of children's rights. At the same time, the content of the provisions on child protection in the Vietnamese constitution also shows the latter's progress compared to the previous one. Specifically, if in the 1946 constitution, the Vietnamese legislator stipulates that children are cared for and educated, in the 1959 constitution, the issue of child protection is no longer limited to care and

¹⁸⁶ REYNAERT - ROOSE, Children's rights from a social work perspective 3.

¹⁸⁷ NGUYỄN, Constitution of 1946: the democratic and progressive constitution.

¹⁸⁸ NGUYỄN, Children's rights in current Vietnamese law.

education. Instead, the legislator prescribed ‘protection of children’s interests’ in general. The 1980 constitution added the principle of expanding the responsibility of raising children, and the 2013 constitution added the principle of prohibiting acts of abuse and maltreatment against children - something all constitutions have previously unspecified in law. However, compared with the children’s rights enshrined in the CRC, the rights listed in the Vietnamese constitution may not be comprehensive. Therefore, the analysis of children’s rights in Vietnamese law should not be limited by the constitution but also include rights enshrined in other documents such as the Civil Law and the Marriage and Family Law. Subsequent sections of the study will attempt to clarify this. However, does enshrining children’s rights in constitutional regulations improve the implementation and enforcement of those rights?

2.3.2. Protection of Children’s Rights in Civil Law

From 1945 to now, Vietnam has promulgated three civil laws. These are the Civil Code 1995, the Civil Code 2005 and the Civil Code 2015. The provisions on the protection of children’s rights are recognised in all three documents. Specifically, they include: (1) the right to be adopted; (2) the right to have a birth; and (3) guardianship.

Although the right to be cared for and brought up in their family is a fundamental right that affects the children’s physical, intellectual, and emotional development, in particular cases when some children do not have such fortune, it is reasonable and humane to recognise the right to adoption. Children need to grow up in the love of a family; although it may not be the family of their biological parents, there is genuine love for the child. There have been many adopted cases where children have developed well and achieved many successes in their careers. The right to be adopted is prescribed in Article 40 of the Civil Code 1995, Article 40 of the Civil Code 2005, and Article 39 of the Civil Code 2015, which does not directly mention children. However, based on Clause 1 Article 8 of the Adoption Law 2010, it is possible to determine that the age to be adopted in Vietnam is under 16 years old. Therefore, it can be concluded that the right to be adopted under the Vietnamese Civil Code is a right dedicated to children.

When it comes to formality, the right to adoption in the Civil Code 2015 is different from those of the previous two documents. Specifically, the Civil Code 1995 and the Civil Code 2005 have separate articles on this right. Meanwhile, the Civil Code 2015 stipulates the right to adoption and other rights related to marriage and family aspects in one article. The author thinks that the provisions of the Civil Code 2015 are adequate and reasonable because another specialised law, the Adoption Law 2010, has already regulated the detailed contents. It is also important to emphasise that it was not only after 1945 that Vietnamese law had provisions on the right to adoption but also since the French colonial period; this right has also been enshrined in Civil Codes . However, the purpose of adopting children is slightly different. Previously, researcher *Vu Van Mau* said that the purpose of adopting in this period came from humanity, personal interests, and spirituality. “An example of adopting children out of kindness is when a well-off family adopts the young children of a destitute family. When the aim of adopting children is a personal interest, it means adopting a child to take them to without a salary. For example, the creditors adopt the debtor’s children for adoption. Then, they will make

deductions from the loan amount. Adopting for spiritual reasons means that a well-off but disaster-prone family will adopt a child from a low-income family with many children, so that child will take part in the disaster and bring to the recipient's family a little happiness". In the current period, the purpose of adoption is defined as follows: Adoption aims to establish a permanent parent-child relationships in the best interests of adopted persons, ensuring that adopted persons are nurtured, cared for, and educated in the family environment. This comparison shows that Vietnamese law is now more concerned with children's rights than before.

Article 7 in the CRC regards birth registration immediately after birth as one of the fundamental human rights of children. Registering children at birth is the first step in securing their recognition before the law, safeguarding their rights, and ensuring that any violation of these rights does not go unnoticed. The child's right to have a birth is enshrined in all Civil Codes in Vietnam from 1945 to date. The content of the right to have a birth was recorded in detail in the first Vietnamese Civil Code. Accordingly, it affirms that everyone has the right to a birth certificate, regardless of whether they were born in or out of wedlock. This right is provided more simply in the following two documents issued in 2005 and 2015. Accordingly, it only affirms that individuals have the right to have birth registration. Non-discrimination and how to give a name to children no longer appear. The author believes that this change is necessary and appropriate because the specific relevant contents have been recorded in the documents of states administrative agencies. Additionally, the issuance of birth certificates to children right after completing the birth registration procedure has created favourable conditions for children to enjoy their remaining rights as citizens of Vietnam.

Guardianship is one of the institutions recorded quite fully and in detail in the Civil Code 2015 of Vietnam. Similar to the laws of other countries, the recognition of guardians in Vietnamese civil law is also aimed at protecting the interests of children. Although, throughout time, the form of appointing a guardian has been regulated differently in the Civil Code 2015, the purpose of a guardian is still to take care of and protect the legitimate rights and interests of the guardian. The Civil Code 1995 and the Civil Code 2005 have similar provisions in the guardian's formality selection. Accordingly, a guardian is a person who is required by law or appointed. Although the Civil Code 2015 also stipulates that a guardian is a person who is required by law or appointed, the subject of appointment of a guardian is more expanded, namely the ward, the people's committee, and the court, instead of only the court as in the previous two Civil Codes .

There is almost no difference in the provision of guardians for minors under the Vietnamese Civil Codes . Accordingly, relatives of minors will be designated as their guardians. Specifically, the eldest brother or sister shall be the guardian of the ward; if they fail to satisfy all requirements for acting as a guardian, the paternal grandfather, grandmother, or maternal grandfather, grandmother, shall be the guardian; if they fail to satisfy all requirements for acting as a guardian, a biological uncle or aunt of the ward shall be the guardian. To ensure that guardians protect children's best interests, Vietnam's Civil Codes have forced them to perform several obligations that have remained unchanged over the past twenty years. It shows the correctness and stability of these regulations. Specifically, guardians have the following obligations: to take care of and educate the ward; to represent the ward in civil transactions, except where it is provided for by law that wards aged under fifteen years can

establish and perform civil transactions by themselves; to manage the property of the ward; and to protect the legitimate rights and interests of the ward.

2.3.3. Protection of Children's Rights in the Marriage and Family Law

The provisions on children's rights in the Marriage and Family Law of Vietnam over time have the following highlights: Firstly, the goals of the Marriage and Family Law have varied over time, but they are all aimed at the states's protection of children's rights. Second, the rights of children recorded in this group of documents mainly focus on the right to be cared for and nurtured, the right to education, and the right to have private property with other institutions' different performance guarantees. Children's rights are protected in the Marriage and Family Law through specific periods, as described in the following.

This is a fundamental right of children, which should be recognised in the Marriage and Family Law in Vietnam from 1945 to the present. However, in terms of content, the recently issued documents will have made more progress than the previous ones. For example, the Marriage and Family Law 1959 stipulates that parents must love, raise, and educate their children, but the Marriage and Family Law 2000 and the Marriage and Family Law 2014 have more than their predecessors: parents must care for and raise their minor children jointly. Compared to the provisions of the Marriage and Family Law 1959, this new regulation has emphasised the equality of parents in the exercise of children's rights to care and upbringing and clarified that the beneficiaries of these rights are minor children. To ensure the right to be cared for and nurtured is best implemented, the Marriage and Family Law from time to time also stipulates the right to be adopted.

Like the right to be cared for and nurtured, the right to education is recognised in all laws on marriage and family in Vietnam. If the Marriage and Family Law 1959 and the Marriage and Family Law 1986 stipulate the right to care, nurture, and legal education in one law, the Marriage and Family Law 2000 and the Marriage and Family Law 2014 separate each right in a separate law. Specifically, Article 17 of the Marriage and Family Law 1959 stipulates: "Parents must love, raise, and educate their children", and Article 19 of the Marriage and Family Law 1986 stipulates: "Parents must love, raise and educate, take care of their children's learning and healthy development in terms of physical, intellectual, and moral values". Article 37 of the Marriage and Family Law 2000 stipulates as follows: "Parents create conditions for their children to live in a warm and harmonious family environment; set a good example for their children in all aspects; closely coordinate with schools and social organisations in the education of children". Article 72 of the Marriage and Family Law 2014 stipulates that "parents create conditions for their children to live in a warm and harmonious family environment; set a good example for their children in all aspects; closely coordinate with the school agencies and organisations in the education of children". Thus, the content of children's right to education in the Marriage and Family Law 2000 and the Marriage and Family Law 2014 is more detailed than in previous documents. At the same time, the two later documents also added that parents must set an example for their children and coordinate with schools, other agencies, and organisations in educating their children. It is necessary because children will passively learn their parents' behaviour in social activities.

Furthermore, homeschooling is an educational activity that happens every day and goes on for a long time. Therefore, stipulating the responsibility of parents in setting an example for their children in all aspects is a practical regulation and helps parents guide on how to educate their children at home. In addition, regulations on the cooperation of parents with schools, agencies, and organisations are also necessary. For example, at present, when Vietnam in particular and countries around the world in general are affected by the COVID-19 epidemic, the cooperation between parents and schools in educating their children is more evident. Specifically, schools are closed to prevent the spread of the virus, so online learning measures are implemented. However, for this learning method to be effective, as well as to ensure children's right to learning, parents must show their cooperation in educating children through activities such as guiding children to use electronic devices for learning, especially those who are still in primary school, creating favourable conditions in terms of time and space for them to participate in learning.

These provisions show the details of the Marriage and Family Law 2000 and the Marriage and Family Law 2014 in regulating the right to own property of minors. Since then, it has helped solve the question posed by the Marriage and Family Law 1959. That is, what is the private property of minors? Similar to the Marriage and Family Law 2000, the Marriage and Family Law 2014 stipulates the grounds for forming separate property for minors. In addition, this law also adds the basis that 'the child's private property is the property formed from the child's property'. This basis helps to diversify the sources of children's property, thereby ensuring children's legitimate rights to property ownership. Regulations on children's right to own property will be a premise for children to exercise their other rights better - for example, the right to participate in civil transactions. Specifically, if children have property sufficient to meet their obligations, they can participate in civil transactions by themselves without the legal representative's consent¹⁸⁹.

¹⁸⁹ Except for civil transactions related to real estate and movables, which must be registered in accordance with the provisions of the Civil Code 2015 above.

3. THE PRINCIPLES OF PROTECTION CHILDREN'S RIGHTS

There is no hierarchy expressed between the rights in the CRC, but the committee has identified three general principles that are given greater priority in implementation. The three principles are Article 2, the prohibition of discrimination in accessing the rights contained in the CRC; Article 3, the primary consideration of the child's best interests; and Article 12, the right of the child to be heard in proceedings affecting them¹⁹⁰. These rights should be considered in the interpretation and implementation of all the other rights in the CRC. While theoretically none of these principles is more important than any other, Article 3, the primacy of the child's best interests, underpins all other provisions in the CRC. This is the guiding principle for all other CRC provisions and should be reflected in all other legislative and policy matters affecting children¹⁹¹. This section will endeavour to elucidate the content of the aforementioned principles, aiming to derive criteria that can serve as benchmarks for applying these principles in regional and national legal frameworks.

3.1. THE PRINCIPLE OF PROTECTING THE BEST INTERESTS OF CHILDREN

In international law, the principle of safeguarding the best interests of the child is established as one of the core principles in all decisions related to children. This principle has been instrumental in protecting children and has yielded positive results. However, to highlight the states's concern for this vulnerable population, this section will focus on relevant provisions pertaining to the circumstances when parents divorce. This is because, at that juncture, parental attention to the welfare of children may be somewhat diminished due to the negative emotional impacts that marital dissolution imposes on the parents themselves.

3.1.1 The Principle of the Best Interests of the Child in International Law

This principle has a long history, but it was not until the late 20th century that it was formally recognised and codified in international legal instruments. Several documents recognise it, such as the Geneva Declaration of 1924. Later on, the Declaration on the Rights of the Child in 1959. The most notable document is the CRC, which was adopted in 1989. It recognises the principle of protecting the best interests of the child in Article 3.

Marit Skivenes and *Line Marie Sørsdal* asserted that “there are many competing and legitimate ways of bringing up children and, as such, defining what is good or best for them. Thus, there is not one “best interest value” that can be expected to be valid and accepted as a right for all children”¹⁹². Indeed, evaluating whether a decision protects the best interests of children is not a straightforward matter. This is because a decision may be initially intended to protect children from abuse by their

¹⁹⁰ CRC, General comment No. 12/2009.

¹⁹¹ Ibid.

¹⁹² SKIVENES - SØRSDAL, The child's best interest principle 78.

parents, but in the long run, it may also have unintended consequences for the child. For example, a court decision to terminate parental guardianship over a child to protect them from abuse or neglect may also cause emotional harm or disrupt their education. Therefore, it is crucial for courts and relevant authorities to carefully consider all possible outcomes of a decision and strive to minimise any negative impacts on children and their families.

Upon examining Article 3(1) of the CRC, it can be observed that there is no specific explanation of what constitutes the best interests of the child. Instead, it establishes a principle that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration”¹⁹³. *Jean Zermatten* also asserted that: “This provision must be seen as a specific rule (serving as the starting point when analysing the impact of decisions concerning a child) and also as a general principle, contributing to a larger concept, namely the newly recognised status of the rights of the child”¹⁹⁴.

In May 2013, the CRC committee issued a comment on the best interest Article (number 3) intended to accommodate the lack of a common understanding of the principle. Accordingly, seven factors need to be considered when deciding the best interests of the child, including: (a) the child's perspective; (b) the child's identification; (c) the preservation of the family environment and maintenance of relationships; (d) care, protection, and safety for the child; (e) vulnerability status; (f) children's health rights; (g) children's right to education.

In summary, the concept of “best interests of the child” is a legal concept that is not clearly defined in international law. Because it is a large concept, and it depends on the social and cultural circumstances as well. This can be seen as an “open rule” that provides flexibility for countries in the process of applying the law. This means that depending on the specific situation of each country in terms of space and time, as well as the context of their legal system, political order, and welfare model, the application of the principle of protecting the best interests of the child is recognised in legislative activities and implemented in practice through different methods and degrees.

3.1.2. The Principle of the Best Interests of the Child in the Vietnamese Law

Vietnam signed the CRC on February 26, 1990, and officially ratified it by issuing Decree No. 09/1991/TT-BTP on April 15, 1991. Vietnam became the 54th country in the world and the first in Southeast Asia to recognise and implement the UNCRC. Being a member of the CRC means that Vietnam has ratified this international treaty on human rights, and is committed to ensuring the protection and promotion of children's rights and interests within the country. One of them is the protection of the best interests of the child in decision-making processes that involve children.

The principle of the child's best interests first appeared in Vietnam's legal system in the Child Protection, Care and Education Law 1991 (the 1991 Law) and was further developed and incorporated into the current Children Act 2016. According to Article 3, Clause 5, of this law, all parties are responsible for ensuring the best interests of children are considered in decisions relating to them.

¹⁹³ ZERMATTEN, The convention on the rights of the child.

¹⁹⁴ *Ibid.*

The principle of the child's best interests is also reflected in other laws related to children, such as the Marriage and Family Law 2014 and the Adoption Law 2010.

Although this principle has been acknowledged in the 1991 Law, legislators have not yet shown an intention to formally elaborate on the specific content and scope of this concept. This lack of clarity creates an unclear picture of how this principle is applied and implemented in the legal domain of the country. The absence of clarification regarding the content of this principle can lead to misunderstandings and difficulties in enforcing and evaluating the effectiveness of measures designed to protect the best interests of children. However, to some extent, the absence of regulations explaining the term “best interests” of children could be viewed as an opportunity for individuals and relevant organisations to flexibly assess and apply this principle in specific contexts.

Regarding the application of this principle within the legal framework of divorce in Vietnam¹⁹⁵, the thesis will examine some issues related to children, including: (1) deciding who will directly care for the children; (2) visitation rights; (3) providing financial support for the children; and (4) changing the person who directly cares for the children.

There are specific criteria that the court must ensure when determining custodianship in divorce cases, including: (1) respecting the mutual agreement of the spouses; (2) considering the opinions of children aged at least seven; and (3) prioritising the wife for the care of children under 7 years and 36 months.

Respecting the mutual agreement of the spouses is the foremost issue that the court must address. In divorce cases, the question of who should be granted custody of the children is a crucial matter that has a significant impact on their lives and futures. This is because the parent who is awarded custody will be the one who lives with the child under the same roof and has a substantial impact on the child's personality, intellectual, and physical development.¹⁹⁶ Therefore, the court always carefully considers and evaluates the full scope of factors involved in deciding who will directly care for, nurture, and educate the child to ensure the best interests of the child are protected.

The Marriage and Family Law 2014 specifies in Clause 2, Article 81, the regulations for the care, nurturing, and education of children following a divorce as follows: “Husband and wife shall reach agreement on the person who directly raises their children and on their obligations and rights towards their children after divorce. If they fail to reach an agreement, the court shall appoint either of them to directly raise the children, taking into account the children’s benefits in all aspects”.

This regulation indicates that the person who will directly care for and nurture the child following a divorce will primarily be determined through an agreement between the spouses. This is because they are the ones who understand the situation, as well as their own conditions and abilities to care for, nurture, and educate the child¹⁹⁷. In other words, this regulation stems from the Vietnamese lawmakers' belief in the role of parents in making decisions related to their children's lives. Furthermore, this can also help reduce conflicts and promote cooperation among parties, especially in cases where divorce is being disputed.

¹⁹⁵ In Vietnam, there is no separate law on divorce; instead, the regulations regarding divorce are stipulated on chapter IV in the law of marriage and family, which was enacted in 2014.

¹⁹⁶ LÊ - NGUYỄN, Protecting the rights and interests of the child 125.

¹⁹⁷ TÔ, Vietnamese legal provisions on safeguarding the rights and interests of children 13.

This rule is widely applied by the courts in Vietnam when resolving divorce cases. For instance, in the divorce case of *Bui Xuan T* and *Nguyen Thi H*¹⁹⁸, the couple has a common child named *Bui Thi Thanh T* (born in 2018). After the divorce, due to the need to work far away and the busy nature of her job, *Mrs. H* was unable to directly care for the child. Therefore, *Mrs. H* and *Mr. T* reached an agreement that *Mr. T* would be the primary caretaker, responsible for the upbringing of the child. Considering the conditions and circumstances of *Mrs. H* and *Mr. T*, the court acknowledged their agreement. The court stated that, “Although *T* is under 36 months old, *Mrs. H* is currently working far away and occupied with her job. Moreover, *T* has been under the direct care of *Mr. T* and has shown positive development in all aspects. Therefore, the court concludes that the agreement made by the couple ensures the best interests of *T*”¹⁹⁹.

However, it is important to note that the law also provides for the court to make decisions about custody and care if the parties are unable to reach an agreement or if the agreement is not in the best interests of the child. In these cases, the court will consider a range of factors, including the child's age, health, and education needs, as well as the ability of each parent to provide for the child's physical, emotional, and social well-being. Based on that consideration, the court decides to award custody to the spouse who is better able to provide practical care, nurturing, and education for the child²⁰⁰.

One of the common issues that couples often fail to reach an agreement on during divorce is child custody and care. It is precisely for this reason that the practical resolution of divorce cases in Vietnam often involves situations where the court has to determine whether the father or mother will be the custodial parent. A notable example of such a case is the divorce between *Mr. Nguyen Dinh H* and *Mrs. Nguyen Thi My H*²⁰¹. The couple has a child named *Nguyen Thi Khanh T* (born in 2018). Due to *T*'s young age, *Ms. H* desires to have primary custody of the child. *Mr. H* also wishes to have direct involvement in caring for *T*. After considering the relevant factors, the court has concluded that “*Mrs. N* currently has stable housing, and the child has primarily resided with her since infancy, receiving attentive care and attending school. On the other hand, *Mr. H*'s job is not established. Therefore, it is necessary to grant joint custody of the child to *Mrs. N* for direct supervision, care, upbringing, and education”.

Taking into account the opinions of children, aged at least seven, is also a matter of concern for the court. Because Vietnamese law stipulates that the wishes of children aged 7 and older must be taken into consideration when reaching an agreement on who will be the primary caregiver²⁰². Because at this age, a child is recognised as having sufficient awareness to express their views on their life after their parents' divorce²⁰³. On the other hand, considering children's desires in custody arrangements can have positive impacts on their well-being. Specifically, children's participation in custody decisions can give them a sense of autonomy and control over their lives, which can be beneficial for their

¹⁹⁸ People's court of Tho Xuan district, Judgment No. 279/2020/HNGD-ST.

¹⁹⁹ Ibid.

²⁰⁰ NGUYỄN - LÊ - TRẦN - LÊ, Textbook on Vietnamese family and marriage law 453.

²⁰¹ People's court of Tho Xuan district, Judgment No. 06/2022/HNGD-ST.

²⁰² Clause 2, Article 81 of the Marriage and Family Law 2014.

²⁰³ In the legislation preceding the Marriage and Family Law 2014, namely the Marriage and Family Law 2000, the age at which a child was acknowledged to express their opinions on this matter was set at 9 years old.

psychological and emotional health. *Le Thi Man*²⁰⁴ concluded that “this is also a humane mechanism, significant from both theoretical and practical perspectives. Children lose a crucial support system provided by a complete family with both a father and a mother when parents divorce. Therefore, creating a mechanism for children to express their thoughts and desires for the sake of their interests is absolutely necessary”.

However, the opinion of a child is not a binding decision that the court must adhere to but rather serves as a reference when making the final decision²⁰⁵. The reason for this is that while the child's wishes and preferences are important, they may not always be in their best interests. In some cases, the child may express a preference based on incomplete or biased information or may be under the influence of one parent or another. The court must carefully weigh the child's wishes against other factors, such as their safety, welfare, and best interests, which may require a different custody arrangement. Furthermore, the ability of the parents to provide care, support, and stability for the child is also an important factor to be considered. It is possible that the parent with whom the child wishes to live may not be the one who is best able to provide for their needs.

The practical resolution of cases in Vietnam has shown that the consideration of children's opinions regarding living arrangements with their parents after divorce is taken quite seriously by local courts²⁰⁶. For instance, in the divorce case of *Mr. Pham Van N* and *Mrs. Thach Thi Ng*²⁰⁷, who have a common child named *Pham Ngoc M* (born in 2009), during the process of resolving the divorce matter, *M* expressed the desire to live together with *Mrs. Ng*. After evaluating the relevant factors, the court determined that “*Mrs. Ng* has provided all necessary conditions for *M's* well-being and development. Additionally, *M* has expressed the desire to continue living with *Mrs. Ng*. Therefore, to ensure stability in *M's* life. and to safeguard *M's* best interests, the court has determined that *Mrs. Ng* shall continue as the primary carer, providing care and nurturing for *M* until the child reaches adulthood”²⁰⁸.

Furthermore, there are cases where the spouses are unable to reach an agreement on who will be the primary carer for the child. In such instances, the court, based on the determination of the child's opinion and consideration of factors related to ensuring the child's best interests, has assigned custody to the mother for direct care and upbringing. However, subsequently, the father appealed the decision to continue disputing the right to have joint custody. This is the situation in the divorce case between *Mr. Luong Van Q* and *Mrs. Le Thi Phuc H*, involving a dispute over the custody of their two children, *Luong Le N* and *Luong Le Thien N*²⁰⁹. Finally, the appellate court concluded that “*N* and *E* have received attentive care, nurturing, and education from their mother and grandparents. Additionally, *N* has expressed a desire to continue living with the mother due to her affectionate care and attentive upbringing. Therefore, the decision of the lower court to accept the plaintiff's request, *Mrs. H*, and assign custody of *N* to her for direct care, upbringing, and education”²¹⁰.

²⁰⁴ LÊ, Discussing the consideration of children's preferences.

²⁰⁵ NGUYỄN - LÊ - TRẦN - LÊ, Textbook on Vietnamese family and marriage law 453.

²⁰⁶ People's court of Tam Ky city, Judgment No. 217/2021/HNGD-ST. See also: People's court of Don Duong district, Judgment No. 02/2021/HNGD-ST.

²⁰⁷ People's court of Duong Minh Chau district, Judgment No. 11/2022/HNGD-ST.

²⁰⁸ Ibid.

²⁰⁹ People's court of Hậu Giang province, Judgment No. 12/2022/HNGD-PT.

²¹⁰ Ibid.

The practical resolution of disputes regarding direct custody of children also reveals that there are cases where children are over 7 years old, yet the court does not seek their opinion. The divorce case of *Mr. S* and *Mrs. Tb* serves as an example. They have three children together: *Ng* (born in 2001), *Cb* (born in 2003), and *D* (born in 2004). Since 2014, due to conflicts, *Ms. Tb* and the two children, *Cb* and *D*, have been living separately, while *Ng* has remained with *Mr. S*. During the divorce proceedings, *Mrs. Tb* requested to continue caring for *Cb* and *D*, and to entrust *Ng* to *Mr. S* for custody. Throughout the case, *Ng*, who was working far away, did not appear in court to express their wishes. The court determined that “currently, *Ng* is working; therefore, it is necessary to entrust *Ng* to *S* for continued care and custody”²¹¹.

This hasty ruling by the court raises a thought-provoking issue: “Although the children, *Cb* and *D*, are currently living with their mother, while *Ng* is living with the father, it does not necessarily mean that maintaining the existing custody arrangement is always the best solution for ensuring a stable life for the children, especially when the children's wishes have not been fully considered. Moreover, the decision of the lower court to accept the petitioner's request and to entrust *Ng* to the father for custody without seeking the child's opinion - despite the child being over 14 years old - because the child “did not come to court to express their wishes due to being far away” is not convincing and goes against the principles of law: When a child reaches the age of 7 or older, the court must seek their opinion to consider their wishes”²¹².

Priority for the wife to care for children under 36 months in cases of divorce is stipulated in Article 81 of the Marriage and Family Law 2014 as follows: A child under 36 months of age shall be directly raised by the mother, unless the mother cannot afford to directly look after, care for, raise, and educate the child. This provision demonstrates that Vietnamese law gives precedence to mothers who can care for children under the age of 36 months. This is based on the belief that during this time, the mother is considered the primary carer for the child, as she typically assumes the responsibility of caring for the child since birth. Moreover, the practice of assigning young children to their mothers to directly raise them aligns with traditional gender roles and expectations in Vietnamese society, where women are often expected to prioritise their roles as carers and homemakers²¹³. However, the law also has exceptions when the mother is not qualified to take care of the child or when placing the child with the mother is not in the best interests of the child. Some related cases may include: the mother being seriously ill and not physically capable of taking care of the child; the mother's unhealthy lifestyle harms the child's development; the mother being temporarily detained, wanted, punished criminally, or prosecuted; the mother's parental rights are restricted concerning the child.

In addition, the law also recognises the importance of the father's role in the child's life, so there are provisions for agreeing on joint custody arrangements if appropriate, even when the child is under 36 months old. On February 27, 2019, the Supreme People's Court of Vietnam recognised the verdict²¹⁴ numbered 01/2019/HNGD-GDT as a precedent for determining the jurisdiction of caring

²¹¹ LÊ, Discussing the consideration of children's preferences.

²¹² Ibid.

²¹³ KNODEL -VU - JAYAKODY - VU, Gender roles in the family 72.

²¹⁴ In Vietnam, according to the regulation in Article 1 of Resolution 04/2019/NQ-HDTP, a verdict is a set of arguments and rulings within a court decision that has legal effect and is selected by the supreme people's court's council of judges

for children under 36 months of age in cases where the mother does not directly take care of, nurture, and educate the child. The content of the verdict shows that due to a marital conflict, Mrs. *Pham Thi Kieu K* unilaterally returned to her parents' house, leaving her 4-month-old child, *T*, to be cared for by Mr. *Nguyen Huu P*. The competent local authorities confirmed that “Mr. *P* takes good care of and nurtures the child, *Nguyen Dac T*. He has a stable job and income, fully capable of raising *T*”²¹⁵. Although Article 81, Clause 3, of the Marriage and Family Law 2014 stipulates that “children under 36 months of age must be given to the mother for direct care” Mrs. *K* did not take care of *T* since the child was 4 months old. Currently, *T* is accustomed to the living conditions and environment and is well taken care of by Mr. *P*, ensuring the best conditions for the child's development. If *T* was given to Mrs. *K* for nurturing, it would cause disturbance and adversely affect the child's normal development. During the process of resolving the case, the court of first instance comprehensively considered and continued to assign *T* to Mr. *P* for direct care and nurturing, which is justifiable. The appellate court amended the first-instance verdict, which assigned *T* to Mrs. *K* for nurturing, as inappropriate, as it did not fully consider the legal rights and interests of *T*.

Vietnam's recognition of the precedent allowing a father to directly care for and nurture children under 36 months of age when the mother is unable to meet the necessary conditions has clearly demonstrated the flexibility and progress of Vietnam's legal system. This shows that, in the process of conducting trials and resolving disputes, Vietnam's judicial agencies have prioritised the interests of children and fully considered specific situations to make appropriate decisions. The recognition of this precedent also demonstrates that Vietnam's legal system has made progress in terms of policies and the protection of citizens' rights according to the provisions of the law.

To protect the rights and best interests of the child, Vietnamese law stipulates the right of non-custodial parents to visit their children. This regulation allows children to have contact with both parents, creating an environment of love and care for them, as mentioned. In addition, it also helps to strengthen the responsibility of parents to care for and nurture their children²¹⁶. Clause 3 of Article 82 of the Marriage and Family Law 2014 stipulates the right of non-custodial parents to visit their children as follows: “After divorce, the person who does not directly raise a child has the right and obligation to visit and care for this child without being obstructed by any person”. From this regulation, it can be seen that the emphasis on “without being obstructed by any person” when a non-custodial parent exercises their right to visit their child is not only to protect the rights of that parent but also to protect the interests of the child. Preventing contact between a child and a parent who does not live with them can have many negative impacts on the child's mental and physical health, making them feel unloved, abandoned, and with low self-esteem²¹⁷.

In addition, to ensure that the person directly raising the child fulfils their responsibilities to the best of their ability, the Marriage and Family Law 2014 also stipulates in Article 83²¹⁸ as follows:

for a specific case. The chief justice of the supreme people's court announces the verdict for other courts to study and apply in trials.

²¹⁵ The supreme people's court, Judgment No. 01/2019/HNGD-GĐT

²¹⁶ NGUYỄN - TRẦN, Child visitation rights of parents 59.

²¹⁷ BAKER, The long-term effects 300.

²¹⁸ This is a legal provision concerning the responsibilities and rights of parents who directly care for the child in relation to those who do not have direct custody after divorce.

“The parent directly raising a child and family members may not obstruct the person not directly raising the child from visiting, caring for, raising, and educating this child”. This is a new provision added to the Marriage and Family Law 2014. Practical resolution of marriage and family cases has shown that there are many cases where the person who directly raises the child has obstructed the non-direct custodian's right to visit, care for, and educate the child. This is due to many reasons, but, in general, two main reasons can be identified that affect the behaviour of the direct custodian: first, their resentment towards their ex-husband or ex-wife; and second, their failure to recognise the necessity and benefits for their children when respecting the non-direct custodian's right to visit the child. Therefore, with the aim of regulating and guiding the behaviour of parents in this matter, Vietnamese law has specific provisions regarding the “no obstruction” responsibility of the direct custodian and their family members regarding the non-direct custodian's right to visit the child.

The verdict regarding the termination of the act of obstructing visitation of the shared child between *Mr. Ly Du D*, *Mr. Nguyen Van D*, and *Mrs. Lam Thi T*²¹⁹ can be considered as one of the empirical evidence for this provision. In 2013, *Mr. D* and the daughter of *Mr. Nguyen Van D* and *Mrs. Lam Thi T* - *Mrs H* got married, and in 2015, *Mr. D* and *Mrs. H* divorced. The couple has a child named *Nguyen Lam K* (born in 2015). The court determined that *Mrs. H* would be the custodial parent for *K*. After the divorce, *Mr. D* made several attempts to visit his child, but he was consistently obstructed and verbally insulted by *Mr. D* and *Mrs. T*. Local authorities were present as witnesses to these incidents. The court has determined that “according to the provisions of the law on marriage and family, *Mr. Ly Du D* has the right and obligation to visit, care for, and educate the child, and no one is entitled to obstruct these rights”. Therefore, *Mrs. H* and her family must facilitate *Mr. D's* visitation with his child, *K*. However, in reality, *Mrs. H* and her family have engaged in actions that obstruct *Mr. D*. This behaviour violates the law. Therefore, the Court requires *Mrs. H* and her family to cease these actions and create conditions for *Mr. D* to exercise his visitation rights.

On the other hand, the reality also shows another aspect of the exercise of the right to visit children, which is that the non-parental person visiting the child has caused many obstacles and difficulties for the person who directly takes care of the child during the visit. For example, they intentionally create inconvenience, pressure, and discord for the person who directly takes care of the child or intentionally have a negative impact on the emotional relationship between the person who directly takes care of the child and the child. Therefore, to ensure the harmony of the interests of both parents in taking care of, nurturing, and educating the child, Article 82, Section 3 of the Marriage and Family Law 2014 provides that “the parent who directly raises a child has the right to request a court to restrict the right of the other parent who does not directly raise this child if the latter takes advantage of his or her visit to and care for the child to obstruct or adversely affect the looking after, care for, raising, and education of this child”.

The case regarding the restriction of visitation rights between *Mr. Le Thanh T* and *Mrs. Bach Thi My N*²²⁰ will contribute to further clarifying the application of the aforementioned provision in practice. *Mr. Le Thanh T* and *Mrs. Bach Thi My N* were married in 2014 and divorced in 2017. *Mr. T* was determined by the court to be the custodial parent of their child, *Le Bach Kha H* (born in 2015).

²¹⁹ The people's court of Chau Thanh district, Judgment No. 09/2019/HNGD-GĐT.

²²⁰ The people's court of Chau Thanh district, Judgment No. 06/2018/HNGD-GĐT.

After the divorce, Mr. *T* provided favourable conditions for Mrs. *N* to visit their child. However, according to the evidence provided by Mr. *T*, “every time Mrs. *N* comes to visit the child, she creates conflicts and disturbances, which disrupt the household activities of Mr. *T*. The local authorities have also educated her multiple times, but she has not shown any change in behaviour”²²¹. Therefore, Mr. *T* requested the court restrict Mrs. *N*'s visitation rights, specifically allowing her to visit the child only once a year. The court has determined that “Although Mrs. *N*'s behaviour has had an impact on Mr. *T*'s child-rearing, Mr. *T*'s request to allow Mrs. *N* to visit the child only once a year is not reasonable. Considering that the child is still young, they also need the care, attention, and education of Mrs. *N*. Therefore, to ensure the rights of the child, the court agrees to allow Mrs. *N* to visit the child once a month. The specific time and place will be agreed upon by Mr. *T* and Mrs. *N*”²²².

Regarding the obligation to provide financial support for the child by the non-custodial parent, Article 82 Section 2, of the Marriage and Family Law 2014 stipulates as follows: “When parents divorce, whoever does not directly raise the child must provide support for the child”. Support means the obligation of the person to contribute money or other assets to meet the essential needs of the person who is not residing with them²²³. It is easily discernible that this regulation is designed to safeguard the lawful rights of children following a divorce. Children have the right to receive support from both parents, and thus, when parents divorce, the parent who does not have physical custody of the child must fulfil their obligation to support their child by providing them with financial assistance. In other words, the obligation to provide child support helps non-custodial parents share responsibility with custodial parents for the care of the child²²⁴.

To provide flexibility and convenience for parents in fulfilling their obligations, Vietnamese law has a provision that allows those who do not directly care for their children to contribute by providing financial support and other assets for the purpose of raising their children. For example, a father who is a farmer may contribute not only the tuition fee of 2 million VND but also 20 kg of rice and 2 litres of cow's milk every day for the child's nourishment each month.

According to Article 116, Clause 1, of the Marriage and Family Law 2014 in Vietnam, the amount of child support is based on the agreement between the obligated party, the recipient, or the legal guardian of the recipient, taking into account the income, actual ability to pay of the obligated party, and the essential needs of the recipient. If no agreement can be reached, the court will be requested to resolve the matter. Therefore, instead of specifying a fixed amount of money or specific assets that the obligated person must provide to the supported person, the Marriage and Family Law 2014 has opted for a very progressive solution, which is to allow the parties involved to negotiate themselves. This demonstrates flexibility and suitability for actual circumstances. This is because the needs of different subjects regarding age, health status, and living conditions cannot be met by a single support amount.

Moreover, the amount of support that the obligated person must provide depends heavily on their financial ability²²⁵. Therefore, there are cases where the needs of children remain unchanged after

²²¹ Ibid.

²²² Ibid.

²²³ Clause 24, Article 3 the Marriage and Family Law 2014.

²²⁴ NGUYEN - HUYNH - TRAN, A legal perspective on child support obligation 121.

²²⁵ HUYNH, Child support 306 in PHAN, Textbook on marriage and family law.

divorce, but due to the decreased financial ability of the non-custodial parent, the initial child support amount may be modified. The dispute over child support between Mr. *Nguyen Van T* and Mrs. *Duong Thi Yen H*²²⁶ is an example. According to the decision to recognise their mutual divorce in 2018, Mr. *T* and Mrs. *H* agreed that Mrs. *H* would be the custodial parent of their two shared children, *Nguyen Nhu Q* (born in 2014) and *Nguyen Moc K* (born in 2017). Mr. *T* has the obligation to provide a monthly child support payment of 5,200,000 VND²²⁷ for both children. After fulfilling this child support obligation for two years, Mr. *T* wishes to modify the child support amount to 3,000,000 VND²²⁸, stating that “currently, his job is not stable, and his income is only about 4,700,000 VND²²⁹ per month, making it impossible for him to continue providing support for both children at the previous level”. After reviewing the documentary evidence provided by Mr. *T*, the court accepted the reduction of child support from 5,200,000 VND to 3,000,000 VND.

Furthermore, according to the provisions of the law, child support shall be provided periodically on a monthly, quarterly, semi-annual, annual, or one-time basis²³⁰. However, the final decision on the most suitable method of child support for the situation of the parties involved is determined by their mutual agreement. It is also from their agreement that the method of child support can be changed after a period of implementing the initially chosen method²³¹. For example, after divorcing, Mr. *Hung* has an obligation to support his child, *Tien*, according to the agreement with his wife of VND 2 million per month, and the payments are made monthly. However, after fulfilling this obligation for two years, Mr. *Hung* had to change jobs and move to another city, so both parties agreed to change the support method to yearly payments.

To ensure the rights of children and provide them with a healthy, safe environment, Vietnam's laws on marriage and family have regulations regarding changing the person responsible for directly caring for the child. Specifically, Section 2 of Article 84 of the Marriage and Family Law 2014 outlines the grounds for changing the person responsible for directly caring for the child, including: “a) The father and mother have an agreement on changing the person responsible for directly caring for the child that is in the best interest of the child; b) The person directly responsible for caring for the child is no longer capable of directly supervising, caring for, nurturing, and educating the child”.

It can be seen that the grounds for changing the person responsible for directly caring for the child are necessary measures to ensure the rights of the child related to the changing of the person responsible. Specifically, on the first ground, the law stipulates that not all agreements between parents regarding changing the person responsible for directly caring for the child are recognised by law. Instead, the parents' agreement must be “in the best interest of the child”. The regulation is concise but clearly reflects the principle of protecting the best interests of children in all decisions related to children.

However, as discussed above, the issue of custodial parent determination after divorce is rarely a matter of agreement between both spouses in Vietnam, leading to the consequence of changes in

²²⁶ The people's court of Danang city, Judgment No. 23/2019/HNGD-GDT.

²²⁷ Equivalent to 75,000 ft.

²²⁸ Equivalent to 43,000 ft.

²²⁹ Equivalent to 68,000 ft.

²³⁰ Article 117 of the Marriage and Family Law 2014.

²³¹ HUYNH, Child support 306 in PHAN, Textbook on marriage and family law.

custodial parents also facing a similar situation. One of the few cases in Vietnam that addresses the change of custodial parent through the agreement of the former spouses can only be found in the dispute over visitation rights. Specifically, in the request for visitation rights restriction concerning Mrs. *Bach Thi My Th* and Mr. *Le Thanh T*, Mr. *Le Thanh T* stated that when they divorced in 2017, the court granted custodial rights to Mrs. *Th*. However, subsequently, Mrs. *Th* wanted to change the custodial parent, and Mr. *T* agreed to it²³².

The second ground for changing the child's carer is directly related to the caregiver's competence. Specifically, they must be a person who is not capable of directly supervising, caring for, nurturing, and educating the child. Assessing and determining the carer's incompetence as stipulated by law is not a simple process. It requires a comprehensive assessment of many factors, from financial capacity, and health status to the attitude and behaviour of the carer. In addition, as changing the person responsible for directly caring for the child also affects the child's life and psychology, Section 3 of Article 84 of the Marriage and Family Law 2014 also stipulates that the wishes of the child from 7 years of age and older must be considered when deciding to change the person responsible for directly caring for the child.

Compared to the first basis, the practical resolution of the issue of changing the custodial parent in divorce cases in Vietnam demonstrates that the application of the second basis is much more prevalent in reality. A series of disputes regarding the change of custodial parent can be found on the official website of the Supreme People's Court of Vietnam when announcing judgements on marriage and family matters²³³. However, not every request for a change of custodian is accepted by the court. Judgement No. 17/2021/HND-ST²³⁴, will clarify this perspective. The content of the judgement indicates that after the divorce of Mrs. *Nguyen Thi Bich Th* and Mr. *Ngo Van T*, the court decided that Mr. *T* would be the custodial parent for their shared child, *Ngo Minh N* (born in 2016). In 2022, when Mrs. *Th* visited the child, she was consistently obstructed by Mr. *T*'s family. Therefore, she requested the court change her status to custodial parent. However, the court determined that “Although Mr. *T*'s family obstructed Mrs. *Th* from visiting the child, it occurred during the complex development of the COVID-19 pandemic, and the state implemented social distancing measures. Thus, while this action may violate Mrs. *Th*'s right to visitation, it may be acceptable for the best interest of the child. Additionally, the child is still living with the paternal grandparents and Mr. *T*, and the child is currently developing well both mentally and physically. To ensure stable development for *N*, the court does not accept Mrs. *Th*'s request.”

In summary, marriage and divorce are both choices made by individuals. While the decision to marry typically has positive effects and directly impacts the individuals involved, the decision to divorce directly affects another party - the children born from the love of the parents. Parents are the ones who decide whether to have children or not, but they are also the ones who decide to break the existence of a family - the child's first and only point of reference in the early years of life. Therefore, to minimise the negative effects of parental divorce, both mentally and physically, on vulnerable and

²³² The people's court of Chau Thanh district, Judgment No. 06/2018/HNGD-GĐT.

²³³ Using the search term “change of custodian for the child”, 14,472 verdicts were identified on June 23, 2023, on the website thuvienphapluat.vn.

²³⁴ The people's court of Duong Minh Chau district, Judgment No. 17/2021/HNGD-GĐT.

fragile children, Vietnam has applied the very humane principle of protecting the best interests of children to its divorce law. Although there is no unified concept of the “best interests” of children in international law, this has created a flexible and effective mechanism for applying the principle of protecting the best interests of children depending on the legal systems of each country. Vietnam has essentially done well in both enacting and enforcing laws regarding divorce. The article has attempted to highlight this principle by analysing aspects of Vietnamese divorce law such as decisions on primary carers, visitation rights, child support, and changes in primary carers. Through legal provisions and court judgements, the article has demonstrated that Vietnam has taken proper steps to protect the best interests of children. However, to maintain and enhance the effectiveness of these efforts in the future, regular monitoring and supervision of the court's application of the law, as well as strengthening legal education for individuals and families in society, are necessary.

3.2. THE PRINCIPLE OF NON-DISCRIMINATION

It can be argued that the principle of non-discrimination is a fundamental and important principle in the field of law in general and child protection law in particular. Furthermore, it is a particularly distinctive principle when considering its relationship with the principle of equality. Firstly, in terms of content, these two principles are quite similar, however, there are still certain differences between them. For example, while the principle of non-discrimination focuses on setting requirements to eliminate discriminatory factors in the enjoyment of rights for all subjects, the principle of equality focuses on ensuring fairness among subjects. Secondly, “equality is a deep-rooted principle in human morality. Unsurprisingly, therefore, the principle has quickly been recognised legally as one of the fundamental principles of modern democracies”²³⁵.

In the past, traditional international law did not concern itself with the issue of discrimination, except in matters related to sovereignty. However, the Second World War brought about an unprecedented concern for the protection of human rights and led to the assurance of these rights for all individuals without discrimination. From the 1950s onwards, the principle of non-discrimination has been increasingly emphasised and defined more clearly in standard guarantees²³⁶.

In the field of child protection, this principle holds great significance. According to *Samantha Besson*, “children are even more vulnerable than adults to discrimination based on gender, religion, race, as well as any other suspect classification”²³⁷. Therefore, the recognition of this principle in the field of child protection under the CRC has ensured that children are treated fairly, respected, and protected from all forms of discrimination, violence, and abuse.

To clarify the significance of this principle in child protection work, this section will analyse the origins and concept of “non-discrimination”, the content of this principle in international law, and the Vietnamese law.

²³⁵ BESSON, The principle of non-discrimination 433.

²³⁶ Ibid.

²³⁷ Ibid

3.2.1. The Principle of Non-Discrimination in International Law

Although non-discrimination is one of the most frequently protected principles in international human rights law, “unfortunately, no proper definition of discrimination has been included in the UN Covenants, which are the most comprehensive and general human rights treaties”²³⁸.

This becomes evident upon examination of Article 2 in the CRC: “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 based on the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”.

Through a thorough examination of this legislation, it is possible to identify various observations regarding the principle of non-discrimination in relation to children:

The law commences by acknowledging that member states have an obligation to respect and ensure the rights of children as recognised in this convention without any form of discrimination. This signifies not only the states's obligation to ensure equitable and equal treatment for children, but also underscores that it constitutes a fundamental human right for children. Furthermore, by mandating the commitment to non-discrimination by member states concerning the rights of children in the convention, the legislation also confirms that this principle of non-discrimination applies to all specific rights of children. In other words, “the right of non-discrimination works in conjunction with the other rights in the agreement of which it is a part; it is an umbrella right that adds protection to the sectoral rights (e.g., Articles 6 to 40 of the CRC)”²³⁹.

Next, Article 2(1) enumerates the bases of discrimination, which encompass “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” to elucidate the rights of children and the corresponding obligations of the states. As an illustration, in country A, the education law establishes that children of ethnicity X (a minority ethnic group) are excluded from attending the same educational institutions as children of ethnicity Y (the dominant ethnic group) based on their non-usage of the official language of country A. This provision entails discriminatory treatment based on the ethnic background of the children.

There is no mystery why the framers of the CRC named these particular classifications. They have been singled out because of humanity's experiences with discrimination on these specific grounds²⁴⁰. These particular characteristics are important to a person's identity, but race, sex, etc. Classifications are virtually always an arbitrary basis for the states to grant and deny fundamental things in life (like economic opportunities, education, political power, and all the other things now protected by international human rights law)²⁴¹.

²³⁸ VIJAPUR, The principle of non-discrimination 72.

²³⁹ ABRAMSON, A commentary on the United Nations convention on the rights of the child 167.

²⁴⁰ Ibid 168.

²⁴¹ Ibid.

Another additional observation regarding this Article is that the legislation has prohibited member states from engaging in differential treatment towards children - individuals belonging to a specific group or any recognised group as stipulated by the law (such as race, gender, religion, etc.) - as compared to other individuals or groups, and such differential treatment must have an impact on the interests of those who possess rights.

Despite the absence of a clear expression of the criterion “adversely affecting the interests of those with rights” in the legislation, some researchers contend that it is one of the essential elements required to establish a discriminatory act in violation of the CRC. The author also concurs with this perspective. This is because the essence of “discrimination” inherently involves differential treatment, which can manifest as either beneficial or detrimental, just or unjust, and with or without an impact on the interests of children. Consequently, non-discriminatory treatment will be deemed discriminatory against children if it diminishes their capacity or poses a threat to their capacity to enjoy the benefits derived from their rights.

In conclusion, the legislation underscores the imperative for member states to employ all necessary measures to ensure the protection of children from discriminatory treatment or punishment based on grounds pertaining to the child or their parents or legal guardians, with the overarching goal of safeguarding and promoting the rights of children.

VijaPur asserted that “equality and non-discrimination constitute the dominant single theme of the modern international law of human rights”²⁴². Indeed, the principle of non-discrimination is a fundamental and crucial provision enshrined in various international legal instruments concerning human rights. It establishes a robust legal framework ensuring equal treatment and safeguarding individuals in society, regardless of their race, gender, religion, nationality, or any other distinguishing factor.

This principle is explicitly stated in several international legal documents, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women, among other relevant instruments.

The Charter of the United Nations²⁴³ is the first international document that not only included several specific references to human rights but also includes the principle of non-discrimination four times: in Articles 1(3); 13(1); 55(C)²⁴⁴ and 76(C)²⁴⁵. Surprisingly, the charter lists only four grounds on which discrimination is prohibited. These are race, sex, language, or religion²⁴⁶.

²⁴² VIJAPUR, The principle of non-discrimination 74

²⁴³ It is the founding document of the United Nations (UN). It was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations conference on international organization, and came into force on 24 October 1945 - UN, United Nations Charter.

²⁴⁴ Article 55 affirms the principle of non-discrimination in the establishment and maintenance of international peace and security. It mandates all members of the UN to adhere to this principle and take necessary measures to promote equal and just treatment among nations.

²⁴⁵ Article 76 pertains to the establishment and functions of the security council. It addresses the security council's responsibility to promote compliance with and application of the principle of non-discrimination in resolving issues related to international peace and security.

²⁴⁶ VIJAPUR, The principle of non-discrimination 75.

Articles 2 and 7 of the Universal Declaration of Human Rights (UDHR)²⁴⁷ explicitly endorse the principle of non-discrimination, irrespective of factors such as race, colour, gender, language, religion, or any other status.

The International Covenant on Civil and Political Rights (ICCPR)²⁴⁸ is designed to protect civil and political rights, such as the right to life, freedom from arbitrary detention, and freedom of expression²⁴⁹. This covenant provides that the rights included therein shall not be abridged in a discriminatory manner (Article 2). Accordingly, the “obligation” provision directs states immediately to implement the substantive ICCPR guarantees at the municipal level. In particular, Article 2(1) obliges states to ‘respect and ensure enjoyment by all individuals within its territory, and subject to its jurisdiction’ the substantive ICCPR rights “without distinction of any kind”. The immediacy of the obligation facilitates the justifiability and definition of a state’s ICCPR duties²⁵⁰.

In addition, Article 26 of the Covenant states that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status”²⁵¹.

On December 16th, 1966, the General Assembly of the UN adopted the International Covenant on Economic, Social, and Cultural Rights (ICESCR)²⁵². The text of “a high-class international document on the assurance and legal protection of human rights - outlined a sum of principles regarding these rights that fall within the broad range of legal doctrine on fundamental human rights; one of them is the obligation of states parties to ensure the exercise of the human rights set out in the text of the covenant without any kind of discrimination”²⁵³.

As it can be seen, the first principle enunciated by the covenant was that of non-discrimination on human rights, which regards the legislative framework for preventing and sanctioning all forms of discrimination²⁵⁴. Furthermore, Article 3 states that parties also commit “to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights which are set forth in the present covenant”.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁵⁵ has been the primary international human rights treaty concerned with the protection and promotion of women's human rights since its adoption by the UN General Assembly in 1979²⁵⁶.

²⁴⁷ It was drafted by representatives with different legal and cultural backgrounds from all regions of the world, the declaration was proclaimed by the UN General Assembly in Paris on 10 December 1948. UN, Universal declaration of human rights.

²⁴⁸ It was adopted by the UN in 1966, and came into force upon receiving the requisite number of ratifications in 1976.

²⁴⁹ JOSEPH - CASTAN, *The International covenant on civil and political rights* 173.

²⁵⁰ *Ibid.*

²⁵¹ HEVENER - MOSHER, *General principles of laws* 607.

²⁵² DURĂ - MITTELU, *International covenant on economic, social and cultural rights* 132.

²⁵³ *Ibid*

²⁵⁴ *Ibid* 134.

²⁵⁵ It opened for signature 1 March 1980 and entered into force 3 September 1981.

²⁵⁶ CUSACK - PUSEY, *CEDAW and the rights to non-discrimination* 54.

Its overarching object and purpose, as stated by the committee, is “to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms”²⁵⁷.

The rights to non-discrimination and equality are “the backbone of CEDAW; they guide CEDAW's overarching object and purpose and inform each of the obligations enumerated in the convention. Articles 15 and 24 of CEDAW enumerate the general obligations of states parties to eliminate all forms of discrimination against women and achieve substantive equality. They also form the interpretative framework for CEDAW substantive provisions in Articles 6-16 of CEDAW, which outline states parties' obligations concerning some of the most common areas of discrimination against women. Together, they protect women's rights to non-discrimination and equality in political and public life, economic and social matters, and in legal and civil matters”²⁵⁸.

As the first UN human rights convention states adopted, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)²⁵⁹ is remarkably clear and unambiguous that states obligations to ensure human rights apply to activities of private as well as states actors²⁶⁰. Through its provisions, ICERD commits to the elimination of all forms of racial discrimination. Article 1 establishes that racial discrimination is a violation of human rights and is not acceptable. Additionally, ICERD requires member states to take specific measures to eliminate racial discrimination in all areas, including political, economic, social, cultural, and educational domains.

In 1989, world leaders made a historic commitment to the world’s children by adopting the CRC, an international agreement on childhood. It’s become the most widely ratified human rights treaty in history and has helped transform children’s lives around the world.

As a principle of particular importance in protecting children, the principle of non-discrimination is recognised in Article 2 of the CRC. It requires member states to respect and ensure all rights enshrined in the CRC are applied to all children without any discrimination. This principle reflects the international community's commitment to ensuring that all children, regardless of their background or characteristics, have the right to enjoy their rights on an equal basis.

It can be argued that, compared to other mentioned international documents, the principle of non-discrimination as stipulated in the CRC provides specific and clear guidance on eliminating all forms of discrimination against children and commits to promoting fairness and equal treatment for all children.

In general, the principle of non-discrimination in the CRC plays a foundational role in promoting the rights and well-being of children worldwide while emphasising the importance of creating a just and inclusive society for all children.

3.2.2. The Principle of Non-Discrimination in Vietnamese Law

²⁵⁷ UN, General Recommendation 25, UN Doc A/59/38, annex I at 4.

²⁵⁸ CUSACK - PUSEY, CEDAW and the rights to non-discrimination 55.

²⁵⁹ It was adopted on December 21, 1965, and entered into force on January 4, 1969.

²⁶⁰ The UN human rights council, Mapping states obligations for corporate acts.

As a member of the CRC, the Vietnamese government recognises its obligation to ensure the right to non-discrimination for children by establishing the necessary policies, laws, and mechanisms to achieve this goal.

Specifically, the current constitution of Vietnam includes a separate provision on the principle of non-discrimination in Article 16, Clause 2: “No one shall be discriminated against in political, civil, economic, cultural, and social life”. The inclusion of this provision in the constitution demonstrates Vietnam's recognition of the importance of non-discrimination and its commitment to promoting human rights based on equality. By explicitly prohibiting discrimination in various aspects of life, such as political, civil, economic, cultural, and social domains, it underscores the determination of the Vietnamese government to build a society where individuals are treated without any discrimination.

Furthermore, in Article 5 of the Children Act 2016, which regulates the principles ensuring the realisation of children's rights and responsibilities, the principle of “non-discrimination against children” is stipulated in Clause 2. In addition, Article 6 of this law prescribes prohibited behaviours, and Clause 8 recognises that “discrimination and prejudice against children based on personal characteristics, family circumstances, gender, ethnicity, nationality, religion, or belief of the child” are prohibited.

3.3. THE PRINCIPLE OF LISTENING TO THE OPINIONS OF CHILDREN

3.3.1. The Principle of Listening to the Opinions of Children in International Law

Around the world, children have been historically perceived as anonymous members of society. They have been denied the right to express their perspectives. This perspective on children has led to many unfortunate consequences, as “reflected through an increasing number of adults speaking out to report and seek justice for the horrific abuses they endured as children. The list of reports and investigations conducted as a result of these crimes in countries worldwide all emphasise the helplessness, vulnerability, and lack of anyone listening to these children”²⁶¹.

Indeed, for many centuries, children were only regarded as personal property, obligated to obey the authority of their parents. The period known as childhood was not recognised until recently because, in most societies, children were often considered invisible. These attitudes have been reflected in the laws, policies, and social practices in Europe since the Middle Ages²⁶².

Regarding children as subjects, has been identified as a phenomenon of the 20th century²⁶³, the Geneva Declaration was the first explicit affirmation; however, this declaration did not specifically address the right to be respected and to have the opinions of children heard. The shift in perspectives regarding children's rights in general and the right to be heard specifically truly commenced with the CRC. Since its enforcement, the impact of the convention has been observed at regional, national, and international levels. The current status of the CRC globally is distinctive within international law²⁶⁴.

²⁶¹ PARKES, Children and international human rights law 189.

²⁶² VAN BUEREN, The international law on the rights of the child 95.

²⁶³ RIOS KÖHN, The convention on the rights of the child 151.

²⁶⁴ ALSTON, The best interest of the child 94.

Aisling Parkes identifies this convention as a “milestone in the United Nations' history of setting standards”²⁶⁵ because it is the first international document that acknowledges the civil and political rights, as well as the economic, social, and cultural rights of children, all in a single text. This marked a shift in the perception of children, transforming them from mere subjects without a voice to empowered individuals with the right to participate in decisions affecting them. The convention also embodies a novel perspective on children - one that is child-centred, friendly, and age-appropriate²⁶⁶.

The right to be respected and to have their opinions heard, as stipulated in Article 12 of the CRC is as follows: “1. Member states must ensure that children are capable of forming their views and have the right to freely express those views in all matters affecting them. The weight given to a child's views shall be commensurate with their age and maturity. 2. For this purpose, children, especially, shall be provided with opportunities to be heard in legal and administrative proceedings related to them, either directly or through representatives or appropriate bodies, in a manner consistent with the procedural rules of national law”.

Aisling has assessed that “Article 12(1) is a robust provision”²⁶⁷, as it mandates states to ensure the right of children to form and express their own views in all matters concerning them. *Aisling* also emphasises that “all member states are legally bound to implement this right for children. This ensures that the participatory rights of children are consistently realised and not subject to discrimination based on their nationality or culture”²⁶⁸.

The content of Article 12(1) also indicates that the opinions of children must be “considered in all matters concerning them”. This implies that the convention does not limit the issues on which children can express their views. Therefore, it may encompass issues in the daily activities of children, such as dietary habits, recreational activities, and medical treatment, but it can also extend to matters related to administrative and legal procedures. To ensure the principle of promoting the best interests of children, the consideration of children's opinions should be approached as a consultation process²⁶⁹. The rationale for this interpretation under Article 12(1) is that “the views of the child shall be given due weight in accordance with the age and maturity of the child”. Thus, while recognising that children can form and express their opinions, the convention also acknowledges that this ability is not universally possessed by all children of all ages. In other words, “simple emotions or preferences expressed through behaviour do not constitute views”²⁷⁰ of children. This means that member states should not only listen to the opinions of children but also assess and consider them in the context of the child's age and development. Specifically, the level of mental capacity, awareness, and evaluative ability of each specific child should be taken into account. This approach allows for flexibility, enabling authoritative entities to better understand the child's capacity to participate in decision-making processes. The question at hand is how consideration of children's views takes into account their age and maturity. According to *David Archard* and *Suzanne Uniacke*, “Firstly, this idea seems straightforward:

²⁶⁵ PARKES, *Children and international human rights law* 190.

²⁶⁶ *Ibid* 193.

²⁶⁷ PARKES, *Children and international human rights law* 78.

²⁶⁸ *Ibid* 120.

²⁶⁹ BRIGHOUSE, *How should children be heard* 691.

²⁷⁰ ARCHARD - UNIACKE, *The child's right to a voice* 527.

the older the age, the more mature, and the greater the weight given to the child's viewpoint"²⁷¹. However, according to these authors, the combination of "age and maturity" is an ineffective construct and leads to misunderstandings in this context²⁷². Finally, they proposed two solutions, as follows: Firstly, evaluation based on the content of the viewpoint. In other words, based on the rationality of the viewpoint's content, the more reasonable the viewpoint, the more mature the child. For example, in a classroom setting, the teacher asks students for their opinions on how to complete a homework assignment with the theme "Present measures to conserve electricity". The teacher presents two options: working in groups or working individually. In this scenario, *Minb* (15 years old) expresses the following opinion: "I agree with the group work method because it helps us develop communication skills, cooperation, and build good relationships with friends". *Linb* (15 years old) supports the individual work method with the reasoning: "Working individually helps me take initiative to solve the assignment whenever I want". Thus, in these two opinions, *Minb's* viewpoint is considered more reasonable and, therefore, may be viewed as demonstrating more maturity, even though both individuals are of the same age.

Secondly, not relying on the content of the viewpoint. According to this approach, its criterion is quite simple, relying on age: "the older the child, the more mature". For instance, if a mother is considering which of her two daughters, *Na* (6 years old) and *Mi* (12 years old), should go buy snacks alone without her assistance, the choice made would be *Mi* (12 years old). In this case, maturity has been assessed based on age, even though both daughters expressed the opinion that they could handle the task independently.

The next rule outlined in Article 12(2) pertains to the interconnection of the right to be respected and the consideration of the opinions of children in administrative and legal procedures affecting them. It can be argued that, in terms of content, Article 12(2) is related to Articles 9(2) and 21 of the same convention. This is because Article 9(2) of the convention stipulates that children are parties involved; therefore, they must have the opportunity to participate and express their opinions in any divorce proceedings involving parents and the child. Article 21 recognises that all parties involved in the adoption process, including the child, must provide consent.

Regarding how children express their opinions in these two processes, Article 12(2) specifies that children can participate either directly or indirectly through a representative or an "appropriate body". "Direct participation implies situations where the child engages in face-to-face encounters or direct conversations with the decision-maker, actively contributing to the decision-making process. In contrast, indirect participation involves the child expressing their opinions through a representative or an appropriate body"²⁷³. Although the term "appropriate body" is not defined in the CRC, it suggests that it means "any individual or organisation, including non-governmental, capable of intervening on behalf of the child and always concerned with the best interests of the child".

In summary, despite some remaining ambiguities, Article 12 of the CRC has established a robust foundation for member states to review and reconstruct national legal provisions, ensuring the enforcement of the rights to be respected and to have the opinions of children heard within their

²⁷¹ Ibid

²⁷² Ibid 530.

²⁷³ PARKES, Children and international human rights law 45.

respective countries. This initial step will contribute to creating a conducive and progressive environment where children are listened to and developed, and aid in minimising issues that impede the rights and interests of children. Additionally, it gradually enhances the effectiveness of child protection on a global scale. Building upon the provisions of Article 12, the subsequent section of this article will focus on analysing Vietnam's legal regulations to provide evidence of Vietnam's commitment to ensuring the rights are respected and the opinions of children are heard.

3.3.2. The Principle of Listening to the Opinions of Children in Vietnamese Law

In the past, due to the influence of Confucian ideology, listening to the opinions of children within the family was not practiced in both practical and legal contexts²⁷⁴. Children in Vietnam at that time could be said to be in a state of “seen but not heard”. However, gradually, with the social and legal changes, as well as Vietnam's ratification of international legal documents on child protection, respecting and listening to the opinions of children has become an inherent right and is ensured and enforced in Vietnam. To assess the effectiveness of these provisions, as well as to identify areas for improvement in relevant legal regulations and their practical implementation, this part will analyse the principle of listening to the opinions of children not only in their daily lives, such as healthcare, but also in activities carried out by competent authorities, such as child custody proceedings in administrative agencies and the determination of the primary carer in divorce cases at the court.

In particular, under Clause 4, Article 5 of the Children Act 2016, which delineates the principles ensuring the realisation of children's rights, Vietnamese legislators have specified that “respecting, listening to, considering, and providing feedback on the opinions and wishes of children” constitutes fundamental principles that warrant prioritised implementation. This not only signifies the commitment of the legal system to the rights of children but also underscores the pivotal role of establishing a conducive and affirmative environment to promote the participation and autonomy of children in society.

To ensure comprehensive development for children, healthcare is an integral aspect. Healthcare can be provided at home or through medical facilities, depending on the health condition of the children. Therefore, medical examinations for children are an inseparable part of the healthcare process for children. Consequently, decisions made during the medical examination of children also necessitate consideration of the children's opinions. As per the provisions in Clauses 1 and 2 of Article 11 of the Medical Examination and Treatment Law 2023, patients have the right to “choose examination and treatment methods after being provided with full information, explanations, and consultations regarding the health condition, results, and potential risks”. Furthermore, they have the right to “accept or refuse to participate in biomedical research related to medical examination and treatment”²⁷⁵. Thus, during the medical examination and treatment process, patients have the right to be provided with information about their health condition, results, and potential risks, enabling them to make decisions to accept or refuse participation in medical examinations. The procedures for implementing these decisions, especially when the patient is a minor, are clearly outlined in the Medical

²⁷⁴ NGUYỄN, The filial piety in Confucianism.

²⁷⁵ The Medical Examination and Treatment Law No. 15/2023.

Examination and Treatment Law 2023. According to Clause 3, Article 15, “if the patient is a minor, their rights are exercised by their legal representative; if there is no legal representative, the rights of the minor patient are exercised based on the decision of the responsible professional or the designated leader of the healthcare facility”.

Besides, according to Point c, Clause 2, Article 8 of the Medical Examination and Treatment Law 2023, the legal representative of a minor patient is either a legal representative as per the law or a representative appointed through the authorization of the patient following the provisions of the Civil Code 2015. Accordingly, Article 136 of the Civil Code 2015 stipulates that the legal representative of a minor patient is their parents (Clause 1) or their guardian (Clause 2). If the legal representative cannot be determined based on paragraph 1 and paragraph 2, the representative is appointed by the court (Clause 3). Therefore, based on the aforementioned regulations, it can be concluded that during the healthcare process for children at medical facilities, decisions related to accepting or refusing medical examinations will be made by the legal representative of the child.

The provisions regarding the rights of patients in Article 15 of the Medical Examination and Treatment Law 2023 entirely omit any reference to consulting the opinions of child patients. Although there are numerous justifications for this provision based on the awareness and age of the children, it cannot be denied that this regulation in the Medical Examination and Treatment Law 2023 does not align with the spirit of the CRC, to which Vietnam is a signatory participant.

Regarding child participation in administrative procedures for recognition, Article 91 of the Marriage and Family Law 2014 stipulates the right to recognise children. Parents have the right to officially recognise someone as their child, even if the person being recognised is deceased. Analysing this legal provision separately, it is evident that Vietnam's legislative framework aims to ensure that individuals within parent-child relationships receive formal recognition from the State. This also contributes to fulfilling Vietnam's commitment under Article 9 of the CRC, which emphasises the non-separation of children from their parents. However, challenges arise when examining the right to adopt in relation to Article 12 of the CRC and the principle of listening to the opinions of children outlined in Article 5 of Children Act 2016. Article 91 lacks provisions regarding consulting the opinions of the adopted child, instead optimising this right for parents by allowing adoption even when the adoptee is deceased.

Although Vietnamese legislators have made considerable efforts to ensure human rights for children, it cannot be denied that Article 91 of the Marriage and Family Law 2014 does not adequately guarantee the process of listening to and considering the opinions of children in the recognition process. However, when examining the regulations on the recognition process as stipulated in Article 25 of the Civil Status Law 2014, it can be observed that the registration of recognition is only conducted after the parents have submitted all required documents as specified by the law, including the declaration form and evidence proving the parent-child relationship²⁷⁶. Additionally, the presence of both parents and the child is required at the local people's committee at the commune level. Thus,

²⁷⁶ The evidence establishing parent-child relationships includes: (i) Documentation from competent health agencies, evaluation bodies, or other authorized domestic or foreign entities confirming the parent-child relationships. (ii) In cases where there is no supporting documentation proving the parent-child relationships as stipulated, the parties involved in the parent-child relationships shall create a written affidavit regarding the parent-child relationships according to the regulations. This affidavit should be supported by at least two individuals who can testify to the parent-child relationships.

children involved in this recognition relationship may have agreed, as evidenced by their presence alongside the adopting party at the competent states administrative agency to carry out the recognition procedure. However, this conclusion is not entirely accurate. The presence of the parents cannot be considered a substitute for expressing the opinions of the children. Moreover, even the regulations on the recognition process in the Civil Status Law 2014 do not explicitly acknowledge the examination of the child's opinion. Therefore, legislatively, the commitment to ensuring the right to be respected and heard for children has not been thoroughly implemented in the provisions related to recognition children in Vietnam.

Listening to the child's opinions during the legal proceedings of parental divorce is also an issue that Vietnamese law is concerned about because the divorce of parents can potentially cause a psychological shock for children. Therefore, children also need to be cared for by listening to and responding to their opinions. The ability of children to recover from the stress of parental separation is enhanced when they are treated as capable individuals and able to communicate their decisions in their lives²⁷⁷. Recognising the significance of this issue, Vietnamese law has stipulated in Article 81(2) of the Marriage and Family Law 2014 as follows: “The wife and husband shall agree on the person directly raising the child, the obligations, and rights of each party after divorce regarding the child; in case of no agreement, the court shall decide to entrust the child to one party for direct care based on the comprehensive rights and interests of the child; if the child is aged 07 or older, their wishes must be considered”.

Therefore, among the three groups of regulations analysed in this part, only the provision regarding consulting the opinions of children about the direct care after the divorce of the parents is clearly stipulated in the Vietnamese legal system.. However, this regulation faces a significant obstacle, namely the age limitation for children to express their opinions, while according to Article 12 of the CRC, there is no age limit for children to exercise this right.

²⁷⁷ SMITH - TAYLOR, Rethinking children's involvement 208.

4. PROTECTION OF CHILDREN'S RIGHTS UNDER INTERNATIONAL LAW AND VIETNAMESE LAW

4.1. THE RIGHT TO BIRTH REGISTRATION

When discussing the birth registration rights of children, it is universally acknowledged that this constitutes a fundamental and pivotal entitlement. The significance of this right becomes evident through its impact on other prerogatives such as the right to a legal identity, nationality, and various other fundamental rights of children. Thus, experts at UNICEF have discerned that birth registration serves as “the passport to protection for children”²⁷⁸. Indeed, if such formal recognition by the state does not occur, a child might be unable to obtain a birth certificate and thus be denied health care or education. “The lack of registration might mean that a child enters into marriage, the labour market, or is recruited into the armed forces before the legal age. If accused of a crime, unregistered children might be prosecuted as adults. Registering children at birth is the first step in securing their recognition before the law, safeguarding their rights, and ensuring that any violation of these rights does not go unnoticed”²⁷⁹.

Therefore, in this section, the author will endeavour to elucidate the provisions of the CRC about the right to birth registration. Subsequently, an analysis of analogous provisions in Vietnamese law will be conducted to assess the effectiveness of the implementation in ensuring this right for children in practice.

4.1.1. The Right to Birth Registration in International Law

Article 7 of the CRC acknowledges the content of the right to birth registration as follows: “Children must be registered immediately after birth and have the right to a name, nationality, and, to the extent possible, the right to know and be cared for by their parents after birth. 2. Member states must ensure the implementation of these rights in accordance with their national laws and their obligations under relevant international instruments in this field, particularly in cases where failure to do so would result in children being without nationality”. This provision not only recognises the right to birth registration but also stipulates a range of significant rights that children are entitled to after birth. These include the right to a name, the right to nationality, and the right to know and be cared for by their parents after birth.

*Stefanie Schmah*²⁸⁰ observes that “Article 7(1) of the CRC contains five separate rights. Whereas out of these five rights under Article 7(1) CRC, three of them, namely the right to birth registration, the right to a name, and the right to acquire a nationality, are widely recognised in international instruments, the rights to know and be cared for by one’s parents were, at least until the adoption of

²⁷⁸ CAPPA - CLAUDIA - GREGSON - WARDLAW - BISSELL, Birth registration.

²⁷⁹ Ibid.

²⁸⁰ SCHMAHL, United Nations Convention on the rights of the child 314.

the African charter on the rights and welfare of the child in 1990, unique to the convention”²⁸¹. According to the Human Rights Committee’s Report²⁸², the drafting of these five rights separately into distinct provisions is aimed at ensuring the psychological stability of children throughout their developmental process as self-aware individuals.

Based on this general overview, several specific observations can be drawn from Article 7 of the CRC:

Firstly, Article 7(1) stipulates that children must be registered immediately after birth. “The registration of birth and the significance of birth registration is a topic that has garnered attention from numerous researchers”²⁸³. It cannot be denied that birth registration brings about numerous benefits for children, such as establishing identity, providing conditions for access to education and healthcare, and simultaneously aiding in the prevention of crime and the protection of children. The HRC has emphasised that the duty to register a child is closely linked with the right of a child to special measures of protection, and “it is designed to promote recognition of the child’s legal personality”²⁸⁴.

Supporting the perspective of the CRC committee, *Ineta Ziemele* also contends that “registering children immediately after birth plays a crucial role in safeguarding and promoting children's rights to protection through specific measures. Specifically, maintaining comprehensive records of children supports the effective management of health, education, and social welfare programmes for children, thereby ensuring the right to life, development, and access to essential services in life”²⁸⁵. Similarly, *Ursula Kilkelly* and *Ton Liefgaard* argue that “registering immediately after birth is a measure to encourage the recognition of a child's legal personality as a preliminary step in establishing, developing, and preserving an individual's identity”²⁸⁶. Simultaneously, recognising the existence of a child through the birth registration system also serves as a protective measure by contributing to damage prevention. Therefore, it is not difficult to comprehend that, right from the opening sentences, Article 7(1) unequivocally emphasises the responsibility of member states to ensure that “children shall be registered immediately after birth”.

The CRC committee has emphasised the positive obligation of state parties to make sure that “children are registered properly even in situations where access to, for example, nomadic families or rural areas in the country is very difficult”²⁸⁷. The CRC committee further adds that “Children’s birth registration should be given priority to ensure that every child is recognised as a person and enjoys his or her full rights. The committee encourages further steps to ensure the birth registration of children, including the establishment of mobile registration offices”²⁸⁸. This implies that parents or legal guardians of children should promptly and proactively undertake the necessary legal procedures to register the birth of the child with the competent authorities as early as possible, ideally immediately

²⁸¹ Ibid.

²⁸² Human Rights Committee (HRC), Report of the working group, E/CN.4/1989/48.

²⁸³ FREEMAN, The new birth right 273. See also: ASSIM, International human rights of children 400.

²⁸⁴ HRC, General comment No. 17. Rights of the child.

²⁸⁵ ZIEMELE, A Commentary on the United Nations convention on the rights of the child 221.

²⁸⁶ KILKELLY - LIEFAARD, International children’s rights 617.

²⁸⁷ CRC, Concluding observations: Algeria, Cyprus, Lao Republic. See also: HOLMSTROM (ed.), Concluding observations of the UN Committee 243.

²⁸⁸ CRC, Concluding observations: Paraguay.

after the child is born. This facilitates monitoring and the provision of essential services and protection for the comprehensive development of children by relevant authorities.

In general comment No. 7 on the implementation of child rights in early childhood, the committee affirmed: “Providing registration for all children immediately upon birth remains a significant challenge for many countries and regions. This may have adverse effects on the individual awareness of children, and they may be denied the right to enjoy benefits related to health, education, and social welfare”²⁸⁹. Therefore, “as a preliminary step in ensuring the right to survival, development, and access to quality services for all children (Article 6), the committee recommends that member states take all necessary measures to ensure that all children are registered immediately upon birth”²⁹⁰.

Despite the emphasis on birth registration, the law does not specify a specific timeframe for the registration process; instead, it simply stipulates that birth registration must be carried out “immediately”. *Ziemele* asserts that “both the CRC committee and the HRC fail to elucidate the meaning of “immediate registration”²⁹¹. The ICCPR similarly contains provisions as stipulated in Article 24(2). Accordingly, every child must be registered and named immediately after birth. However, “neither the covenant nor the HRC explains what “immediate” registration means”²⁹². It is clear, however, that for the purposes of Article 24 of the ICCPR, the reference to “immediate” registration implies a much shorter period than, for example, references to “reasonable time” in the context of a fair trial. We are talking days and weeks rather than months and years. This seems to be in line with the fundamental right of a child to special protection. It is clear that if a child is not registered, he or she may be prevented from receiving the benefits and protection afforded by the state²⁹³.

Based on an integrated analysis of both clauses 1 and 2 of Article 7, *J Tobin*²⁹⁴ contends that “Although member states, under Article 7(2) of the convention, enjoy a degree of freedom in choosing the system for registering children's births, any system employed must adhere to the “3AQ” framework (meaning availability, accessibility, acceptability, and appropriate quality).”²⁹⁵. Furthermore, the author underscores that 'the phrase “shall ensure the implementation of these rights” in Article 7(2) of the convention places an obligation on signatory states to take all appropriate measures to ensure the effective enjoyment of rights under Article 7(1) of the convention. This implies that birth registration must be available, accessible, acceptable, and of appropriate quality for the integrity and essential nature of the recorded information’²⁹⁶.

In the evaluation and comments documents of the committee on the CRC in certain specific countries, the committee stated that “Member states must ensure that effective systems for birth registration exist”²⁹⁷. This means that these birth registration systems must adhere to the standards prescribed by the state's legal framework, and the officials responsible for birth registration must

²⁸⁹ CRC, General comment No. 7.

²⁹⁰ Ibid.

²⁹¹ ZIEMELE, A commentary on the United Nations convention on the rights of the child 221.

²⁹² Ibid 222.

²⁹³ Ibid.

²⁹⁴ TOBIN - SEOW, Article 7 in TOBIN, John, ed. The UN Convention on the rights of the child 419.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ CRC, Concluding observations: Canada, India.

possess appropriate professional qualifications. Additionally, accessibility to facilities within this system must be easily achievable. Indeed, these criteria were subsequently reaffirmed in the evaluation document of the CRC in Venezuela in 2014²⁹⁸.

Children also have the right to a name, which ensures that children have an identity, thereby respecting and duly recognising the individuality and unique identity of each child. It is a fundamental right for the protection of individuality and personal development, as well as self-awareness, which as a name, represents the first point of reference for the child and also serves as a means for society to identify the child and his or her family²⁹⁹. Additionally, *U Kilkelly and T Liefwaard*³⁰⁰ argue that “the name plays both a symbolic and functional role by connecting the child to parents and their extended family, empowering the child as a member of a family group and cultural context, and ultimately integrating the child into society”³⁰¹.

It can be argued that birth registration and naming go hand in hand because “registration requires a name”. The act of naming a child is not explicitly addressed in Article 7 of the convention. However, by natural inclination, it is typically the parents who undertake the task of naming their child. This is because, at the time of birth registration, the child cannot choose their own name. According to *Van Bueren*³⁰², in this context, “the child does not have the right to choose a name for themselves”³⁰³. When the CRC was drafted, the right to a name was never contested, showing certain agreement in this respect. Problems arise in practice concerning the choice of a name. As there is no explicit provision concerning the registration of names within the convention, “it should not be such a name that may create hardships for a child in the future”³⁰⁴.

Children are also recognised as having the right to a nationality. Although it acknowledges the right of children to nationality, Article 7(1) of the CRC does not specify the nationality of any particular country that a child may have the right to, such as the country where the child is born or the nationality of the mother. Former chairperson of the CRC committee, *Jaap Doek* emphasized that the CRC committee does not suggest that state parties should introduce “the jus soli approach”³⁰⁵, but rather that “all necessary measures are taken to prevent the child from having no nationality”³⁰⁶. His views are similar to the approach adopted by the HRC³⁰⁷. As such, those measures to be taken to prevent a child having no nationality fall not only on the country of birth of the child but also on the country of the nationality of the parent(s). This approach aims to prevent statelessness and ensure that no child is left without nationality. Moreover, by not specifically stipulating the principle of determining which nationality applies to children, the CRC demonstrates an understanding of the differences in nationality laws among member states. Therefore, if a specific provision in the CRC related to

²⁹⁸ CRC, Concluding observations: Venezuela.

²⁹⁹ CVEJIĆ JANČIĆ, *The rights of the child in a changing world* 30.

³⁰⁰ KILKELLY - LIEFAARD, *International children’s rights* 610.

³⁰¹ *Ibid.*

³⁰² VAN BUEREN, *The international law on the rights of the child* 341.

³⁰³ *Ibid.*

³⁰⁴ ZIEMELE, *A Commentary on the United Nations Convention on the rights of the child* 207.

³⁰⁵ *The principle of determining citizenship based on territorial criteria.*

³⁰⁶ *Ibid.*

³⁰⁷ HRC, *General comment* 17.

determining nationality for children were applied, it could lead to inequality and the potential for discrimination against certain groups of children.

For instance, consider a country with strict “jus sanguinis” laws³⁰⁸, requiring a child to have at least one parent who is a citizen to be eligible for citizenship. If a child is born in that country to parents who are not citizens, the child may not automatically acquire citizenship under the existing nationality laws. This could lead to the child becoming stateless or facing difficulties in accessing basic rights and services such as education, healthcare, and legal protection. The CRC's approach emphasises flexibility and comprehensiveness in recognising the right to nationality for children. By not specifying particular nationality requirements, the CRC demonstrates a commitment to promoting equal treatment and protecting the rights of all children, regardless of the background or nationality of their parents.

*Gerard-René*³⁰⁹ contends that “the pivotal juncture in guaranteeing a person’s right to a nationality is the moment of birth. If a child does not secure a nationality at birth, he or she may be left stateless for many years or even a lifetime, with severe consequences”³¹⁰. Nonetheless, it is imperative to assert that the content of Article 7(1) does not specifically stipulate that the right to acquire nationality for children must be ensured immediately upon birth. Each state can determine the procedures for the acquisition or loss of nationality, albeit within the limits of “their obligations under the relevant international instruments” and with special attention to situations where the child “would otherwise be stateless”. This formulation suggests that child statelessness is still a reality, but that national measures in implementing Article 7 of the CRC must seek to eliminate the problem³¹¹.

The convention has also established the right to know one's parents in Article 7 to ensure and promote familial connectivity, as well as to foster the psychological and emotional development of children. The right to know one's origins is synonymous with the right to know about one's parentage, encompassing both familial and biological lineage as well as the circumstances of one's birth. This right safeguards the entitlement of every individual to ascertain their place of origin and “is often deemed fundamental or “fundamental enough” to constitute a human right”³¹². “It is indeed deemed an important element in one’s psychological balance to know where one comes from. Every one of us has a right to truth, and hence to truth about one’s origins”³¹³. As *Katherine O'Donovan*³¹⁴ has also observed, the interest involved may amount to one or more of the following concerns: (i) A desire to know one's origins. Interest in identity, without which one is “deracinated,” (ii) A wish to know medical history to avoid the possibility of marriage within the prohibited degrees of consanguinity and the problems attendant upon this (iii) The benefit of being qualified to take a property in the event of the death of a social parent. This is a material interest.

³⁰⁸ The principle of determining citizenship based on bloodline.

³⁰⁹ GERARD-RENÉ, *Children, their right to a nationality and child statelessness* 144.

³¹⁰ *Ibid.*

³¹¹ Some argue that the CRC Committee in its concluding observations appears less certain of the existing obligation concerning nationality of stateless children. It has stated that children should not suffer in acquiring nationality because one of the parents may not have a nationality. See also: DAES, *Prevention of discrimination and protection of indigenous peoples and minorities*.

³¹² FREEMAN, *The new birth right* 273.

³¹³ O'DONOVAN, *A right to know one's parentage?* 27. See also: EEKELAAR, *family law and personal life* 106.

³¹⁴ O'DONOVAN, *A right to know one's parentage?* 27.

The law emphasises the right to know one's parents and the right to be registered at birth for a child. These rights are closely intertwined as they mutually support the protection of children's rights and their development. Specifically, the right to know one's parents allows children to understand themselves and their familial roots, aiding in the formation of personal identity and fostering a sense of pride and purpose in life. Therefore, according to the interpretation provided by the CRC in Ireland, this right is ensured to the greatest extent possible. This implies that “whenever applicable, the child's unmarried and/or non-biological father should also be listed on the birth certificate”³¹⁵. Supporting this perspective, *I. Ziemele*³¹⁶ states that “the parent-child relationship is not contingent on proof of consanguinity”. This viewpoint holds particular significance in cases where a child is adopted. In such instances, even though not biologically related, the legal system recognises the parent-child relationship due to emotional attachment, care, and support provided by the adoptive parents. Indeed, the expanded concept of “parent” as defined in Article 7 of the convention is reiterated in general comments No. 4 and No. 23 by the committee of the CRC. The committee asserts that “the meaning of “parent”, for the purposes of Article 7 of the CRC, is not limited to the concept of biological parents or the dualistic and geographical standards of parenthood, but should extend to all those who play a role in conceiving and nurturing the child, be it biological, social, and/or gestational”³¹⁷.

For children born within the legal confines of the marital relationship of their parents, the right to know about their parents is relatively straightforward and is acknowledged in the legislation of the majority of countries through regulations concerning birth registration. This involves officially recording the birth details, establishing parent-child relationships through administrative procedures, or, in some cases, through a court decision. Therefore, it can be argued that knowing one's origins is something that most of us, who are aware of our parents, consider given. However, for those who do not have this knowledge, it is a benefit that has only recently been recognised through the acknowledgement of the right to fully know one's parents.

The reality has demonstrated that “while for a long time, the right to know one's origins pertained only to a small number of children, nowadays, at least in Western European societies, the number of such children has significantly increased, rendering the issue more pressing”³¹⁸. Several potential reasons can be cited for this situation. For example, children adopted from birth, those conceived through assisted reproductive techniques such as in vitro fertilisation or surrogacy, or those born through third-party reproduction methods. Some scholars have argued that “adopted or artificially inseminated children, who depend on the goodwill of authorities or their social parents to know about their origins, suffer from discrimination by comparison to children whose social and genetic parents match, but also to other children whose social and biological parents differ”³¹⁹.

For adopted children, although the provisions in Article 7 of the CRC do not explicitly address this issue, the CRC committee opposes laws that do not allow adopted children to learn about their biological parents³²⁰. When a child is adopted from birth, the adoptive parents are legally recognised

³¹⁵ CRC, Concluding observations: Ireland.

³¹⁶ ZIEMELE, A commentary on the United Nations Convention on the rights of the child 401.

³¹⁷ CRC, General comment No. 4 23; and General comment No. 23 27.

³¹⁸ BESSON, Enforcing the child's right to know her origins 138.

³¹⁹ O'DONOVAN, A right to know one's parentage? 30.

³²⁰ ZIEMELE, A commentary on the United Nations Convention on the rights of the child 268.

as the child's parents. However, according to some exchanges between the CRC committee and countries within the framework of national reports, it is suggested that the CRC committee believes that the term “parents” in the context of Article 7 and the purpose of the CRC includes both biological parents and that children have the right to know, to the extent possible, who they are³²¹.

According to the observations of *Ineta Ziemele*: “this right is both part of Article 7 and Article 3 of the CRC since it is considered to be in the best interests of the child to know, as far as possible, the child’s birth parents”³²². In examining the report of Kazakhstan, the committee noted that “it is concerning that adoptions are processed in such a way that seriously hinders the right of the child to know, as far as possible, her or his biological parents. [. . .] In light of Articles 3 and 7 of the convention, the committee recommends that the state party undertake all necessary measures to allow all adoptive children to obtain, as far as possible, information on the identity of their parents”³²³.

In the case of children born outside of marriage, the CRC committee has also pointed out that “it is important to identify the father in the birth certificate even if a child is born to an unmarried couple”³²⁴. The right to know one's parents for children born through assisted reproductive techniques is also not explicitly delineated in the content of Article 7 of the CRC. However, by employing a similar legal interpretation approach as mentioned above, it can be deduced that, as there are no specific restrictions stipulated in the law, the right to know one's parents for children conceived through sperm or egg donation, or through in vitro fertilisation, should also be ensured by member states.

In this scenario, a new issue arises, namely the conflict of interests between the right to know one's parents for the child and the right to privacy and confidentiality of sperm and egg donors. No official guidance has been provided by the CRC committee on this matter, but it is a topic that has garnered significant attention from scholars³²⁵. Thus, the child’s right to know conflicts with other people’s rights as well as with public interests or even other interests of the child. One may think, for instance, of the competing rights to autonomy and privacy of the mother, the father, the adoptive parents, or the gamete donor. All this has contributed to turning the topic of the child’s right to know her origins into a “Pandora’s box”³²⁶. Enforcing the child’s right to know her origins implies going beyond respecting the material and personal scope of the specific rights and duties it generates. Human rights do not usually arise alone, and they often enter into conflict with the other rights and interests with which they coexist. Human rights enforcement is therefore, to a large extent, about resolving conflicts of rights and interests, and children’s rights enforcement is no exception in this regard³²⁷.

The legislation also acknowledges the entitlement of children to postnatal care, while concurrently delineating the responsibilities and rights pertaining to the support, nurturing, and care of infants during their pivotal early life stage. “Like the right to know, however, the right to be cared for by one’s biological parents, besides one’s social parents, is qualified by the words as far as

³²¹ Luxembourg has objected to Article 7 of the CRC in this sense and has submitted a reservation. Also Poland has reservations with respect to Article 7 of the CRC and open adoptions that the article has come to provide for.

³²² ZIEMELE, A commentary on the United Nations Convention on the rights of the child 270.

³²³ CRC, Concluding observations: Kazakhstan.

³²⁴ *Ibid.*

³²⁵ FREEMAN, *The new birth right* 279.

³²⁶ VAN BUEREN, *The international law on the rights of the child* 147.

³²⁷ EEKELAAR, *Family law and personal life* 266.

possible”³²⁸. While the obligation of parents is not explicitly addressed within the provisions of Article 7, the inherent correlation between rights and responsibilities suggests that the rights of children to be cared for and nurtured after birth are inherently tied to the duties of parents. However, this provision has engendered an inquiry into whether parents genuinely bear this obligation towards their offspring by the mere virtue of their parental status.

There exist various perspectives for elucidating parental responsibility concerning offspring, particularly in the context of postnatal care and nurturing. One of these viewpoints that merits consideration is the notion that “one, called the causal account of parental obligations, holds that one acquires parental obligations by having voluntarily acted in such a way that had the reasonably foreseeable consequence of bringing a child into being in the normal course of events”³²⁹. This perspective is based on the causality of obligation, and it is noteworthy that this is not devoid of contention³³⁰. In the Hebrew-Christian tradition, *Alan Donagan* presents what he refers to as the “principle of parental responsibility” as follows: “A person cannot voluntarily become a parent to a child and then refuse to nurture it until the stage of development at which it can engage in independent social life”³³¹. This right to contact and be cared for by one’s biological parents may be explained by reference to the further interests of the child protected by the convention. “Article 7 should indeed be read in light of the rest of the convention and in particular of Articles 9 and 18 CRC, which guarantee the child’s right to have a relationship with her parents”³³².

Article 7(2) of the CRC stipulates that “state parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless”. While Article 7(2) only reiterates the obligation of state parties to prevent a situation where a child would be stateless, it does not imply that the duty to ensure the realisation of the rights of the child mentioned here applies only to the right to nationality but to all the rights recognised in paragraph 1 of the same Article. *Tobin* affirms a similar interpretation: “The phrase “shall ensure the implementation of these rights” in Article 7(2) of the convention indicates that it applies to all the rights recognised in Article 7(1) of the convention”³³³.

On the other hand, it is also worth noting that the obligations imposed on states by Article 7(2) of the CRC are not exclusively directed to the country of birth of a child but to all countries with which the child has a link by way of parentage, residence, or place of birth³³⁴. For instance, consider a child born in country A but whose parents are citizens of country B. The child later moves to live in country C with their parents or extended family. This scenario may arise due to various reasons, such as work, migration, or other factors. Based on the author's assertion, not only does country A but also countries B and C have the responsibility to ensure the rights and protection of this child.

³²⁸ BESSON, Enforcing the child's right to know her origins 140.

³²⁹ PRUSAK, Parental obligations and bioethic 206.

³³⁰ Ibid.

³³¹ DONAGAN, The theory of morality 101 cited in PRUSAK, Parental obligations and bioethics 188.

³³² FORTIN, Children's rights and the developing law 451.

³³³ TOBIN, The UN Convention on the rights of the child 238.

³³⁴ WAAS, Nationality matters 63.

Country A, where the child is born, bears the responsibility to ensure the rights of the child, such as the right to life, protection from violence, and the right to enjoy the best interests of the child, among others. Country B, where the child's parents are citizens, also holds the responsibility to safeguard the rights of the child. This includes ensuring that the child is not subject to discrimination in cases where the parents have different nationalities and upholding the right to live with both parents if desired, provided it is conducive to the child's well-being. Country C, where the child currently resides and is growing up, is also obliged to ensure the rights of the child. This entails guaranteeing that the child enjoys fundamental rights, such as the right to education, access to healthcare, participation in cultural and recreational activities, and other rights afforded to children. Hence, the application of obligations under Article 7(2) of the CRC extends beyond the country where the child is born and encompasses other countries with which the child has a connection. This underscores the significance of safeguarding the rights of children not only within national borders but also within the international context, ensuring that all nations share a collective responsibility in protecting children and ensuring their comprehensive and secure development. In summary, Article 7 of the CRC makes this even more precise in that it guarantees both the positive right to registration at birth and the positive right to preservation of these data for later consultation.

The HRC has commented that the lack of registration may result in discrimination and be seen as contrary to Articles 24, 26, and 27 of the CCPR if it is directed to a particular ethnic group³³⁵. Even if the drafters of the CRC did not anticipate problems with the right to registration and the right to a name, state practice shows that different historical and legal traditions have generated problems in this area. While as concerns the registration of a child after birth, a state has a very limited margin of discretion, national particularities about names may represent a different situation. It is clear, however, that there should not be any discrimination based on grounds of ethnicity, national origin, language, etc.

The right to acquire a nationality now has fairly precise content concerning children. However, the right is not always implemented, especially in states that have identified the primary body of nationals based on the *jus sanguinis* principle. Procedures relating to the acquisition of nationality rely on the length of residence, the age of the applicant, and other requirements, but in the process, the non-discrimination rule, the prohibition to render children stateless, and the prohibition against adopting arbitrary decisions have to be respected. It appears that if a child remains stateless for a considerable period because of the age requirement or for other reasons, this would violate his or her right to acquire the nationality of the state that has registered the child.

Finally, as concerns the right to know his or her parents, the challenge of the secrecy of adoptions dominant in domestic practices remains, while the CRC committee is clearly taking a different approach. Above all, the fundamental principle of the best interests of the child should assist in the interpretation and application of Article 7 of the CRC. In light of this principle, it is clear that non-registration, statelessness, a lack of knowledge of one's roots as part of one's identity, and a lack of a family environment are not in the best interests of the child.

³³⁵ HRC, Concluding observations: Syrian Arab Republic.

4.1.2. The Right to Birth Registration in Vietnamese Law

Article 13 of the Children Act 2016 stipulates the rights related to birth registration and nationality of children. Accordingly, “Children have the right to be registered at birth, to be named, and to have nationality determined in accordance with legal regulations. They are entitled to the determination of their father, mother, ethnicity, and gender as prescribed by law”. In comparison to the provisions outlined in Article 7 of the CRC, Article 13 of the Children Act 2016 does not address the right to be cared for by parents. This aspect is explicitly addressed in the Children Act 2016 under Article 15. Nevertheless, other human rights of children associated with birth registration, such as the right to a name, the right to nationality, and the right to know one's parents, are all duly acknowledged within the framework of this law.

The subsequent analysis will endeavour to elucidate the specific regulations in Vietnam pertaining to each of the mentioned rights. This aims to address the question: Does Vietnamese law fulfil the obligations set forth by the CRC for its member states? The right to birth registration for individuals in general is stipulated in Article 29 of the Civil Code 2015, which states: “Individuals, upon birth, have the right to birth registration”. The Children Act 2016 only regulates the right to birth registration for children, without providing additional provisions on the manner of implementing this right. Instead, these regulations are documented in the Residence Law 2014, specifically from Article 13 to Article 16 and some other related provisions. However, these provisions do not explain the term “birth registration”. The Residence Law 2014 only elucidates the term “residence registration” with the following content: “Residence registration is the act of a competent state agency confirming or recording in the residence register the events related to an individual's residence, establishing a legal basis for the state to protect the legal rights and interests of individuals and to carry out population management”. According to the Vietnamese dictionary of terms and phrases, “birth registration” is defined as recording the birth of a new-born. Therefore, “based on the terms “residence registration” and “birth registration”, it can be understood that “birth registration” is the act of a competent state agency confirming or recording in the residence register the event of a person being born. Confirming or recording in this register reflects the fundamental residence information of an individual, such as their family name, middle name, first name, date of birth, gender, ethnicity, nationality, hometown, personal identification number, and information about the parents (if available)”³³⁶.

From the aforementioned concept, several characteristics of birth registration can be deduced, including: Birth registration is an activity conducted by a competent state agency to establish a legal basis for determining an individual's birth. Specifically, depending on the administrative level and whether the individual registering the birth is Vietnamese or a foreigner, residing within the country or abroad, the competent state agency can be the People's Committee at the commune level, the People's Committee at the district level, or the diplomatic representative office of Vietnam abroad³³⁷. Besides, birth registration is the act of recording the actual event of an individual's birth. The individual

³³⁶ DƯỠNG, The important issues revolving around the Citizenship Law 31.

³³⁷ Article 17 of Inter-Ministerial Circular No. 02/2016/TTLT-BNG-BTP.

requesting birth registration provides information related to the content of birth registration as stipulated by relevant legal regulations.

Birth registration also serves as the practical foundation for an individual to be issued a birth certificate, a document considered the “original residence registration”³³⁸ with significant implications, laying the groundwork for the issuance of other documents in the future, such as the national identification card and passport. It is also a crucial foundation for the state to safeguard the legal rights and interests of individuals. Simultaneously, it serves as the basis for competent state agencies to carry out population management³³⁹. The birth registration by the competent authority marks the inception of the relationship between a state and an individual. “The essence of recording personal information on the birth certificate is the acknowledgement of an individual's characteristics, providing a basis for distinguishing this individual from others”³⁴⁰. According to legal regulations, the birth certificate is considered the “original residence registration” of an individual and holds significant importance in the issuance of other documents in the future. This is because all records and documents related to an individual, including family name, middle name, first name, date of birth, gender, ethnicity, nationality, hometown, and familial relationships, must align with the information on the birth certificate. From this, it can be understood that the birth registration procedure is the sequence and method by which the competent state authority confirms the occurrence of an individual's birth event.

According to legal regulations, the People’s Committee at the commune level is responsible for carrying out birth registration procedures for Vietnamese citizens whose parents are both Vietnamese, or registering the birth of a child born in Vietnam with one parent being a Vietnamese citizen residing in the commune and the other parent being a citizen of a neighbouring country residing in an administrative unit at an equivalent level to the commune of Vietnam bordering the region where the Vietnamese citizen is a resident³⁴¹. Moreover, Article 15, Clause 1 of the National Law 2016 stipulates that “within 60 days from the date of the child's birth, the father or mother is responsible for registering the birth; in cases where the father or mother cannot register the birth, the grandparents or other legal guardians or individuals and organisations currently caring for the child are responsible for registering the birth”. This provision indicates that the Vietnamese legislators have explicitly acknowledged the specific timeframe for conducting birth registration for children, which is 60 days from the date of the child's birth. This demonstrates the attentiveness of Vietnamese lawmakers to the provisions regarding birth registration in international law, particularly in the CRC. This convention requires member states to register the birth of children immediately after they are born. The 60-day period is not excessively short to accommodate families living in remote or rural areas or single-parent families in registering births for their children, yet it is not overly long to ensure prompt and timely protection of the legal rights of children through birth registration. On the other hand, the law also expands the group of individuals who can carry out birth registration for a child, not only limited to parents but also including grandparents or other legal guardians. This provision aligns with the living conditions, lifestyle, and cultural practices of the Vietnamese people. Unlike European

³³⁸ Section 1, Article 6 of Decree No. 123/2015/NĐ-CP stipulates that “The birth certificate is the original document of personal permanent residence”.

³³⁹ VÕ, Discussion on the content of birth registration.

³⁴⁰ NGUYỄN, Implementation of the household registration law 15.

³⁴¹ Section 1, Article 17 of Decree No. 123/2015/NĐ-CP.

families, current families in Vietnam often maintain a multi-generational structure. Therefore, permitting grandparents, other legal guardians, or individuals and organisations currently caring for the child to undertake birth registration reflects an awareness of the diverse family environments within society.

The right to have a name is stipulated in Article 26, paragraph 1 of the Civil Code 2015, as follows: “Each natural person has the right to have a family name and a given name (including a middle name, if any). The family and given names of a person shall be the family and given names in the birth certificate of such person”. The naming of a child is carried out according to the following principles: (i) In cases where the child has a biological father and mother, the surname of the child is determined to be either that of the father or the mother by mutual agreement of the parents. In the absence of an agreement, the child's surname is determined based on customary practice. In instances where the biological father is not identified, the child's surname is determined by that of the mother³⁴²; (ii) in the event that a child is born through surrogacy, the biological father and biological mother are recognised as the legal parents, while the individual who carried out the surrogacy is acknowledged as the surrogate. In this scenario, the surname of the child is determined following the aforementioned principles³⁴³; (iii) In the case of abandoned children who are subsequently adopted, the surname of the child is determined by the mutual agreement of the adoptive parents, following either the surname of the adoptive father or that of the adoptive mother. In instances where there is only one adoptive parent, the child's surname is determined by that individual. In cases where abandoned children have not yet been officially adopted, the surname is established based on the recommendation of the head of the institution responsible for caring for the children, or at the request of the person applying for the child's birth registration, if they are temporarily providing care for the child³⁴⁴; (iv) The name of Vietnamese citizens must be in Vietnamese or the ethnic languages of Vietnam. Vietnamese law strictly prohibits the use of numbers or single characters, excluding letters, for naming purposes³⁴⁵.

Furthermore, the naming process is also subject to limitations in cases where it infringes upon the rights and legitimate interests of others or contradicts the fundamental principles of Vietnamese civil law. Currently, Article 6 of Directive No. 04/2020/TT-BTP stipulates that “the determination of surnames and names for children must comply with the law and the requirements to preserve the ethnic identity, customs, and beautiful cultural traditions of Vietnam; names should not be excessively long or difficult to use”. However, Directive No. 04/2020/TT-BTP does not provide a specific explanation of what constitutes “excessively long or difficult to use”. Similarly, other legal documents in our country do not offer specific guidance on this matter, which can lead to difficulties in the process of registering births at the local People’s Committee.

The right to nationality of children, as elaborated earlier, is stipulated in Article 15 of the Children Act 2016, along with the right to birth registration. Furthermore, in Article 2, Clause 1 of the National Law 2008³⁴⁶, it is noted: “In Vietnam, every individual has the right to nationality”. It is one of the most crucial human rights for individuals in general and specifically for children. It not only

³⁴² Section 2, Article 26 of the Civil Code 2015.

³⁴³ Ibid

³⁴⁴ Ibid

³⁴⁵ Section 3, Article 26 of the Civil Code 2015.

³⁴⁶ The Nationality Law No. 24/2008 amended June 24, 2014.

influences an individual's identity but also serves as a prerequisite for enjoying legal rights and benefits according to the regulations of the country of which the child is a national. To ensure the implementation of the right to nationality for children in practice, the Vietnamese nationality law includes relevant provisions regarding the determination of nationality in Articles 8, 14, 15, 16, 17, 18, 35, 36, and 37 of the National Law 2008. Specifically, children are determined to have Vietnamese nationality if they fall into one of the following cases: (i) when born to parents who are Vietnamese citizens³⁴⁷, (ii) when born with either the father or mother being a Vietnamese citizen³⁴⁸, (iii) when born with parents who are non-citizens. Specifically, if a child is born on Vietnamese territory and both parents are non-citizens but have permanent residence in Vietnam, then the child is considered to have Vietnamese nationality³⁴⁹. If a child is born on Vietnamese territory, the mother is a non-citizen, has a permanent residence in Vietnam, and the father is unknown, then the child has Vietnamese nationality³⁵⁰. For abandoned infants, if a child is found on Vietnamese territory and the parents are unknown, then the child has Vietnamese nationality³⁵¹.

The entitlement to knowledge about the parents of a child is legally stipulated under the circumstances of the child under the laws of Vietnam. Specifically, for children born within marriage, Article 88 of the Marriage and Family Law 2014 provides regulations as follows: “1. A child born during the period of marriage³⁵² or as a result of the wife being pregnant during the period of marriage is considered the common child of the spouses. A child born within 300 days of the termination of the marriage is considered to be the child of the wife who was pregnant during the period of the marriage. A child born before the date of the marriage registration and is acknowledged by the parents as their common child. In cases where the parents do not acknowledge the child, the evidence must be presented, and the court must make the determination”.

This regulation demonstrates that Vietnamese legislators have proactively constructed a legal framework to ensure that children are always born with legal legitimacy. This entails guaranteeing that a child born, whether during the marriage of the parents or before the establishment of their marital relationship and even within a specific period after the termination of their marital relationship (300 days), is legally presumed to be the biological child of the couple. Consequently, the legal consequence is that when children are born within the scope of this legal presumption, their birth certificates³⁵³ will contain complete information about both parents. Specifically, the mother's name will be determined based on the child's birth certificate³⁵⁴, while the father's name will be established according to the marriage certificate of the mother who gave birth. This can be explained by the elevated emphasis on the cohesion and stability of families in Vietnamese society. Nevertheless, in a spirit of respecting truth

³⁴⁷ Article 15 of the National Law 2008.

³⁴⁸ Article 16 of the National Law 2008.

³⁴⁹ Paragraph 2 of Article 17 of the National Law 2008.

³⁵⁰ Paragraph 2 of Article 17 of the National Law 2008.

³⁵¹ Paragraph 1 of Article 18 of the National Law 2008.

³⁵² The marital period is the duration of the husband and wife relationship, calculated from the date of marriage registration to the date of the termination of the marriage.

³⁵³ This certificate is valid for verifying personal information of the child, including the child's full name, mother's full name, father's full name (if applicable), date of birth, and place of birth. See: Appendix E.

³⁵⁴ This document only holds validity as evidence of the childbirth of the woman's offspring. See: Appendix D.

as well as allowing for the possibility of knowing one's biological parents, paragraph 2 of the same provision states that “if the parents do not acknowledge the child, the evidence must be presented and the court must make the determination”.

For example³⁵⁵, Mr. *Hai* and Ms. *Hang* got married in October 2020. In May 2021, Ms. *Hang* gave birth to a child named *Hoa*. In July 2021, Mr. *Hai* and Mrs. *Hang* went to the People’s Committee to register *Hoa*'s birth. However, at the time of registration, Mr. *Hai* provided DNA test results showing that he was not the biological father of *Hoa*. Therefore, he refused to have his name recorded as the father on *Hoa*'s birth certificate. Based on the provision in paragraph 2 of Article 88 of the Marriage and Family Law mentioned above, Mr. *Hai* has the full right to make this request. However, the competent authority to resolve this matter is the court, not the People’s Committee of the commune where he is registering *Hoa*'s birth. Therefore, first and foremost, to ensure the best interests of *Hoa*, *Hoa*'s birth certificate must still be issued with both the names of the father and mother based on the presumption principle stipulated in paragraph 1 of Article 88 of the Marriage and Family Law, 2014. Then, if Mr. *Hai* provides a court decision recognising that he is not the biological father of *Hoa*, he can request the competent authority to amend the information on the birth certificate³⁵⁶.

Furthermore, Vietnamese marriage and family law also contain a particularly unique provision, which is the recognition of the right to request the determination of parents for a child even if the parents have passed away. Specifically, Article 90 of the Marriage and Family Law 2014 stipulates: “A child has the right to know their parents even if the parents have passed away”. This provision demonstrates the understanding and efforts of Vietnamese legislators regarding the right to know one's origins. With the desire to maintain relationships and bonds among family members, the law provides a humane legal aspect, even though its practical implementation may be complex and sensitive³⁵⁷. Based on the aforementioned analysis, it can be observed that the right to know one's parents in the legal provisions of Vietnam is comprehensively and specifically recognised, even in cases where children are born to a married mother.

For children born out of wedlock, according to the regulations from Articles 13 to 16 of the Citizen Identification Law 2014, information about the mother in the birth certificate of the child is recorded as per the birth certificate. As for the section regarding the father, if there is no legal guardian, it will be left blank³⁵⁸. If at the time of birth registration, the father requests to proceed with the child acceptance procedure as stipulated in Article 25, Section 1 of the citizenship law, the People’s Committee will handle both the child acceptance and birth registration together³⁵⁹.

For example, Mrs. *Huong* gave birth to *Minh* in July 2022. In September 2022, Mrs. *Huong* and Mr. *Tuan* came to register *Minh*'s birth. Mr. *Tuan* expressed his desire to have his name recorded in the section for the father on *Minh*'s birth certificate. However, since Mr. *Tuan* and Mrs. *Huong* were not yet married, according to the current laws of Vietnam, the section for the father had to be left blank.

³⁵⁵ This is a hypothetical scenario

³⁵⁶ Regarding the scope of changes to permanent residence as stipulated in Article 26 of the law on residence of 2014, and the procedural sequence for changing permanent residence as regulated in Articles 46 and 47 of the law on residence of 2014.

³⁵⁷ There are some relevant precedents: the people's court of Quang Nam province, Judgment No. 01/2018 of the; the people's court of Ha Nam province, Judgment No. 01/2018.

³⁵⁸ Article 15 of Decree No. 123/2015/NĐ-CP.

³⁵⁹ Section 3, Article 15 of Decree No. 123/2015/NĐ-CP.

Nevertheless, the competent officer advised Mr. *Tuan* on the child acceptance procedure. Specifically, Mr. *Tuan* had to submit the required forms along with evidence proving the parent-child relationship between him and *Minh*, as stipulated by the law. Within 3 days from the date of receiving all valid documents, the competent authority would issue a decision to accept *Minh* as Mr. *Tuan*'s child. The next step would be to proceed with *Minh*'s birth registration. Therefore, even though Mr. *Tuan* and Mrs. *Huong* were not married, to facilitate the legal recognition of both parents for children born out of wedlock, the Vietnamese legal system has established flexible, accessible, and stringent regulations.

These regulations illustrate two key points. First, regardless of whether the mother giving birth is married or not, her identity on the birth certificate will be clearly established based on the birth certificate issued by the competent authority or through the affirmation of the person registering the birth if the mother gave birth outside of a healthcare facility. Second, in cases where the mother giving birth is not married, Vietnamese law also provides a comprehensive procedural framework for someone to be legally recognised as the father of the newly born child.

For a child born through assisted reproductive technology, according to the provision in Clause 21, Article 3 of the Marriage and Family Law 2014, giving birth through assisted reproductive techniques “refers to the act of giving birth through techniques such as in vitro fertilisation or fertilisation in a test tube”. The determination of parents for a child born through assisted reproductive techniques is governed by the provisions in Clause 1 and Clause 2 of Article 93 of the Marriage and Family Law, 2014. Specifically: “1. In the case where the wife gives birth through assisted reproductive techniques, the determination of parents is applied following the provisions of Article 88 of the Law on Marriage and Family in 2014; 2. In the case where a single woman gives birth through assisted reproductive techniques, that woman is considered the mother of the child born”. Therefore, the parent-child relationship in cases of childbirth through assisted reproductive techniques is also governed by the legal presumption principle as stipulated in Article 88 of the Marriage and Family Law 2014, if the woman applying assisted reproductive techniques is registered as married. In addition, the law also specifies that in cases where the person using assisted reproductive techniques to give birth is a single woman, she is considered the mother of the child born. It can be observed that the aforementioned regulations do not pose any issues when in vitro fertilisation or artificial insemination is carried out using the sperm, ova, or embryos of an infertile married couple. However, there are cases where the assisted reproductive techniques mentioned above are performed using donated sperm and ova from a single mother or using donated embryos and sperm from the husband in an infertile married couple. Consequently, a legal issue arises: how is the determination of biological parentage handled in these situations?

Analysing the aforementioned regulations in Vietnamese law, it can be observed that the determination of parentage in cases of children born through assisted reproductive techniques is consistent, regardless of whether donated sperm or ova are used. Furthermore, Article 3 of Decree 10/2015, which outlines the principles of applying in vitro fertilisation, it states “the provision and acceptance of sperm and ova is conducted on the principle of anonymity between the provider and the recipient; sperm and ova from the provider must be encrypted to ensure confidentiality while still specifying the characteristics of the provider, particularly ethnic factors”. Additionally, in Articles 4 and 5, when regulating the provision and acceptance of sperm and ova, Decree 10/2015 also explicitly

states that healthcare facilities shall not provide the name, age, address, and images of the sperm or ova provider³⁶⁰; or the recipient of sperm or ova³⁶¹. Therefore, it can be concluded that children born in these circumstances cannot know their true biological parentage. Arguments in support of keeping the information of sperm and ova donors confidential may include the notion that “sperm donors may have the sole intention of helping infertile couples and do not wish to become parents, thereby having a fundamental right to privacy”³⁶². Therefore, within the current legal framework in Vietnam, the conclusion regarding the right to know one's biological parents can be drawn that this right is not absolute. In other words, there are still limitations imposed on this right if it conflicts with the human rights of other individuals, as analysed, such as the privacy rights of sperm and ova donors. Revisiting Articles 7 and 8 of the CRC, it can be observed that no specific solutions are provided to address potential conflicts between the right to know one's biological parents and the legal rights of other individuals (such as privacy rights). However, some researchers argue that this silence can be evaluated positively. Therefore, it cannot be concluded that the regulations regarding the confidentiality of personal information of sperm and ova donors under Vietnamese law violate the CRC.

For a child born through surrogacy, the determination of parentage in cases of altruistic surrogacy is established based on the principles outlined in Article 94 of the Marriage and Family Law 2014: “A child born through altruistic surrogacy is considered the legitimate child of the couple for whom surrogacy was employed from the moment of the child's birth”. This provision stems from the recognition, under Vietnamese law, of altruistic surrogacy as the voluntary act of a woman who, without commercial purposes, assists a couple in conceiving a child, even when assisted reproductive techniques are applied. This is achieved by fertilising the ova of the woman and the sperm of the man in vitro, followed by implantation into the uterus of the voluntarily surrogate woman to allow her to conceive and give birth.

The mentioned regulations demonstrate that Vietnamese law designates the parents of a child born through surrogacy as the couple who undergoes surrogacy, as the surrogacy process involves the combination of the sperm and egg of this couple. However, the wife in the surrogacy couple is not the one “giving birth” - it is the surrogate woman who gives birth. Therefore, the birth certificate will record the name of the surrogate woman. To avoid errors in determining the parents of the child, Article 16 of Decree 123/2015/ND-CP requires the person registering the birth to submit a confirmation document from the healthcare facility that conducted the surrogacy. It also illustrates that Vietnamese law establishes parentage for children born through surrogacy as belonging to the couple who employed surrogacy, as surrogacy is conducted through the combination of the sperm and ova of said couple. However, it is important to note that within this context, the wife in the surrogacy arrangement is not the “birth mother”; rather, it is the surrogate woman who assumes this role. As a result, the birth certificate will reflect the name of the surrogate mother. To prevent any discrepancies in determining parentage, Article 16 of Decree 123/2015/ND-CP mandates that the

³⁶⁰ Section 3, Article 4 of Decree No. 10/2015/ND-CP.

³⁶¹ Section 5, Article 6 of Decree No. 10/2015/ND-CP.

³⁶² BESSON, Enforcing the child's right to know her origins 142.

person registering the birth must submit a written confirmation from the healthcare facility that facilitated the surrogacy process³⁶³.

For an adopted child, despite “the secrecy of adoption still dominating domestic approaches, although experts have come to the conclusion that it is most likely not in the best interests of the child”³⁶⁴, Vietnamese legislation includes provisions that allow adopted children to be informed about their biological origins. Specifically, in Article 4 of the Adoption Law 2010, which addresses the principles for resolving foster care matters, one of the key principles listed first is to “respect the rights of children to live in their original family environment” (Section 1). The original family refers to the family of individuals with blood relations³⁶⁵. Therefore, in the subsequent provision outlining the priority order for selecting substitute families - families receiving children as foster children - the Adoption Law 2010 acknowledges priority for the following subjects in receiving foster children: “stepfather, stepmother, aunt, uncle, niece, nephew, maternal or paternal aunt or uncle of the person accepted as a foster child”³⁶⁶. Additionally, in Article 11 of the Adoption Law 2010, provisions are made to ensure the right to know one's origins: “Foster children have the right to know their origins. No one shall obstruct foster children from knowing their origins”. In this regard, it can be observed that this legal provision in the framework of Vietnamese Law aligns with the perspective of the CRC committee, as it safeguards the right to know one's parents. The CRC committee has emphasised that the family is the best environment for children and that states have an obligation to apply laws, programmes, and policies to strengthen families³⁶⁷.

In summary, the recognition of the right to know the origins of the person accepted as a foster child in Vietnamese law demonstrates the nation's commitment to ensuring the best interests of children.

4.2. THE RIGHT TO EDUCATION

The right to education is the right of each person to access and participate in the learning process, develop knowledge, and acquire skills. This is a crucial right, as it ensures that every individual can self-develop and make progress in their career and life. Moreover, it contributes to building a comprehensive and progressive society. According to *Yves Daudet* and *Kishore Sing*, “the right to education is an extremely valuable tool in eliminating poverty and addressing issues such as violence and conflict”³⁶⁸.

As the successors of society in the future, it can be argued that children are the primary beneficiaries of the right to education. However, in reality, there are still many cases where children do not have access to education due to the economic conditions of their parents, geographical distances, or language barriers. These factors have hindered opportunities for children to explore,

³⁶³ HUỖNH, Chapter 5: parental relationships in PHAN, Textbook on Marriage and Family Law 306.

³⁶⁴ There is a lot of literature and a lively debate in various related disciplines where the experts favour open adoption. E.g. NATHAN, Visitation after adoption 649; GROTEVANT - MCROY, Openness in adoption: 299.

³⁶⁵ Section 8, Article 3 of the Adoption Law 2010.

³⁶⁶ Section 9, Article 3 of the Adoption Law 2010.

³⁶⁷ CRC, Concluding observations: Kazakhstan.

³⁶⁸ DAUDET - SINGH, The right to education 9.

discover, and develop their potential. Therefore, the objective of this section is to explore the regulations in international law and Vietnamese law to determine legal frameworks and supportive policies ensuring the right to education for children. Additionally, it aims to investigate the practical effectiveness of measures that have been or are being implemented to protect and promote this right.

The right to education is one of the most widely accepted of all human rights provisions, having been a consistent feature of international human rights treaties since the establishment of the UN³⁶⁹.

4.2.1. The Right to Education in International Law

Recognising the paramount importance of the right to education for children, many international documents have acknowledged this fundamental right. These texts demonstrate a global commitment to ensuring that children have access to quality education, laying the foundation for comprehensive development, and empowering them. Although it is not a right that is exclusive to children, it is enjoyed mainly by them and is crucial to their development and, in many instances, their survival and safety. Although similar provisions were laid down in the CESCRC, the CRC, in articulating bespoke rights for those under the age of 18, provided a fresh platform that built on agreed-upon global aspirations for education with a specific focus on children.

The right to education of children is stipulated in Article 28 of the CRC, which outlines the following content: “1. States Parties recognize the right of the child to education and to achieve this right progressively and based on an equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all based on capacity by every appropriate means; (d) Make educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates. 2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention. 3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular to contribute to the elimination of ignorance and illiteracy throughout the world and facilitate access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries”.

Through the analysis of the aforementioned legislation, several key points can be identified, as follows: The concept of the right to education for children is not explicitly and concretely articulated. This observation is also echoed by *Mieke Verheyde*³⁷⁰ through the assertion that “similar to any other international human rights instrument, the CRC does not present a clear-cut definition of education”³⁷¹. UNESCO believes that “education is a human right for all throughout life and that

³⁶⁹ BEITER, The protection of the right to education 25.

³⁷⁰ VERHEYDE, A commentary on the United Nations Convention on the rights of the child 467.

³⁷¹ Ibid 469.

access must be matched by quality³⁷². Meanwhile, international legal instruments use the term “education” in a double sense: (a) education as the provision of basic skills, and (b) education as the development of the intellectual, spiritual, and emotional potential of the young person, or, in other words, the broader development of his or her personality³⁷³. Clearly, the CRC is no exception in stipulating that: “Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child³⁷⁴”.

In General Comment No. 1 on the aims of education, the CRC committee emphasised that “the notion of “basic skills” does not only include literacy and numeracy but also life skills such as the ability to make well-balanced decisions, to resolve conflicts in a non-violent manner, and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities that give children the tools needed to pursue their options in life³⁷⁵. *Yves Daudet* and *Kishore Singh*³⁷⁶ hold a similar perspective, contending that “central to the human condition is the knowledge that the search for democracy, the culture of peace, the protection of the environment, in short, the quest for human well-being, all incontestably involve providing individuals - all individuals - with an effective, suitable education, in as much as knowledge and skills are proper to human beings. Education is therefore, to be understood in a broad sense, as continuous, ongoing education taking place in a great variety of professional, social, and community fields and places”. Indeed, the understanding of educational terminology in this broader sense can be affirmed “by a combined reading of Articles 28(1) and 29(1) of the CRC, containing the extensive goals of education to be achieved throughout the curriculum³⁷⁷”.

In conclusion, although not explicitly defined, the analysis of the content of Article 28(1) of the convention allows us to infer that: “education should be understood as the process of developing the child’s personality, talents, mental and physical abilities; developing the child’s respect for human rights, fundamental freedoms, and the maintenance of peace; respect for his or her parents; national values of his or her country and those of other civilizations; developing the child’s ability to participate in a free society in the spirit of mutual tolerance; and developing the child’s respect for other civilizations, cultures, religions, sexes, and the natural environment³⁷⁸”. This perspective demonstrates that education is not merely the process of imparting knowledge and skills to children but also involves creating conditions for children to develop their character, self-esteem, and respect for others. It encourages the enhancement of their ability to confidently integrate into the community and fosters awareness of diversity and differences, promoting progressive and cultured behaviour.

While Article 28 of the Convention focuses on the issue of access to education, Article 29 addresses the aims of education³⁷⁹. According to *Mieke Verheyde*³⁸⁰, “In fact, the drafters of the CRC

³⁷² UNESCO, Education transforms lives.

³⁷³ DELBRUCK, The right to education 97.

³⁷⁴ Article 28 (1) (b) of the CRC.

³⁷⁵ CRC, General comment No. 1 9

³⁷⁶ DAUDET - SINGH, The right to education 12.

³⁷⁷ VERHEYDE, Article 28: the right to education 470.

³⁷⁸ Ibid.

³⁷⁹ LUNDY - O’LYNN, International human rights of children 260. See also: LUNDY - SCHIER, Handbook of children’s right 364.

³⁸⁰ VERHEYDE, Article 28: the right to education 470.

found one article insufficient to capture all aspects of children's education rights, resulting in two different articles". To speak in the manner of *John Tobin*: "The right to education, as guaranteed by the convention, can therefore only be understood by joint consideration of Article 28 and Article 29 CRC, which enjoy a symbiotic relationship"³⁸¹.

Following Article 29, paragraph 1 of the convention, education must aim to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment. This provision illustrates that the primary goal of education is to "cultivate the character, talents, and physical well-being of children". The author argues that this is a remarkably humane and ethical provision, as the drafters of the convention prioritise the development of character in children over the acquisition of knowledge. While the role of knowledge in personal development cannot be denied, human character stands as a paramount factor contributing to success in various facets of life, such as education, work, and social interaction. Specifically, children with confident and positive personalities tend to absorb information, interact, and collaborate with others more effectively. A balanced and harmonious character also aids children in surmounting difficulties and stressors in their academic pursuits. Moreover, one's character significantly influences how one engages with society and the surrounding environment. If children are nurtured and developed with a balanced character, they will possess the capacity to build strong relationships, resolve conflicts efficiently, and actively participate in social activities.

In general comment No. 1, the committee on the convention underscored that "education must not only be focused on literacy, numeracy, and science but also be aimed at ensuring that life skills are learned by every child, such as the ability to make well-balanced decisions and to resolve conflicts in a non-violent manner"³⁸².

The second objective of education is to cultivate an appreciation for human rights and fundamental freedoms, as well as reverence for the principles enshrined in the UN Charter. *Stefanie Schmahl*³⁸³ contends that "the inclusion of these values requires that, at the very least, the education offered does not contradict these principles. This is also noted in the Vienna Declaration and Programme of Action organized by the UN in 1993. According to it, "their real aim is to provide a fundamental understanding of human rights, democracy, and the principle of the rule of law by incorporating these principles into the school curriculum"³⁸⁴. Section b, Clause 1 of Article 29 of the CRC, as interpreted by *Verhellen* and *Lundy-Tobin*³⁸⁵, "is considered to be understood in conjunction

³⁸¹ TOBIN, The UN Convention on the rights of the child 341.

³⁸² CRC, General comment No.1 9.

³⁸³ SCHMAHL, United Nation Convention on the rights of the child 459.

³⁸⁴ SCHMAHL, United Nation Convention on the rights of the child 459.

³⁸⁵ TOBIN, The UN Convention on the rights of the child 229.

with Article 42 of the constitution. It mandates that states parties widely disseminate the provisions of the constitution to both adults and children³⁸⁶. Thus, through this objective, it can be observed that, from the perspective of the drafters of the CRC, education is not merely the transmission of knowledge and skills but also a process of shaping human personality and moral education. The requirement for member states to integrate human rights education into national education programmes is aimed at establishing a solid foundation for a society that values human rights.

Section 1, Article 29 of the CRC is regarded as “the first example of such an arrangement in a human rights charter without precedent”³⁸⁷. This objective necessitates that education be directed towards cultivating respect for parents, cultural identity, national values, and diverse cultural backgrounds. The CRC committee has summarised these aims as developing the child’s enhanced sense of identity and affiliation³⁸⁸. The preparation of children for a life of responsibility in a free society, guided by the principles of understanding, peace, tolerance, gender equality, and amity among all races, ethnic groups, nationalities, religions, and indigenous peoples, constitutes the fourth objective articulated in Article 1, section 29 of the CRC. This provision “contains an indirect prohibition of discrimination and is closely linked to Article 2, paragraph 1, and Article 30 CRC”³⁸⁹.

According to the assessment provided by *Lundy* and *Tobin*³⁹⁰ in 2019, “the main body of the provision asserts that education should be directed to responsible life in a free society, and the second part attempts to encapsulate fundamental elements of this spirit”. This objective demonstrates that the CRC emphasises the educational goal of preventing selfishness and racial discrimination, as the proliferation of these negative attitudes and mindsets can significantly impede societal progress. Simultaneously, it underscores the importance of instilling a sense of responsibility, peace, and respect for cultural diversity through legislation. This will engender individuals who are accountable to themselves and society, actively engaging in addressing societal issues, and contributing their intellect and talents to the development of their respective nations and society at large. Furthermore, an education that promotes cultural diversity will afford individuals the opportunity to gain a deeper understanding of various values, perspectives, and cultural backgrounds. This fosters empathy and harmony, thereby enhancing connectivity among communities, culminating in a collective cultural richness and diversity that coexist in peace and cooperation.

The ultimate objective of education, as stipulated in Point e of Article 1, Section 29 of the CRC, is to foster respect for the natural environment. According to *Stefanie Schmahl*’s observation in 2021, “this constitutes a novel approach”³⁹¹. *Hart*³⁹² argues that this marks the first instance where the environment is mentioned in a human rights charter of the UN. It reflects an increasing awareness of the global and local challenges that the natural environment confronts and underscores the significance of children learning to respect nature and natural resources.

³⁸⁶ VERHELLEN, Children’s rights and education 35. See also: TOBIN, The UN Convention on the rights of the child 238.

³⁸⁷ SCHMAHL, United Nation Convention on the rights of the child 459

³⁸⁸ CRC, General comment No. 1 2.

³⁸⁹ SCHMAH, United Nation Convention on the rights of the child 460.

³⁹⁰ LUNDY - TOBIN, Article 29 in TOBIN, The UN Convention on the rights of the child 1116.

³⁹¹ SCHMAHL, United Nation Convention on the rights of the child 407.

³⁹² HART, Children’s participation 113.

In conclusion, it can be observed that the objectives outlined in Article 29 aim towards a comprehensive and sustainable education for children worldwide. Article 28 also defines the obligations of the member states to ensure the right to education for children. “Imposing responsibilities on the government in a provision regarding children's rights is not difficult to understand”³⁹³. This is because “the human rights partners are the obligations of the government”³⁹⁴. This means that to ensure the right to education for children is realised in life, the government must take responsibility for fulfilling corresponding obligations. Indeed, *Courtis* and *Tobin* also demonstrate their consensus when asserting: “Article 28 paragraph 1 of the CRC characterises education as an individual right of every child and not merely an interest that remains dependent upon the discretion of the state authorities or other actors. On the contrary, the child’s right to education imposes a corresponding legal duty on States Parties to secure the realisation of those rights”³⁹⁵.

The foremost obligation delineated is the responsibility to guarantee tuition-free education. For the primary level, Article 28(1)(a) stipulates that “make primary education compulsory and available free to all”. This provision asserts that free education at the primary level applies to all children, not just those from low-income families or children with special circumstances. However, it should be noted that “states parties to the CRC are required to undertake this obligation progressively, not immediately”³⁹⁶. This is understood through the term “progressively” used in Article 28(1) of the convention. For the secondary level, Article 28(1)(b) prescribes that member states should take “appropriate measures such as the introduction of free education and offering financial assistance in case of need”. This means that the convention only mentions the introduction of free secondary education as an example of how education can be accessible to all children. In other words, member states can implement other appropriate measures to ensure that secondary education is accessible to all children in their country. For instance, they could establish various educational support programmes such as providing free textbooks or study materials, offering financial assistance for students from disadvantaged families, or building additional educational infrastructure in remote rural areas. At the level of higher education, states parties have even more limited obligations regarding the cost-free aspect than at the level of secondary education. Article 28(1) does not oblige governments to organise free higher education or to take some steps in this direction³⁹⁷.

States parties are also required to ensure that education is “available” and “accessible”³⁹⁸. Based on the content of Article 28(1), it can be observed that only in the context of secondary education does the convention explicitly mention both terms. For primary education, the focus is solely on the “availability” aspect, while for higher education, only the “accessibility” aspect is mentioned. “Still, it is acceptable that both the availability aspect and the accessibility aspect are relevant to all levels of education since both aspects are interlinked. Making education accessible implies in the first place that education should be made available; making education available would have no sense if it were not

³⁹³ TOMAŠEVSKI, Human rights obligations 22.

³⁹⁴ *Ibid.*

³⁹⁵ COURTIS - TOBIN, Article 28, in: Tobin, The UN Convention on the rights of the child 1062

³⁹⁶ VERHEYDE, Article 28: the right to education 199.

³⁹⁷ *Ibid.* 200.

³⁹⁸ To gain a deeper understanding of these two terms, see: VERHEYDE, Article 28: the right to education 201.

accessible”³⁹⁹. Indeed, more than a decade after the convention came into force, within the framework of the Dakar, the drafters still acknowledged that the objective of the right to education is “to ensure universal access to that right for all children - regardless of their sex, their ethnic or cultural group, or any disability or particular situation - and for youth and adults, all of whom should have equitable access to appropriate programmes so designed as to enable them to acquire knowledge and the skills necessary for day-to-day life”⁴⁰⁰. However, what constitutes “available” and “accessible” education has not been explicitly defined in the convention. Nevertheless, by assessing the realisation of children's right to education in certain countries, the CRC committee has recommended “member states undertake measures to enhance children's access to schools through conditions such as providing transportation to schools or offering mobile educational facilities”⁴⁰¹.

According to *Mieke Verheyde*⁴⁰², to ensure the realisation of accessible education, member states must “take financial and technical actions to ensure that an education system of good quality is established and maintained”. Not only does the CRC set forth high-quality requirements for education, but “many texts emphasize this as a clear necessity, albeit not always easily implementable”⁴⁰³. This is because such a requirement inevitably demands resources and the selection of capable teaching personnel. They must also have opportunities to update their knowledge. Furthermore, the pursuit of quality education necessitates the development of tailored curricula, particularly for certain groups.

Furthermore, *Mieke Verheyde* also proposes a model for fulfilling the obligation of “accessible education”⁴⁰⁴. Specifically, this model comprises: “Firstly, the government can establish a network of public schools. Secondly, the government can fund institutions run by non-state actors. And thirdly, the government can have a mixture of both public schools and (funded) private schools”⁴⁰⁵. These models are also referenced in the research conducted by *Tomasevski*⁴⁰⁶. Thus, while the state plays a pivotal role in ensuring the right to access education for children, it is “not the sole actor”, and instead, “education should now be organised into partnerships”⁴⁰⁷.

Regarding the term “accessible education”, the CRC Committee does not provide any further explanation. However, prior to its inclusion in the ICESCR, the aspect of accessibility of the right to education in this covenant was elaborated by the Committee of the CESC, encompassing the following criteria: Firstly, educational institutions and programmes should be accessible to all children without discrimination on any of the prohibited grounds. Special attention must be paid to the most vulnerable groups in society⁴⁰⁸. For example, children with disabilities, girls, children in rural areas, and street children. Similarly, *Yves Daudet* and *Kishore Singh*⁴⁰⁹ also assert: “Making education free is not, however, the only way of making it accessible; non-discrimination is no less essential since it enables

³⁹⁹ VERHEYDE, Article 28: the right to education 205.

⁴⁰⁰ See the expanded commentary on: World education forum drafting committee, The Dakar framework.

⁴⁰¹ CRC, Concluding observations: Sudan, Syria.

⁴⁰² VERHEYDE, Article 28: the right to education 207.

⁴⁰³ DAUDET - SINGH, The right to education 14.

⁴⁰⁴ VERHEYDE, Article 28: the right to education 210.

⁴⁰⁵ Ibid.

⁴⁰⁶ TOMAŠEVSKI, Human rights obligations 45.

⁴⁰⁷ DAUDET - SINGH, The right to education 22.

⁴⁰⁸ CESC, General comment No. 34 6.

⁴⁰⁹ DAUDET - SINGH, The right to education 23.

those from disadvantaged or vulnerable categories to benefit equally from the right to education”. Secondly, the concept refers to the physical accessibility of education: education has to be provided within a reasonable and safe distance. Either a child should be able to attend education at some reasonably convenient geographic location (e.g., a neighbouring school) or he or she should have access to education via modern technology (e.g., a distance learning programme)⁴¹⁰. Thirdly, there is economic accessibility, which means education must be affordable to all individuals based on their financial capacities⁴¹¹. *Yves Daudet* and *Kishore Singh* argue that “the simplest way to achieve accessibility for all is by providing free education”⁴¹². However, these authors also contend that “this is a sensitive issue and one that the international community has not addressed uniformly or in detail” due to the costs associated with providing universal education, particularly in certain countries.

According to *Tomasevski*, “the obligation of ensuring access to education by member states should encompass measures such as: eliminating legal and administrative barriers; removing financial obstacles; identifying and addressing discriminatory denials of access; and eliminating barriers to compulsory schooling (e.g., school fees, distance, schedule)”⁴¹³. In this context, the measure “eliminating legal and administrative barriers” involves member states ensuring that no legal provisions or administrative procedures are hindering the education of children. Furthermore, this can be achieved by simplifying enrollment procedures and admissions. The measure “identifying and eliminating instances of discriminatory denial of access” entails member states investigating and resolving cases where children are denied access to education due to discrimination. This can also be accomplished by providing financial support to minority children, such as scholarships, and by supplying educational materials and tools. The measure “removing barriers to compulsory attendance” requires member states to ensure that all students can conveniently participate in the learning process without facing financial, geographical, or scheduling difficulties.

Despite the additional inclusion of a legal and administrative provision, it can be observed that the remaining three measures in *Tomasevski*'s study bear considerable resemblance to the explanations provided by the CESCR committee regarding access to education. However, the crucial issue here is whether these criteria can be considered the formal set of criteria for evaluating the implementation of member states' commitments related to the right to education for children as recorded in the CRC. From the author's perspective, the criteria of the CESCR committee can be entirely applied to assess the implementation of the right to education in member states. This is because there is no need to wait until the CRC explicitly asserts that children have the right to education for children worldwide to enjoy that right. As human beings, children were officially recognised under international law to have the right to education as early as 1966 in the CESCR.

According to *Stefanie Schmahl*⁴¹⁴, “the obligation to promote regular attendance at school and reduce the dropout rate represents a novel development within the global human rights protection framework”⁴¹⁵. This duty is innovative since it is omitted in the main international and regional human

⁴¹⁰ CESCR, General comment No. 13 9.

⁴¹¹ *Ibid.*

⁴¹² DAUDET - SINGH, *The right to education* 33.

⁴¹³ TOMAŠEVSKI, *Human rights obligations* 36

⁴¹⁴ SCHMAHL, *United Nation Convention on the rights of the child* 407.

⁴¹⁵ SCHMAHL, *United Nation Convention on the rights of the child* 407.

rights instruments. It specifies that it is not enough to have children merely registered at school; states parties should also make sure that children de facto receive education by getting them and keeping them in school.

The “measures” the states parties should take to encourage regular attendance at schools and reduce drop-out rates should be of a positive nature. The drafters of the CRC stated that “they did not want to approach the problem of irregular school attendance in a repressive way”⁴¹⁶. Because fining and imprisoning parents as strategies to enforce the school attendance of their children have been shown to have adverse effects on families, particularly on those that may be economically deprived⁴¹⁷. As regards the kind of measures the states should take, the CRC committee makes various recommendations according to the underlying cause of irregular school attendance and early school drop-out. When poverty is the underlying cause, the committee encourages the states, inter alia, to take measures such as initiating an analysis of child poverty as well as providing for meals and health care at schools⁴¹⁸. Girls drop out easier than boys for various reasons, including early marriage, teenage pregnancy, tradition, and violence and sexual harassment in the school setting⁴¹⁹.

To prevent girls from dropping out of school due to pregnancy, the CRC recommends incorporating gender education into the school curriculum. This ensures that pregnant adolescents have the opportunity to complete their education without exclusion, and that special education programmes are developed for them. The high dropout rates among children from minority ethnic groups can be addressed by expanding multilingual education and adjusting programmes, such as mobile schools for the children of migrant workers⁴²⁰. The issue of early school dropout may also result from inappropriate or inflexible curricula, teacher resistance, or strict disciplinary systems. To address this problem, the CRC encourages the active participation of students, parents, and communities (especially minority groups) in the educational environment. Another effective approach to enhancing programme relevance and consequently tackling drop-out rates is to provide better vocational education⁴²¹. Thus, depending on the situation in each member state, the measures applied may vary.

States parties must also ensure the participation of children in consultations on issues related to their education, both at the individual and policy levels. Specifically, Article 28(1)(e) stipulates that member states must implement measures to encourage regular participation in schools. *Verheyde* argues that “this becomes apparent from the reading together of Article 28 and the CRC’s participation provisions”⁴²². For instance, examples can be found in Articles 12, 13, 14, and 15 of the convention. Indeed, ensuring children's participation in education-related matters is one of the obligations that member states must fulfil. According to the guidance of the CRC committee, “Children should be systematically involved in education matters, such as sex education programmes at school and

⁴¹⁶ CRC, Preliminary activities 467 cited in DETRICK, *The United Nations convention on the rights of the child* 393.

⁴¹⁷ DONOGHUE, *Truancy and the prosecution of parents* 236. See also: LUNDY, *Children’s rights* 399.

⁴¹⁸ The CRC committee, *Concluding observations: Grenada* 408.

⁴¹⁹ In 2004, still millions more girls than boys are dropping out of primary school each year. 70 countries have girls’ attendance and enrolment rates of less than 85 percent. See: BELLAMY, *The state of the world’s children* 156.

⁴²⁰ VERHEYDE, *Article 28: the right to education* 212.

⁴²¹ CESCR, *General comment No. 13* 11.

⁴²² VERHEYDE, *Article 28: the right to education* 215.

exclusion from school. Neither the parents nor the school management may decide without hearing the child's opinion"⁴²³. Thus, with this provision of the convention, children are not simply the passive receivers of educational inputs but must be viewed as "political actors in their own right"⁴²⁴.

Concerning school discipline, Article 28(2) explicitly stipulates that it must be administered in a manner that aligns with the child's human dignity and conforms to the international rights of the child. The article has the additional value of not only prohibiting disciplinary measures that constitute torture or are cruel, inhumane, or degrading but also requiring that these measures be administered in accordance with the child's dignity and human rights, including participation rights.

In the first place, this sub-article aims at the protection of children against an inhumane or degrading disciplinary system at school. The words "in conformity with the present convention" refer in this sense mainly to Articles 19 and 37(a) of the CRC"⁴²⁵. Article 19 protects children from all forms of physical and mental maltreatment perpetrated by parents, legal guardians, or any other person who has the care of the child. The CRC committee confirmed "the applicability of this article to schools and other educational institutions"⁴²⁶. It follows that the phrase "any other person who has the care of the child" includes teachers and other personnel in schools. Article 37(a) guarantees the prohibition of torture or other cruel, inhumane, or degrading treatment or punishment.

The concluding observations of the CRC committee reveal that "both excessive and moderate forms of corporal punishment are unacceptable and incompatible with Articles 28(2), 19, 37(a), and even 29 of the CRC"⁴²⁷. Not only corporal punishment but also any other treatment that is cruel, inhumane or degrading, such as bullying, verbal aggression⁴²⁸, or public humiliation⁴²⁹ constitutes an infringement of the rights enshrined in the CRC. States must adopt measures to prohibit such actions de jure and de facto. The committee therefore encouraged states to take legal measures to prohibit physical punishment⁴³⁰. States are also encouraged to take repressive measures, such as punishing the perpetrator and reporting incidents of corporal punishment through the establishment of child-sensitive structures for complaints. Also, preventative measures are encouraged, such as the setting up of awareness-raising campaigns regarding the negative consequences of corporal punishment, as well as the promotion of alternative measures⁴³¹.

Disciplinary measures at school should not only be consistent with the prohibition of torture and inhumane and degrading treatment; they also must conform with the other human rights of children and their human dignity⁴³². This requirement is innovative in international law. In this sense, schools may not impose measures that would impede contact with the parents, interfere with the

⁴²³ CRC, General comment No. 1 4.

⁴²⁴ CRAIG, Children's participation through community development 40.

⁴²⁵ DETRICK, A commentary on the United Nations convention on the rights of the child 501.

⁴²⁶ CRC committee, Concluding observations: Bolivia.

⁴²⁷ CRC committee, General comment No. 1 8.

⁴²⁸ CRC committee, General discussion day on violence against children 679, 696, and 706. See also: CRC committee, Concluding observations: Korea, Zimbabwe, Tunisia.

⁴²⁹ CESCR, General comment No. 34 17.

⁴³⁰ CRC committee, Concluding observations: the United Kingdom of Great Britain and Northern Ireland.

⁴³¹ CRC committee, Concluding observations: Belize, Thailand.

⁴³² VAN BUEREN, The international law on the rights of the child 150.

child's participation in his or her culture or use of his or her language, disproportionately hinder the exercise of participation rights and their right to rest and leisure, or breach the child's right to food⁴³³. Moreover, disciplinary measures should conform with the general principles, such as the best interest principle and the non-discrimination principle⁴³⁴.

The child should be able to express its views when a disciplinary measure, such as the decision to expel the child, is under consideration⁴³⁵. Furthermore, children should be heard in all judicial and administrative proceedings regarding their education, including disciplinary proceedings⁴³⁶. This means, in the first place, that schools may not impose measures that would hinder the exercise of participation rights⁴³⁷. In the second place, some positive measures will be needed to fulfil genuine participation. The CRC committee expressly asks states to report on the adopted legislation providing the opportunity for the child to participate in administrative proceedings relating to disciplinary measures, such as school exclusion⁴³⁸, and encourages states to do so in its concluding observations⁴³⁹. Moreover, the committee recommends states launch awareness-raising campaigns for the introduction of disciplinary measures that comply with the human rights of children⁴⁴⁰.

As becomes apparent from the above, Article 28(2) imposes both negative and positive obligations on the states parties. Firstly, states have some obligations of a negative and thus immediate nature. In this sense, states have, for instance, the immediate obligation not to infringe upon a child's human rights and dignity while imposing disciplinary measures in state-run schools. Secondly, states have positive obligations under this subparagraph. They should, inter alia, protect children against an inhumane disciplinary system in private schools and should take positive measures to ensure that, for instance, participation rights are respected in disciplinary systems in both public and private schools.

As analysed previously concerning the educational objectives stipulated in Article 29 of the CRC, education must uphold human rights, including the right to be respected and to have the opinions of children acknowledged. Therefore, to achieve an effective and comprehensive educational system as outlined in the specified goals, member states must initiate measures to ensure the participation of children in the educational process.

According to *Arend - Kohn* "teachers and schools should not subscribe to the critical pedagogy political role of holding the keys to citizenship, instead seeking to provide a safe, pluralistic space that provides shared experiences leading to self-discovery and the development of relationships"⁴⁴¹. This implies that, to enhance children's participation in the classroom environment, teachers should not convey predetermined ways of thinking and acting to children. Instead, they should encourage children to express their thoughts and discuss various perspectives. Gradually, this fosters confidence, understanding, and respect for diverse viewpoints among children. It also enables children to engage

⁴³³ CESCR, General comment No. 13 41.

⁴³⁴ CRC committee, General guidelines 109.

⁴³⁵ Article 12(1) of the CRC.

⁴³⁶ Article 12(2) of the CRC.

⁴³⁷ NEWELL, Ending corporal punishment of children 119.

⁴³⁸ CRC committee, General guidelines 109.

⁴³⁹ CRC committee, Concluding observations: Suriname.

⁴⁴⁰ CRC committee, Concluding observations: the United Kingdom of Great-Britain and Northern Ireland (9

⁴⁴¹ ARENDT - KOHN, Between past and future 122.

in expressing their opinions on larger issues such as curriculum, learning methods, or educational content at the school or inter-school level.

Article 28 of the CRC has, however, a weak point: it does not always offer the strongest international protection in education. Specifically, Article 28(3) stipulates that “Member States shall promote international cooperation in matters relating to education, in particular to contribute to the elimination of ignorance and illiteracy throughout the world and facilitate access to scientific knowledge, technical expertise, and modern teaching methods. In this regard, the needs of developing countries should be given special consideration”. Thus, in addition to the obligations that the CRC requires member states to implement domestically through policy formulation and the enactment of legal provisions to ensure the right to education for children, the convention also calls on member states, especially developing countries, to enhance international cooperation in education. The goal of this action is primarily to eliminate the conditions of ignorance and illiteracy for children worldwide and subsequently facilitate access to scientific knowledge, new technologies, and advanced teaching methods for children.

4.2.2. The Right to Education in Vietnamese Law

Based on the analysis of the right to education for children as stipulated in the CRC, this section will proceed to scrutinise the relevant provisions within the legal framework of Vietnam. This examination aims to ascertain the degree of compatibility and adaptation of these provisions with international standards regarding the right to education for children. Simultaneously, the exploration and evaluation of achievements and limitations in implementing this mechanism will assist in identifying ways to enhance and optimise efforts, ensuring that every child has the opportunity to access quality and sustainable education.

In Vietnam, the right to education for children is enshrined in Article 37, Clause 1 of the 2013 Constitution, which states: “Children are protected, cared for, and educated by the state, families, and society; they participate in matters concerning children”. With this concise statement, the Vietnamese state affirms that children are protected by fundamental rights recognised by international law, including the right to education. This signifies Vietnam's commitment to fulfilling its obligations to ensure children's access to and enjoyment of quality and comprehensive education. In addition, this right is also recognised in Article 16 of the Children Act 2016, which states: “1. Children have the right to education and learning for comprehensive development and to fully realize their potential. 2. Children have equal opportunities in learning and education; they are nurtured in talents, aptitudes, creativity, and innovation”.

With respect to the educational objectives, Article 2 of the Education Law 2019 stipulates: “The educational objectives aim to comprehensively develop the Vietnamese individual with ethical, intellectual, cultural, physical, aesthetic, and professional dimensions; possessing qualities, capacities, and civic consciousness; harbouring patriotism, national spirit, and loyalty to the ideals of national independence and socialism; leveraging the potential and creative abilities of each individual; enhancing intellectual capacity; developing human resources; nurturing talents; and meeting the

demands of the nation-building endeavour, safeguarding the fatherland, and participating in international integration”.

In the context of Vietnamese law, there is no explicit provision defining the concept of education. However, considering the regulations regarding educational objectives, it is evident that Vietnam aspires, through education, to foster the comprehensive development of children encompassing ethical, intellectual, cultural, physical, aesthetic, and professional dimensions. Clearly, this is a profoundly humane and progressive objective, aligning with the educational goals outlined in Articles 28 and 29 of the CRC. Nevertheless, it cannot be denied that this is not an easily achievable goal within a short timeframe. This objective demands not only continuous efforts from the Vietnamese government to ensure conditions related to infrastructure, human resources, and educational content but also enthusiastic support from families and communities. Furthermore, the attainment of such a goal necessitates the steadfast perseverance of the individuals themselves in the process of training and learning.

Concerning the obligations of the state to ensure the right to education for children, Vietnam has been and is currently implementing the following measures: The first obligation is to ensure free education. Although Vietnam ratified the CRC in 1990, the commitment to ensure free education for children was formally acknowledged in the Education Law 2019. More specifically, it was delineated in Article 99, stating that “elementary school students in public educational institutions are not required to pay tuition fees”. Thus, in comparison to the provisions outlined in Article 28 of the CRC, the legal framework in Vietnam has effectively fulfilled its commitment to the obligation of providing free education. However, the critical question arises as to whether this commitment has truly been ensured, given that nearly 30 years have passed since Vietnam became a signatory to the convention. The author contends that the implementation of the obligation for free education does not necessarily require immediate action but rather should occur “in a progressive manner”, as previously mentioned. Therefore, considering the specific circumstances in Vietnam, despite a considerable period of effort, the Vietnamese government ultimately succeeded in fulfilling this obligation in 2019.

The next obligation is to ensure that education is “available” and “accessible”. Concerning the aspect of “availability”, Clause 2 of Article 16 of the Education Law 2019 stipulates that “the state plays a leading role in the development of the education sector. It diversifies forms of educational institutions and methods; encourages, mobilises, and creates conditions for organisations and individuals to participate in the development of the education sector; and promotes the development of non-public and private educational institutions to meet societal demands for high-quality education”. This regulation illustrates that Vietnam encourages and mobilises the participation of all individuals and organisations interested in society in the field of education. This approach serves to expand educational facilities in Vietnam, thereby creating favourable conditions for the accessibility and enjoyment of the right to education for children.

Regarding the aspect of “accessibility”, as previously mentioned, the CRC committee provides no further explanation. However, relevant studies have proposed an interpretation based on the explanations provided by the CESCR committee. According to this perspective, there are three aspects to consider in evaluating the obligations of countries regarding accessible education. Firstly, education must be accessible to all children without discrimination. In this regard, Vietnam has a provision

known as “inclusive education” in Article 15 of the Education Law 2019. According to this provision, “inclusive education is an educational method that responds to the diverse needs and capacities of learners, ensures equal and quality learning rights suitable for the needs, characteristics, and abilities of learners, respects the diversity and differences of learners and does not discriminate”⁴⁴². This provision indicates that, although not employing the term “accessible education” as used in the convention, Vietnam's legal framework, with its regulation on “inclusive education”, still aims to create conditions for everyone to maximise their potential through education. In other words, education must be accessible to all members of society without any barriers related to gender, religion, ethnicity, family status, or their learning abilities.

Furthermore, to ensure the effective implementation of the provision on “inclusive education” in practice, Clause 2 of Article 15 of the Education Law 2019 contains specific regulations pertaining to the responsibilities of the state as follows: “The State has policies to support the implementation of inclusive education for learners who are children in special circumstances as regulated by the Children Act 2016, learners with disabilities as regulated by the Persons With Disabilities Law 2010, and other relevant legal provisions”. This provision establishes the state's support responsibility for specific subjects, such as children in special circumstances or children with disabilities. According to the Children Act 2016, children in special circumstances are defined as “children who lack conditions to exercise their rights to life, protection, care, nurture, and education, requiring special support and intervention from the state, family, and society to ensure safety, family integration, and community integration”⁴⁴³. Children with disabilities are understood as “children with one or more impaired body parts or reduced functions manifested in difficulties in labour, activities, and learning”⁴⁴⁴.

Education for people with disabilities has been a priority in Vietnam since the 1990s. Specifically, the Vietnamese government has developed policies to ensure that children with disabilities have the right to access education. Currently, this issue is addressed in the national plan of the education and training sector, “Education for all by 2018 - 2020”, to improve access and enhance the quality of education. Ensuring access to education, particularly quality and equitable education, is emphasised for people with disabilities. By the year 2020, at least 70% of people with disabilities of preschool age and in general will have the right to access inclusive, quality, and equitable education. Additionally, at least 50% of management personnel, teachers, and education support staff for people with disabilities should be trained and nurtured, with at least 40% of education development support centres located in provinces and centrally governed cities. The plan also includes ensuring that 100% of provinces, cities, and common educational institutions implement legal documents related to access to education”⁴⁴⁵.

With policies related to education for people with disabilities, it can be affirmed that “Vietnam has fulfilled its commitment to accessible education through robust legal foundations at various levels”⁴⁴⁶. In addition to the significance of reaching diverse target groups, the concept of accessible

⁴⁴² Article 1, Section 15 of the Education Law 2019.

⁴⁴³ Article 10, Section 4 of the Children Act 2016.

⁴⁴⁴ Section 1 Article 2 of the Person With Disabilities Law No. 51/2010.

⁴⁴⁵ Ministry of Education and Training of Vietnam, Many difficulties in educating children with disabilities.

⁴⁴⁶ PHAM - AZAR, A Comparative study of the inclusive education policy 542.

education can also be understood as accessibility in various forms. This allows learners to have multiple options for exercising their right to education. Distance education is a form mentioned in the explanation of the CESCR committee regarding access to education⁴⁴⁷. This is also a form of education that the legal framework in Vietnam has acknowledged. Specifically, Article 43 of the Education Law 2019 recognises that distance learning is one of the forms for implementing regular education programmes⁴⁴⁸.

The objective of regular education in Vietnam is to “eradicate illiteracy for individuals aged 15 to 60”⁴⁴⁹ and “provide training, development, and enhancement of work capabilities; update and supplement knowledge and skills necessary for life for everyone; create opportunities for those with the need for further education to advance their educational qualifications”⁴⁵⁰. Thus, with the aspiration to broaden the scope of educational access to remote regions across the entire territory of Vietnam, the legal framework in Vietnam has stipulated the form of distance education. Despite not being a highly developed country in terms of information technology and communication, the inclusion of this provision in the education law indicates that Vietnam has made efforts to fulfil its commitments under international law regarding the obligation of “accessible education”.

“Accessible education” can also pose additional obligations for Vietnam related to implementing fee waivers, providing economic support, or reviewing legal provisions to realise the “economic access” aspect of “accessible education”. Although there are no official explanations from the CRC committee, the Vietnamese government has endeavoured to acknowledge in its legal framework all possible measures to ensure that education is accessible to every child. Therefore, alongside the regulation on fee exemptions for children in public primary education, Vietnam also has provisions to support tuition fees for children studying in private educational institutions at the primary level⁴⁵¹. In addition, although early childhood education is not a compulsory form of education according to international and Vietnamese legal regulations, to create conditions for comprehensive development in physical, emotional, intellectual, and aesthetic aspects, forming the first elements of personality, and preparing children for entry into first grade⁴⁵², the education law of 2019 also has provisions related to fee exemptions as follows: “Children under 5 years old in difficult villages, especially disadvantaged communes, areas with ethnic minority populations, remote areas, coastal areas, and islands are exempt from tuition fees for preschool education”⁴⁵³.

Additionally, the education law also stipulates that “children under 5 years old who do not fall under the subjects specified in Clause 4 of this article and secondary school students are exempt from tuition fees according to the roadmap prescribed by the government”⁴⁵⁴. Thus, with this provision, in the future, preschool children in Vietnam will be exempt from tuition fees regardless of their economic circumstances. Clause 2 of Article 85 of the Education Law 2019 further stipulates that:

⁴⁴⁷ CESCR, General comment No. 13 6.

⁴⁴⁸ Point b, Article 2, Section 43 of the Education Law 2019.

⁴⁴⁹ Article 1, Section 42 of the Education Law 2019 and Article 17 of Decree No. 20/2014/NĐ-CP.

⁴⁵⁰ Clause 2 of Article 42 of Decree No. 20/2014/NĐ-CP.

⁴⁵¹ Article 3, Section 99 of the Education Law 2019.

⁴⁵² Regulations on the roles and objectives of preschool education in Article 2, Section 23 of the Education Law 2019.

⁴⁵³ Article 3 of the Education Law 2019.

⁴⁵⁴ Article 74 of the Children Act 2016.

“The state has policies of subsidies and exemption or reduction of tuition fees for learners who are beneficiaries of social welfare policies, ethnic minorities in economically and socially extremely difficult areas, orphans, homeless children, persons with disabilities, and individuals belonging to poor households and near-poor households”.

The third obligation is to ensure that children participate in consultations on matters related to their education, both at the individual level and in policy decisions. Accordingly, Clause 10 of Article 83 of the Education Law 2019 stipulates that learners have the right to “be represented and participate in the school council as regulated”. Besides, according to Point C, Clause 1, Article 74 of the Children Act 2016, children are allowed to participate in “decisions and activities of the school” related to them. Additionally, the forms of children's participation in school are specified, including: “(a) forums, conferences, seminars, roundtable discussions, competitions, events; (b) expressing opinions desires of children through representative organisations; activities of the Ho Chi Minh Young Pioneer Organisation, the Ho Chi Minh Communist Youth Union; social organisations, professional organisations working for children; (c) activities of clubs, teams, and groups of children established according to legal regulations; (d) Consultations, surveys, obtaining the opinions of children; (e) expressing opinions, and desires directly or through public media, social media, and other forms of information”⁴⁵⁵. With the acknowledgement of various forms of expressing children's opinions on issues related to them within educational institutions, Vietnamese legislators have demonstrated concern and respect for the general participation rights of children, particularly within schools. This, once again, underscores Vietnam's earnest efforts to fulfil its commitments to the international community in respecting and safeguarding the rights of children, primarily through legislative activities.

From the perspective of education quality, acknowledging children's participation also contributes to building a dynamic and positive educational environment, harnessing the proactive and creative nature of students. Creating conditions for students to develop involves not only knowledge but also skills. Moreover, to ensure the participation of children in schools and other educational institutions, Article 76 of the Children Act 2016 also stipulates the responsibilities of schools and other educational institutions as follows: “1. Organise and create conditions for children to participate in activities of the *Ho Chi Minh* Young Pioneer Organisation, the *Ho Chi Minh* Communist Youth Union, clubs, teams, and groups of children in schools and other educational institutions; extracurricular activities, social activities; 2. Provide information on policies, laws, and regulations related to students; publicly disclose information about study and training plans, nurturing regimes, and contributions as prescribed; 3. Create conditions for children to make recommendations, express opinions, and express their wishes regarding the quality of teaching and learning; the rights and legitimate interests of children in the educational environment and issues of interest to children; 4. Receive opinions, suggestions, and wishes of children, address them within the scope of delegated responsibilities, or transfer them to competent agencies and organizations for review, resolution, and notification of the results to the children”.

The provision above addresses the responsibility of schools in creating conditions for children to participate in activities within the organisations “*Ho Chi Minh* Young Pioneer Organisation” and

⁴⁵⁵ Article 3, Section 99 of the Education Law 2019.

“*Ho Chi Minh Communist Youth Union*”. These two organisations represent the opinions and wishes of children within the school context. Regarding the operational mechanisms of these representative organisations, Article 77 of the Children Act 2016 specifically stipulates that they must organise the collection of opinions and suggestions from children on issues related to them in school. Subsequently, they should compile and transfer the opinions and suggestions of children to the relevant authorities. They are also required to regularly monitor the resolution process and provide feedback to children on the outcomes of addressing their opinions and suggestions.

On the part of educational institutions, in addition to creating opportunities for children to participate in teams, groups, and clubs, they must also provide and publicly disclose information about the study and training plans of students. This helps children and parents obtain clear and official information about the rights and obligations of children during their learning process at school. Moreover, educational institutions need to develop various methods for students to express their opinions. For example, these methods could include interactive sessions between teachers and school representatives with students in the classroom or the establishment of user-friendly websites that are approachable and easy for children to use, accompanied by guidance sessions on how to use them.

Finally, and perhaps most importantly, is the responsibility to provide feedback and address the opinions of children. If implemented effectively, this process can yield very positive results. This is because, in such a scenario, children will understand that their opinions are truly being noticed and listened to, thereby instilling trust in the learning environment. Consequently, it encourages children to express confidence and a sense of responsibility.

Article 28(2) of the CRC asserts the principle that disciplinary measures in schools must be carried out in a manner compatible with the dignity of children and consistent with the international rights of children. Through this regulation, it can be inferred that disciplinary measures in schools are not entirely prohibited but must be carried out in a manner consistent with the dignity and human rights of children. Because the tasks of child-rearing are difficult enough for a parent or teacher when the child is completely cooperative, when a child refuses to obey or is “stubborn”, the person in authority is faced with the problem of overcoming this resistance⁴⁵⁶. However, the application of such disciplinary measures must be compatible with the human dignity and rights of children recognised by international law. This also constitutes the obligation of member states during the process of implementing the right to education for children. It is also a criterion to determine the level of respect for human rights in that country. “One way to measure a society's respect for human dignity is to examine how those who have disobeyed its rules and norms are punished”⁴⁵⁷.

In Vietnam, the forms of discipline for primary school students are regulated by the primary school regulations issued with Circular 28/2020/TT-BGDĐT. According to Article 3, Clause 38 stipulates that “students with deficiencies in their learning process, discipline, and participation in emulation movements may, depending on the severity of the violation, implement disciplinary measures such as reminders, direct support to help students progress, and notify the student's parents to coordinate assistance in overcoming shortcomings. Teachers are not allowed to criticise students in front of the whole class, the entire school, or during general meetings with the students' parents”.

⁴⁵⁶ COHEN, Freedom from corporal punishment 99.

⁴⁵⁷ Ibid.

Instead of focusing on strong punitive measures or punishments related to physical aspects, the above regulation indicates that Vietnamese legislators have emphasised the human rights of children in the application of disciplinary measures for children. This reflects a respect for the dignity and human rights of children, contributing to the achievement of the goal of ensuring human rights in education as set out in Article 29 of the CRC.

Disciplinary measures for primary school students⁴⁵⁸ recognised by Vietnamese law include, first and foremost, “advising and providing direct support to help students progress”. Although considered disciplinary actions, these measures are gentle in nature and aim to improve the behaviour, attitude, and academic spirit of primary school students. Advising helps children recognise their mistakes and provides them with the opportunity to rectify them in the future. This helps children reflect on their actions and cultivates a sense of responsibility for their behaviour. Moreover, the measure of direct support and assistance from teachers is a humane approach, emphasising education rather than punishment. Although these measures require time, effort, and patience from teachers, they are essential for building a friendly and safe learning environment for children.

The measure of “informing parents to coordinate assistance in overcoming shortcomings” is applied to students with repeated violations. Therefore, in addition to teachers, children need additional support and assistance from their families to address these shortcomings. This measure helps emphasise the role of families in educating children and enhances communication and interaction between teachers and parents, enabling timely solutions and guidance for children to overcome difficulties quickly and effectively. Furthermore, the law emphasises that teachers are not allowed to criticise students in front of the whole class, the entire school, or during collective meetings with parents. This is a progressive regulation aimed at building a safe educational environment that respects the dignity of children.

For students in lower secondary and upper secondary education levels⁴⁵⁹, in addition to disciplinary measures similar to those applied to elementary school students, according to the regulations in Article 38, Clause 2 of the regulations of lower secondary and upper secondary schools, these students may face the measure of “temporary suspension from school for a specified period and implementation of other educational measures as prescribed by the Ministry of Education and Training”. For example, educational measures could include attending an educational institution specified by the Ministry of Education and Training⁴⁶⁰.

With the regulations related to disciplinary measures for children in schools, it can be observed that Vietnam does not endorse disciplinary forms related to physical punishment for children because “a quality education cannot be achieved without regard to children’s right to health and well-being. Children cannot achieve their optimum development when they are subjected to humiliating punishment or physical abuse”⁴⁶¹.

⁴⁵⁸ According to the provisions outlined in Article 28, Section 1 of the Education Law 2019, primary education in Vietnam spans from grade 1 to grade 5. The age for students entering grade 1 is 6 years old.

⁴⁵⁹ According to the provisions outlined in Points b and c, Article 28, Section 1 of the Education Law 2019, lower secondary education in Vietnam covers grade 6 to grade 9, while upper secondary education covers grade 10 to grade 12. The age for students entering grade 6 is 11 years old, and the age for students entering grade 10 is 15 years old.

⁴⁶⁰ This educational measure for juvenile law offenders is documented in Article 64, Section 1 of the Education Law 2019.

⁴⁶¹ UNICEF, A human rights-based approach to education for all.

Article 28(3) of the CRC contains a clear and comprehensive call in a human rights document with international binding effect for international cooperation on issues related to education. Concerning international cooperation in education in Vietnam, the law on education of 2019 stipulates that the state encourages and facilitates educational institutions in Vietnam to collaborate with foreign individuals or organisations and Vietnamese residing abroad in teaching, learning, and scientific research. Additionally, it promotes and facilitates Vietnamese citizens going abroad for teaching, learning, scientific research, and academic exchanges, either self-funded or sponsored by domestic or foreign entities⁴⁶². It can be observed that opening up opportunities for educational collaboration with foreign countries creates favourable conditions for Vietnam to learn from and apply scientific achievements, technology, and knowledge from nations with experience in the field of education. On the other hand, the 2019 education law also acknowledges foreign investment cooperation in education in Vietnam under various forms, such as: “(a) educational collaboration and training; (b) establishing representative offices; (c) establishing branches; (d) establishing educational institutions; (e) other forms of collaboration and investment”⁴⁶³.

In summary, the analyses above have somewhat clarified the international community's and Vietnam's efforts in protecting and promoting the right to education for children, synonymous with the commitment to ensuring the best learning environment for children in the present, as well as investing in their future through the provision of quality education while promoting an inclusive and empowered society. These efforts emphasise the crucial role of education in transforming and fostering the development of individuals and society. It is not merely about transmitting knowledge and skills but also about creating opportunities and directions for sustainable development. These efforts lay the foundation for building a progressive society willing to share knowledge, respect diversity, and collaboratively construct a better world.

4.3. THE RIGHT TO PRIVACY

The privacy rights of individuals have been a global concern since early times, as exemplified by the recognition in Article 12 of the UDHR. However, it was not until 1989 that specific provisions focusing on the privacy rights of children were officially acknowledged through the CRC. This document encapsulates crucial principles for safeguarding and promoting the privacy rights of children, emphasising the importance of respecting and protecting the personal space of children. This text can be considered a significant leap forward in protecting the rights of children.

In this section, the analysis of the content of Article 16 of the CRC regarding the protection of children's right to privacy will be undertaken. This involves attempting to clarify the provisions of the law to gain a detailed understanding of aspects related to the right to the privacy of children's personal lives, as well as the obligations that member countries must fulfil to ensure this right for children. Additionally, the author will identify standards and benchmarks to serve as a basis for analysis and comparison. Specifically, this work will involve comparing the legal provisions of Vietnam with the CRC.

⁴⁶² Article 107 of the Education Law 2019.

⁴⁶³ Section 3 Article 108 the Education Law 2019.

4.3.1. The Right to Privacy in International Law

Article 16 of the CRC stipulates: “1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, nor unlawful attacks on his or her honour and reputation. 2. The child has the right to the protection of the law against such interference or attacks”. According to *Stefanie Schmahl's* analysis⁴⁶⁴, “the provisions of Article 16 of the CRC have been acknowledged almost verbatim from Article 12 of the UDHR and Article 17 of the ICCPR and do not contain any specifics related to children, except for the explicit mention of children as a legal subject in Article 16(1) of the CRC”⁴⁶⁵.

In accordance with this, Article 12 of the UDHR states that “no one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”. Article 17 of the ICCPR provides that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor unlawful attacks on his honour and reputation”. However, “the inclusion of Article 16 in the CRC represents a clear expansion of classical civil freedom to children, thereby enhancing children's participation in social life and privacy”⁴⁶⁶. Therefore, “the interpretation of this provision should be particularly focused on children, examining the specific ways in which children may experience this right in comparison to adults”⁴⁶⁷.

Based on the aforementioned regulations regarding the privacy rights of children, the following observations can be drawn: First and foremost, the law lacks a specific conceptual framework regarding the privacy rights of children. Therefore, it is imperative to delve into the notion of privacy rights, particularly about children, within academic literature. Until the current date, there is little agreement on how to define privacy, but “like other contested concepts, such as liberty or justice, this conceptual difficulty does not undermine its importance”⁴⁶⁸. Privacy has been defined in many ways over the last few hundred years. Following *Judge Thomas Cooley*, “*Samuel Warren and Louis D. Brandeis* called privacy “the right to be let alone”⁴⁶⁹. *William Prosser* separated privacy cases into four distinct but related torts: “Intrusion: intruding (physically or otherwise) upon the solitude of another in a highly offensive manner. Private facts: publicising highly offensive private information about someone that is not of legitimate concern to the public. False light: publicising a highly offensive and false impression of another. Appropriation: using another’s name or likeness for some advantage without the other’s consent”⁴⁷⁰.

Alan Westin and others have described privacy in terms of “information control”⁴⁷¹. Still, others have insisted that privacy consists of a form of autonomy over personal matters⁴⁷². *William*

⁴⁶⁴ SCHMAHL, United Nation Convention on the rights of the child 499.

⁴⁶⁵ Ibid.

⁴⁶⁶ TOBIN - FIELD, Article 16, in TOBIN, The UN Convention on the rights of the child 597.

⁴⁶⁷ DETRICK, A Commentary on the United Nations Convention on the rights of the child 606.

⁴⁶⁸ MOORE, Privacy Rights 89.

⁴⁶⁹ COOLEY, A Treatise on the law of torts 197.

⁴⁷⁰ PROSSER, Privacy 384 quoted in ALDERMAN - KENNEDY, The right to privacy 155.

⁴⁷¹ WESTIN, Privacy and freedom 166. See also: MOORE, Intellectual property and information control 207.

⁴⁷² ORTIZ, Privacy, autonomy, and consent 91. See also: ENGLEHARDT, Privacy and limited democracy 123.

Parent argues that “privacy is the condition of not having undocumented personal knowledge about one possessed by others”⁴⁷³ while *Julie Inness* defines privacy as “the state of possessing control over a realm of intimate decisions, which include decisions about intimate access, intimate information, and intimate actions”⁴⁷⁴. More recently, *Judith Wagner DeCew* has proposed the “realm of the private to be whatever types of information and activities are not, according to a reasonable person in normal circumstances, the legitimate concern of others”⁴⁷⁵. This summary indicates the variety and breadth of the definitions that have been offered. Thus, privacy is a term that is difficult to comprehensively define; however, it can be broadly characterised as the freedom from unnecessary intrusion or disturbance in one's personal or professional life. Based on the academic literature mentioned and the content of Article 16, the author contends that the privacy rights of children can be understood as follows: the privacy rights of children may be construed as the authority to govern access to and utilisation of information regarding children. This encompasses personal space, private life, personal information, and the ability to regulate the safeguarding of a child's dignity and personal reputation.

Secondly, instead of delineating the concept of privacy rights, Article 16 acknowledges the facets of privacy that require safeguarding for children. It encompasses privacy, family, residence, correspondence, honour, and reputation. Thus, Article 16 of the CRC is a multidimensional right under which the concept of private life is to be regarded as an umbrella, a “filler”, or a “catch-all” fundamental right⁴⁷⁶.

The following analyses will attempt to clarify various aspects of the right to privacy for children: Regarding private life, Article 16 asserts that children should not be subjected to unlawful interference in their privacy and family affairs. This safeguards the rights of children from unnecessary or unauthorised intrusion from external sources into their private lives. In other words, it implies the right of individuals to autonomously determine their own lives without unwanted interference from others. The concept of the family is generally recognised in human rights law as the natural and fundamental group unit of society and is also mentioned in recitals 5 and 6 of the preamble to the CRC⁴⁷⁷. However, *J. Tobin*⁴⁷⁸ asserted that the requirement under Article 16 para. 1 CRC that a child be protected from unlawful and arbitrary interference with his or her family represents another illustration of the special protection afforded to the family in international law. The concept of family in Article 16 paragraph 1, alternative 2 CRC, is similar to the concept of family in Article 5 CRC and is to be interpreted broadly. “Family includes not simply blood relatives and legally established relationships but also other intensive and regular forms of cohabitation, including the extended family of traditional African societies”⁴⁷⁹.

The concept of personal space, as referenced in Article 16, can be understood as the locations or areas over which each individual possesses the right to control and manage. These are places where individuals feel comfortable and can express their privacy without fear of intrusion from others.

⁴⁷³ PARENT, Privacy, morality, and the law 110.

⁴⁷⁴ INNESS, Privacy, intimacy, and isolation 140.

⁴⁷⁵ DECEW, In pursuit of privacy 197.

⁴⁷⁶ SCHABAS, CCPR: commentary 15.

⁴⁷⁷ Ibid 16.

⁴⁷⁸ TOBIN - FIELD, Article 16, in TOBIN, The UN Convention on the rights of the child 577.

⁴⁷⁹ DE ZAYAS, Review of WA Schabas, Nowak's CCPR commentary 555.

Examples include bedrooms, workspaces, private residences, or tranquil settings often chosen for contemplation and relaxation.

According to Article 16 para. 1 CRC, a child's home is also subject to special protection. "The term "home" covers all confined spaces that serve people's residency and living purposes, regardless of the form of legal authorisation of use and the specific type of use. The area of the home ("domicile") usually reaches as far as the property or the corresponding authorisation of use. This means that in most cases, the garage and garden are included"⁴⁸⁰.

The ECHR extends the scope of Article 8 ECHR further to caravans and houseboats⁴⁸¹. What is decisive in the context of Article 16 paragraph 1 CRC is that "home" is where the family resides and/or (in case of separation) where children reside⁴⁸². The CRC committee has even underscored a state's obligation to ensure full implementation of the right to housing for "street children", including with respect to searching for personal effects in the case of homeless children⁴⁸³.

These involve letters, phone calls, emails, interactions via social media, etc. The protection of correspondence refers to its secrecy, insofar as the communication is performed privately. Thereby, publicly accessible online forums, chats, or websites are not subject to the freedom of correspondence⁴⁸⁴. Privacy has important dimensions concerning the need to protect children from harmful correspondence and risks associated with the digital era, such as cyber violence and virtual pornographic material, in the best interests of the child⁴⁸⁵. On the other hand, certain forms of correspondence via social media (Facebook, Instagram, etc.) are likely to be protected by Article 16 paragraph 1 CRC if the average user can assume that his or her comments are treated confidentially because he or she has admitted, for example, only a very limited "circle of friends" to his or her Facebook or Instagram account. Of course, it remains problematic that children and adolescents are often unaware of how easily Facebook entries can be made visible to everyone. The risk that comments are passed on to third parties is often underestimated by children and adolescents⁴⁸⁶. Therefore, states parties are called upon to take effective measures to protect the child.

The dignity and reputation of children are also recognised by Article 16 as aspects of privacy rights, as they are directly related to how each individual, including children, wishes to be perceived, acknowledged, and treated within society. Honour and reputation in terms of Article 16 (1), alternative 5 CRC are, in principle, separable from one another, although overlaps can occur. "While honour describes the personal subjective perception of a person about himself or herself, reputation is an objective element and primarily consists of the appraisal and assessment of one person by another"⁴⁸⁷. Unlawful acts on honour and reputation typically apply to concerns of slander, defamation, or other

⁴⁸⁰ Ibid.

⁴⁸¹ ECtHR, Judgment No. 24882/94, para. 84. See also: ECtHR, Decision No. 19212/91, para. 2. For more detail, see SCHABAS, *The European Convention on Human Rights* 399.

⁴⁸² TOBIN - FIELD, Article 16, in TOBIN, *The UN Convention on the rights of the child* 586.

⁴⁸³ The CRC committee, General comment No. 21 43.

⁴⁸⁴ For a fuller account with regard to the ECHR see: GRABENWARTER - PABEL, *Europäische Menschenrechtskonvention* 25.

⁴⁸⁵ KILKELLY - LIEFAARD, *International human rights of children* 410.

⁴⁸⁶ STEENHOFF, *Das Internet und die Schulordnung* 1192.

⁴⁸⁷ NOWAK - SCHABAS, *CCPR commentary* 53. See also: SCHABAS, *The European Convention on human rights* 400.

verbal attacks, as well as published defamatory statements or libel⁴⁸⁸. The protection against unlawful attacks on a child's honour and reputation is not an issue that has attracted the detailed attention of the CRC committee so far. The CRC committee has only noted that children in street situations are particularly vulnerable to unlawful attacks on their honour and reputation as a consequence of unlawful discriminatory and disrespectful treatment in law and practice on the grounds of their or their parents' street situation⁴⁸⁹. Furthermore, the comments of the CRC committee suggest that unlawful attacks may include attacks against children as a group⁴⁹⁰.

The third observation drawn from Article 16 is that the law does not specifically address the protection of children's online privacy. The CRC is a pivotal document for safeguarding and promoting the rights of children globally. However, since the CRC was agreed upon at a time when the internet and online technologies were not as advanced as they are today, there are no specific provisions regarding online privacy rights within this text. Nevertheless, this issue has garnered considerable attention from many countries and international organisations, prompting the promotion of corresponding protective measures through various laws, policies, and programs. Indeed, there is no doubt that a child's right to privacy also includes online privacy. Children constitute a particularly vulnerable group of online users who lack awareness and capacity to foresee potential long-term privacy consequences for their privacy, e.g., by disclosing their personal data online⁴⁹¹. In that regard, Article 17 of the CRC, which tackles access to mass media, plays a vital role. "Yet, the right to privacy is also an important participatory right in the digital context, and children are also to be protected against parents who share information, photos, and data about their children online without the previous consent of the child. Parents should consider the child's best interests and involve the child in the decision about what is shared about them, following their age and maturity"⁴⁹².

The final observation is that Article 16 specifies "arbitrary or unlawful interference" as behaviour constituting a violation of privacy rights as outlined in Article 16 of the CRC. This means that the rights protected under Article 16(1) of the CRC are not absolute and may be subject to intervention as long as the intervention is not arbitrary or unlawful. Both conditions must be cumulatively present in a negative form. "While the requirement of lawfulness includes a procedural dimension, namely that the law is valid and accessible, and a substantive dimension, namely that the law is consistent with the principles under the convention and general human rights law, the prohibition of arbitrariness requires that any interference must be reasonable and proportionate if it is to be justified"⁴⁹³. However, this double screening mechanism applies only to privacy, family, home, and correspondence. In contrast, the examination of interference with the honour and reputation of a person expressly entails only a test of legality. The reason for this less extensive protection is probably attributable to the fact that honour and reputation are more likely to conflict with the rights

⁴⁸⁸ KILKELLY - LIEFAARD (eds.), *International human rights of children* 410.

⁴⁸⁹ CRC committee, *General comment No. 21* 60.

⁴⁹⁰ CRC committee, *Concluding observations: Nicaragua*. Further see: HODGKIN - NEWELL, *Implementation handbook* 211.

⁴⁹¹ LIEVENS - LIVINGSTONE - MCLAUGHLIN - O'NEILL - VERDOODT, *Children's rights and digital technologies*. in KILKELLY - LIEFAARD (eds.), *International Human Rights of Children* 496.

⁴⁹² *Ibid.*

⁴⁹³ TOBIN - FIELD, *Article 16*, in TOBIN, *The UN Convention on the rights of the child* 598.

of others. All in all, the CRC committee's comments on the child's right to privacy regularly fall short to the extent that they are unaccompanied by an acknowledgement that any restriction of the rights of the child may be justified on grounds of Article 16 paragraph 1 of the CRC or the human rights of others.

Regarding the obligations of member states, Article 16(2) of the CRC elucidates that the obligation imposed on states parties to protect children against arbitrary and unlawful interference with their right to privacy extends to interference and attacks from both public and private actors. Thus, "the obligation of states parties is not simply to abstain from intrusion into the private life of a child but also to take positive measures to secure a child's enjoyment of the right to privacy"⁴⁹⁴.

In contrast to other provisions of children's rights that may clearly express the obligations that member states must ensure, Article 16 focuses solely on elucidating aspects related to the right to privacy for children. However, this does not imply that no obligations are imposed on the countries that have joined the convention. Instead, the author contends that the obligation of these countries in this case is understood as the duty to ensure the right to privacy of children through any means, including legislative enactment, legal enforcement, and social measures. Specifically, in terms of legal frameworks and policies, countries need to enact laws and policies related to the right to privacy of children. These regulations should protect children from unauthorised interference in their private lives and ensure the right to appropriate communication and access to information based on age. Additionally, nations should clearly define penalties and appropriate measures to ensure respect for the privacy rights of children. On the other hand, in terms of law enforcement, countries need mechanisms for checking and monitoring the implementation of regulations regarding the right to privacy of children. This is to ensure compliance by organisations, businesses, and individuals involved in the processing of children's personal information. Regarding social measures, member countries need to enhance education and raise awareness about the right to privacy of children and how to protect personal information for children, parents, and the entire community.

4.3.2. The Right to Privacy in Vietnamese Law

The protection of children's right to privacy has been gradually established and developed in the Vietnamese legal system over the years. Vietnam's first Constitution, which was adopted by the Democratic Republic of Vietnam in 1949, did not explicitly acknowledge the right to privacy of individuals or children. At the time, the concept of privacy as a fundamental right was not yet widely recognised in international human rights law or Vietnamese law. At the time of its adoption, the 1992 Constitution was a significant departure from the previous Constitution, which had focused primarily on promoting socialist ideals and the interests of the state. The 1992 Constitution, on the other hand, emphasised the importance of protecting individual rights, including the rights of children. Building upon the provisions regarding the right to privacy of individuals in the 1992 Constitution, the Civil Code 1995 was the first document in the realm of private law to outline detailed provisions related to this issue. It included provisions on the protection of privacy, such as the right to protection of

⁴⁹⁴ TOBIN - FIELD, Article 16, in TOBIN, *The UN Convention on the rights of the child* 596.

personal secrets, honour, and dignity. The protection of personal information and privacy, including that of children, was further reinforced by the Civil Code 2005. Article 38 of this code acknowledges the right to personal secrecy and prohibits the collection, usage, and disclosure of personal secrets without the individual's consent.

In 2013, Vietnam issued a new constitution, which acknowledges the rights of children, including the right to a private life⁴⁹⁵. In the Civil Code that was newly enacted two years later, Vietnamese lawmakers recognised the right to privacy and personal secrecy and put in place detailed regulations for the collection, use, and sharing of personal information, which includes information related to children, in Article 38. “However, the provisions of Article 38 of the Civil Code 2015 are only framework provisions, primarily of principle”⁴⁹⁶.

The emphasis on safeguarding the privacy rights of children has progressively gained prominence through the provisions outlined in Article 21 of the Children Act 2016. The content of the statute is as follows: “1. Children have the imprescriptible right to privacy and to keep personal and family secrets, all of which are for the best interests of children; 2. Children have their honour, dignity, personal prestige, mail, telephone, and telegram security, and other personal information exchange types protected by the law. They are protected from and may resist illegal interventions against personal information”. This section highlights the importance of ensuring the rights and interests of children in their personal and family lives by explicitly stating that “Children have the right to inviolability of privacy, personal secrecy, and family secrecy for the best interests of the children”. Indeed, the right to privacy, personal secrecy, and family confidentiality of children is one of their fundamental and essential rights. Therefore, recognising and protecting this right for children is an important part of safeguarding them against abuse, exploitation, and violence. It also contributes to increasing awareness and responsibility among individuals, organisations, and society for protecting children and creating a safe and healthy environment for their development.

There exists an unexplained law regarding the concepts of “personal life, personal secrets, and family secrets” or the concept of the right to privacy”. However, there have been some initial studies in Vietnam that have begun to elucidate the concept of privacy, as well as the privacy rights of children. According to *Nguyen Thi Que Anh, Vu Cong Giao, Ngo Minh Huong, and La Khanh Tung*, they posit the following: “Privacy grants each individual a space to be themselves without arbitrary judgement from others, allowing one to think freely without prejudice or discrimination, as well as the ability to control who knows what about oneself”⁴⁹⁷. Regarding the privacy rights of children, *Pham Thi Duyen Thao* and *Phan Thi Lan Phuong* contend that “the privacy rights of children constitute a human right and are an aspect of the right to privacy”⁴⁹⁸.

The law stipulates that children are protected and can resist illegal interference with their private information. In other words, the law establishes the obligation to prevent unlawful interference with the private lives of children for by entities in society, ranging from individuals and organisations to government authorities, regarding their private personal information. Thus, based on the

⁴⁹⁵ Article 21 of this constitution mandates that “Everyone has the right to inviolability of private life, personal secrets and family secrets; and has the right to protect his or her honor and reputation”.

⁴⁹⁶ NGUYEN - PHAM - LUONG, Completion of the law in order to protect the right to privacy 173.

⁴⁹⁷ NGUYỄN - VŨ - NGÓ - LÃ, Right to privacy 3.

⁴⁹⁸ PHẠM - PHAN, Enhance the legal provisions.

aforementioned analysis, it can be observed that the legislation approaches the right to privacy in two steps. Firstly, it enumerates the aspects of children's private lives, which include personal confidentiality, family privacy, secrecy of correspondence, telephony, telecommunications, and other private information. Secondly, it acknowledges the legal obligation of relevant entities not to unlawfully interfere with these aspects.

To improve legal regulations, on July 1, 2017, the Vietnamese government issued Decree No. 56/2017/NĐ-CP to guide functional agencies, organisations, individuals, and families on many issues related to protecting children's rights. Specifically, Article 33 of this document clarifies the information recognised as private life secrets and personal secrets of children, including name, age, personal identification characteristics, information about health and private life recorded in medical records, personal images, information about family members and carers, personal property, phone number, personal mailing address, information about residence, hometown, address, information about school, class, academic results, and relationships of children's friends, and information about services provided to individual children. Thus, it can be observed that, in comparison to international law, the concept of children's privacy rights on social media in Vietnam exhibits considerable similarities. This indicates that Vietnam is striving to establish a legal framework to protect the rights of children in line with the global trend while also demonstrating a diligent commitment to implementing the international agreements that Vietnam has signed.

In summary, although not yet fully comprehensive and perfect, the regulations on the privacy rights of children have demonstrated progress in the thinking of Vietnamese legislators. This is because this law specifically recognises children as the subject of this right rather than individuals in general, as stipulated in the Civil Code 2015 on privacy and personal secrecy. In addition, the law also demonstrates the compatibility of Vietnamese law with international law in protecting the rights of children. This creates a strong and rigorous legal environment for the safe and healthy development of children's lives.

To ensure the fulfilment of the obligation to respect and protect the privacy rights of children, Vietnam has implemented various mechanisms and important policies through a series of provisions with administrative and criminal legal implications. Regarding protecting privacy rights through administrative legal sanctions. In Vietnam, administrative sanctions are measures prescribed by Administrative Law that are applied to individuals and organisations that commit acts in violation of the law but do not constitute criminal offences or warrant criminal liability⁴⁹⁹. According to Article 66, Clause 3 of Decree 174/2013/ND-CP, "A fine ranging from 10,000,000 VND to 20,000,000 VND shall be imposed for one of the following acts: providing, exchanging, transmitting, storing, or using digital information to threaten, harass, distort, slander, or offend the reputation, dignity, or honour of organisations, or the reputation, dignity, or honour of others". This regulation demonstrates the imposition of monetary penalties on individuals and organizations engaged in activities such as "providing", "exchanging", "transmitting", "retaining", or "using" personal digital information. In this context, personal digital information is defined in Article 3, Clause 11 of Decree 71/2007/ND-CP as "digital content products, including data, texts, images, and audio expressed in digital information form, stored and disseminated on the network environment". Digital content products can take the

⁴⁹⁹ TÔ, What is administrative sanction?

form of articles, e-books, videos, podcasts, music files, images, or social media posts. These products are created by individuals and subsequently shared on social media platforms. If other individuals or organisations engage in the actions listed in the aforementioned provisions, such as “providing”, “exchanging”, “transmitting”, “retaining”, or “using”, they are not yet subject to penalties as stipulated in Decree 174/2013/NĐ-CP. This is because the penalty provisions require these actions to have one of the following purposes: “threatening, harassing, distorting, fabricating, or insulting the reputation, dignity, integrity, or credibility of organisations or individuals”.

Furthermore, it should be noted that the provisions regarding administrative penalties mentioned above are not specifically applicable to individual subjects who are children but rather apply to any individual in society whose digital products are subject to actions by other individuals or organisations that aim to insult their dignity, reputation, fabricate information, or make threats. Thus, the application of the provisions stated in Article 3, Clause 66 of Decree 174/2013/NĐ-CP to protect the privacy rights of children on social media will be implemented as follows: when one or more individuals or organizations store, use, transmit, provide, or exchange digital products of children shared by their parents or the children themselves on social media platforms to threaten or harass children, enticing or seducing children, or insulting the dignity and reputation of children, the parents or legal guardians of the children may request the competent authority to impose fines on those individuals or organizations, with the penalty ranging from 10,000,000 VND to 20,000,000 VND⁵⁰⁰.

Overall, this regulation has contributed to creating a safe environment for children and ensuring their privacy rights on social media, as it has been implemented fairly effectively in Vietnam. However, it can be observed that this regulation does not specifically address the use of personal information of others for fraudulent purposes or asset misappropriation. This can be viewed from both negative and positive perspectives. From a negative standpoint, it can be argued that this is a limitation of Administrative Law in Vietnam. However, from a positive perspective, it can be argued that due to the highly dangerous nature of the mentioned purposes, the legislators in Vietnam have opted for criminal sanctions instead of administrative penalties. Further analysis regarding criminal sanctions will help clarify this assertion.

In contrast to the Administrative Law's approach of addressing privacy infringements on social media through a general legal framework for related behaviours, criminal law focuses on the subject whose privacy is violated when engaging in the unlawful use or disclosure of personal information. Specifically, if an individual engages in the acts of using, disclosing, or exchanging someone else's personal digital information to:

Defame the honour and dignity of the victim shall be prosecuted under Article 155, Section 2, of the Penal Code 2015, with the offence of “defamation of another person”, carrying a penalty of imprisonment for up to 3 years.

Engaging in the act of fabricating or disseminating false information shall be subject to prosecution under Article 156 of the Penal Code 2015, with the charge of “false accusation”. The penalty of imprisonment ranging from 1 to 3 years shall be imposed for this offence.

Force the victim to engage in sexual intercourse or sexual acts shall be prosecuted under Article 143 of the Penal Code 2015, with the offence of “rape”. The punishment applicable to this

⁵⁰⁰ The equivalent is from 150,000 Ft to 300,000 Ft.

offence is imprisonment for 5 to 10 years. If the victim commits suicide, the punishment can be increased to up to 18 years of imprisonment. In the case of victims aged 13 to under 16 years old, they shall be pursued under Article 144 of the Penal Code. The maximum penalty for this offence may be life imprisonment.

Coerce, entice, or compel individuals under 16 years old to engage in pornographic performances shall be prosecuted under Article 147 of the Penal Code. The punishment of imprisonment from 3 to 7 years shall apply to this offence.

Furthermore, Article 159 of the Penal Code 2015 stipulates the offence of “infringement of secrecy or safety of postal, telecommunication, telegraph, fax, or other forms of private information exchange of others”. According to this provision, individuals who engage in the following acts: “(a) appropriating postal letters, telegrams, telex, faxes, or other documents of others transmitted via postal or telecommunication networks in any form; (b) intentionally damaging, losing, or unlawfully obtaining information or contents of postal letters, telegrams, telex, faxes, or other documents of others transmitted via postal or telecommunication networks; (c) illegally eavesdropping or recording conversations; (d) conducting unauthorised searches and seizures of postal letters or telegrams” shall be subject to fines or non-custodial reform for a maximum period of 3 years.

Thus, it can be observed that Vietnamese criminal law plays a crucial role in safeguarding the privacy rights of children on social media by establishing a relatively comprehensive legal framework for addressing infringements. Additionally, the imposition of severe sanctions, such as life imprisonment, serves as a deterrent for offenders. This partly demonstrates the firmness and determination of Vietnamese legislators to protect children. However, to enhance the effectiveness of these efforts, monitoring and enforcement of the aforementioned regulations need to be strengthened, while synchronised supportive measures from relevant parties are also necessary.

In summary, the protection of children's privacy rights through measures outlined in Vietnam's legal framework reflects the nation's commitment to maintaining international standards and ensuring the welfare of children. The legal framework in Vietnam establishes clear obligations and mechanisms to safeguard children's privacy, encompassing both administrative and criminal legal measures. Through Administrative Law, Vietnam addresses violations related to children's privacy, laying out regulations to prevent and rectify unlawful infringements. Additionally, criminal legal penalties serve as a deterrent, reinforcing the severity of offences that violate the privacy rights of children. This comprehensive approach emphasises Vietnam's dedication to creating a secure environment for children, aligning with global efforts to protect and promote the rights of the younger generation.

4.4. THE RIGHT TO BE PROTECTED FROM VIOLENCE

Every year, millions of children worldwide fall victim to violence. This is not merely a specific issue confined to certain countries or regions; rather, it is a global phenomenon, underscoring the urgency and complexity of this situation. This violence manifests in various forms, not only perpetuated by law enforcement officials, personnel in training centres, orphanages, and other care facilities, but also by educators and family members, including the parents of the children. “Violence against children is

not a new phenomenon. In fact, in ancient societies, the act of killing infants has been documented as a form of brutality. The earliest evidence of such cruelty can be traced back to the walls of the city of Jericho, dating from 750 BCE. However, there was minimal public concern expressed about this issue, with only a few exceptions in the 19th century⁵⁰¹. More attention was given to violence against children in the 20th century, but a really breakthrough resulted from the publication⁵⁰² of an article by *Kempe, Silverman, Steele, DroegemueLLer, and Silver* in 1962, which contained the results of a survey of reported cases of child abuse⁵⁰³. The most shocking aspect was that the abuse was committed by parents or similar caretakers⁵⁰⁴.

Given this development, it is understandable that the CRC drafters were paying a lot of attention to violence against children. Article 19 of the CRC is a reflection of not only concern but also growing knowledge of key factors for the prevention and protection of child abuse and neglect in the family or other care settings (foster care, residential care)⁵⁰⁵.

4.4.1. The Right to be Protected from Violence in International Law

Article 19 of the CRC stipulates the right to protection from violence for children as follows: “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. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement”.

First and foremost, it is imperative to assert that Article 19 of the CRC plays a pivotal role in safeguarding children from violence. However, this provision is not the exclusive legal instrument bearing significance in the entire convention. *Stefanie Schmahl* also contends that “Article 19 CRC has primarily, but not exclusively, family grievances and maltreatment at home as well as intra-familial harm in mind”. Indeed, according to general comment No. 13 of the CRC, “Although Article 19 CRC represents the “core rule” of the conventions’ model for protecting the child from violence”⁵⁰⁶, it is closely associated with Article 9; Clause 1; sentence 2, Article 24; Clause 3 of the CRC, and the special provisions enshrined in Article 32 to Article 36 CRC, which seek to protect the child against various forms of sexual and economic exploitation in a wide range of circumstances”⁵⁰⁷.

After over 15 iterations and implementations of the CRC, in 2006, the UN embarked upon the inaugural global study encompassing all forms of violence against children, entitled “World Report

⁵⁰¹ BENSEL - RHEINBERGE - RADBILL, *Children in a world of violence* 16.

⁵⁰² DOEK, *The CRC 20 years* 775. See also: CULO, *Violence against children* 35.

⁵⁰³ KEMPE - SILVERMAN - STEEL - DROEGEMUELLER - SILVER, *The battered-child syndrome* 145.

⁵⁰⁴ DOEK, *The CRC 20 years* 776.

⁵⁰⁵ *Ibid.*

⁵⁰⁶ CRC committee, General comment No. 13 7.

⁵⁰⁷ CRC committee, General comment No. 13 7b.

on Violence Against Children”. The aforementioned study revealed that “despite the broad acceptance of the CRC, which prohibits all forms of violence against children, “children in almost all states are still waiting for full recognition of respect for their human dignity and physical integrity and for adequate investment in actions to prevent all forms of violence against them”⁵⁰⁸. Accordingly, “violence” is understood to mean “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse,” as listed in Article 19, Clause 1, of the convention⁵⁰⁹. This explanation demonstrates that the committee has employed the term “violence” to encompass all forms of maltreatment directed towards children as delineated in the convention. According to the committee, this choice is “in conformity with the terminology used in the 2006 UN study on violence against children”⁵¹⁰.

Article 19 of the CRC does not make any reference to the impact of violence against children. It is rather irrelevant whether the impact of conduct on a child is immediate, mid-term, or permanent. “Violence against children has numerous adverse consequences, including negative impacts on physical, mental, and reproductive health as well as social and cognitive development. The harms inflicted on children are traumatic, and they continue regularly into adulthood. They often have generational and transgenerational effects. Even “mild” forms of violence of a mere transitory nature are prohibited by Article 19 of the CRC”⁵¹¹. Thus, the commission asserts that “no violence against any child can be justified; all violence against children can be prevented”⁵¹².

In order to uphold this commitment within the international community, Article 19 delineates certain corresponding obligations that member states must fulfil. First and foremost, member states are required to institute appropriate legislative, administrative, social, and educational measures aimed at preventing children from all forms of physical or mental violence, ensuring they are not subjected to harm or abuse. According to the assessment provided by *Stefanie Schmahl*, “Article 19 Clause 1 CRC imposes a mandatory obligation on states parties to take all appropriate measures to protect the child from various harms. Therefore, a mere prohibition of corporal punishment by law is, albeit appropriate, not sufficient to fully implement the requirements of Article 19 Clause 1 CRC”⁵¹³. It means this obligation mandates that states “shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of violence”. The term “shall take” is a strongly imperative phrase that, as elucidated by the committee, “leaves no leeway for the discretion of states parties”⁵¹⁴.

Within this context, the legal measures that nations are obligated to enact to safeguard the rights of children from violence encompass the establishment and implementation of regulations, as well as the allocation of financial resources for this purpose. These regulations must explicitly “define frameworks, systems, mechanisms, and the roles and responsibilities of concerned agencies and

⁵⁰⁸ PINHEIRO, Violence against children 3.

⁵⁰⁹ CRC committee, General comment No. 13 8.

⁵¹⁰ Ibid.

⁵¹¹ SCHMAHL, United Nation Convention on the rights of the child 412.

⁵¹² Report of the independent expert for the UN study on violence against children cited from UN, General comment No. 13 9.

⁵¹³ SCHMAHL, United Nation Convention on the rights of the child 414.

⁵¹⁴ UN committee, General comment No. 13 9.

competent officers”⁵¹⁵. The administrative measures that member states should implement, as elucidated by the convention committee, focus on emphasising the role of the government in establishing mechanisms and monitoring systems to ensure the protection of children from violence. This includes specific actions such as “establishing a government centre to coordinate strategies and child protection services”. For example, in Vietnam, according to the provisions in the law on children, this entity is the Population, Family, and Children Committee.

In terms of social measures, the convention committee expounds that these should encompass programmes aimed at risk reduction and the prevention of violence against children. This includes initiatives such as identifying and mitigating factors and situations that impede access to services for vulnerable groups and ensuring the full realisation of their rights (including children from ethnic minority backgrounds, children with disabilities, and other marginalised groups). Additionally, it involves programmes designed to support children, families, and other carers to provide optimal positive nurturing, for instance, offering counselling for children facing difficulties (including suicidal tendencies) and a 24-hour helpline staffed by trained personnel⁵¹⁶.

The educational measures outlined by the convention committee in the general comment emphasise the need to address attitudes, traditions, customs, and behaviours that promote and condone violence against children. They should address attitudes, traditions, customs, and behavioural practices that condone and promote violence against children. They should encourage open discussion about violence, including the engagement of the media and civil society. They should support children’s life skills, knowledge, and participation and enhance the capacities of carers and professionals in contact with children. They can be initiated and implemented by both state and civil society actors under the responsibility of the state⁵¹⁷.

In summary, member states have the discretion to determine how to implement these measures to ensure that children are protected from violence. However, these measures must be designed effectively and integrated into the national legal system in a tightly coordinated, multi-sectoral, and coordinated manner.

Secondly, member states are obligated to safeguard children from physical or mental violence, injury, abuse, neglect or negligent treatment, and exploitation, including sexual abuse. The convention committee, in its general commentary, stipulates that member states “need to establish national standards for child well-being, health, and development, as securing these conditions is the ultimate goal of child caregiving and protection”⁵¹⁸. This serves to identify specific situations or behaviours considered to be violence against children. In other words, it provides a legal framework for recognising, preventing, and addressing potentially hazardous situations for children. Simultaneously, it enhances community awareness and understanding of the risks and consequences associated with violence against children.

To establish a common standard for the formulation of policies and laws regarding forms of violence against children within its member states, the CRC elucidates various definitions and provides

⁵¹⁵ UN committee, General comment No. 13 9.

⁵¹⁶ UN committee, General comment No. 13 10.

⁵¹⁷ UN committee, General comment No. 13 10.

⁵¹⁸ Ibid.

detailed descriptions of the manifestations of violence against children. Accordingly, physical violence is understood as “(a) all corporal punishment and all other forms of torture, cruel, inhumane or degrading treatment or punishment; and (b) physical bullying and hazing by adults and by other children”⁵¹⁹. “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 hazing⁸ by adults or other children, including via information and communication technologies (ICTs) such as mobile phones and the Internet (known as “cyberbullying”)⁵²⁰.

Regarding the form of abandonment or negligent treatment, the committee on CRC explains that “abandonment means not meeting the physical and psychological needs of children adequately, not protecting them from harm, or not providing health care, birth registration, or other services when those responsible for caring for the children have the resources, knowledge, and access to do so”. Abandonment is understood as “the behaviour of parents capable of meeting the needs of their children but failing to do so”⁵²¹.

Regarding sexual abuse and exploitation, the Convention Committee identifies these as behaviours: (a) the inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (b) the use of children in commercial sexual exploitation; and (c) the use of children in audio or visual images of child sexual abuse; (d) child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries), and the sale of children for sexual purposes and forced marriage.

The third obligation imposed on member states is to ensure that the forms of violence outlined in paragraph 1 of Article 19 of the CRC should not occur when children are under the care of parents, legal guardians, or any other individuals responsible for the care of children. This obligation is established to prevent instances of violence and sexual abuse against children within the family environment. It serves to foster a nurturing environment between children and their carer. The definition of “carer”, as referenced in Article 19(1), encompasses “parents, legal guardians, or any person responsible for the care of children”. Additionally, the general comment further elucidates that “care settings are places where children spend time under the supervision of the primary “fixed” carer (such as a parent or legal guardian) or a secondary or “temporary” supervisor (such as a teacher or youth group leader) for short, long-term, recurring, or one-time periods”⁵²².

⁵¹⁹ Ibid.

⁵²⁰ Ibid.

⁵²¹ Footnote No.3 in CRC committee, General comment No. 13.

⁵²² No.3 in CRC committee, General comment No. 13 16.

The fourth obligation stipulated in Article 19(2) of the CRC for member states is to establish social programmes aimed at providing necessary support for children and their carer, encompassing both preventative measures and interventions for cases of child maltreatment. *Tobin and Cashmore* argue that “the use of the word “include” indicates that the list of Article 19(2) CRC is illustrative and not exhaustive”⁵²³. According to *Spratt*, “to safeguard children from violence, it is imperative to engage in the development of a national child protection system”⁵²⁴. UNICEF defines child protection systems as “a set of laws, policies, regulations, and services needed across all social sectors - especially social welfare, education, health, security, and justice - to support prevention and response to protection-related risks”⁵²⁵.

At the level of prevention, their aim includes supporting and strengthening families to reduce social exclusion and lower the risk of separation, violence, and exploitation⁵²⁶. Given the significance of this national protection system, the national committee on the CRC emphasises that “a comprehensive child protection system requires the provision of comprehensive and integrated measures through the stages specified in Article 19(2) of the CRC”⁵²⁷.

In the general comment, the committee on the CRC underscores that “child protection must commence with the active prevention of all forms of violence and a robust prohibition of any form of violence. The state bears the responsibility to implement all necessary measures to ensure that adults responsible for the care, guidance, and upbringing of children will respect and safeguard the rights of the child”⁵²⁸. The committee on the CRC suggests numerous preventative measures in the general comment. Some prominent preventative measures include: for children, member states should “support children in self-protection and advocacy with peers through awareness of their rights and the development of social skills, as well as age-appropriate empowerment strategies”⁵²⁹; for families and communities, states should “assist parents and carers in understanding, promoting, and implementing effective child-rearing based on knowledge of children's rights, child development, and positive discipline techniques to support families in providing a safe care environment for children”⁵³⁰.

In summary, by stipulating the obligation to prevent violence against children in Article 19(2) and providing measures for its implementation in general comment No. 13, the drafters of the convention demonstrate a prioritisation of preventing violent behaviours towards children over severe punitive measures for those engaging in such acts. This carries several significant benefits for children, families, and society at large. One of the most notable advantages is that children will be spared from the physical and psychological harm inflicted by acts of violence. Because “the harms inflicted on children are traumatic, and they continue regularly into adulthood”⁵³¹.

The CRC mandates that member states must ensure the involvement of the legal system in identifying, reporting, transferring, investigating, and addressing cases of child maltreatment when

⁵²³ TOBIN - CASHMORE, Article 19 in TOBIN, John, ed *The UN Convention on the Rights of the Child* 166.

⁵²⁴ SPRATT AND ET AL, *Child protection in Europe* 1508.

⁵²⁵ UNICEF, *Child protection strategy* 12.

⁵²⁶ *Ibid.*

⁵²⁷ CRC committee, *General comment No. 13* 45.

⁵²⁸ CRC committee, *General comment No. 13* 45.

⁵²⁹ *Ibid.*

⁵³⁰ *Ibid.*

⁵³¹ TODRES, *Violence, exploitation in KILKELLY - LIEFAARD, International human rights of children* 221.

necessary. This provision underscores that, in addition to the duty of preventing violence against children, member states must identify and effectively respond to children who have suffered harm from violence. According to *Jonathan Todres*, “this includes ensuring child survivors of violence receive needed treatment and assistance and that appropriate measures are taken to ensure the violence does not reoccur”⁵³².

To elucidate the responsibilities of member states in these activities, the convention commission explicated the pertinent terms as follows: Defining involves clarifying risk factors for individuals or specific carer groups, activating targeted preventive initiatives, and identifying actual signs of maltreatment (to prompt timely and appropriate interventions)⁵³³. The report encompasses a system of mechanisms to: “(a) provide appropriate information to facilitate the making of complaints; (b) participate in investigations and court proceedings; (c) develop protocols that are appropriate for different circumstances and made widely known to children and the general public; (d) establish related support services for children and families; and (e) train and provide ongoing support for personnel to receive and advance the information received through reporting systems”⁵³⁴. This means that member states must ensure that their legal systems encourage citizens and relevant agencies to report any suspected cases of child abuse. This facilitates the early detection and handling of such cases. Consequently, the law should stipulate clear provisions regarding reporting, encompassing crucial elements such as the reporting party, the reporting procedure, required information, and adherence to specified deadlines. The law should also afford protections for individuals reporting instances of child maltreatment while promoting citizen participation in reporting suspected cases.

Referral, as per the convention committee, is the responsibility of the recipient of the report. In accordance with this, the individual in question “should have clear guidance and training on when and how to refer the issue to whichever agency is responsible for coordinating the response”⁵³⁵. This undertaking serves to ensure that information concerning children facing peril due to violence is promptly communicated and addressed in a timely manner. This means that member states must ensure that their legal systems have clear provisions regarding the procedures and protocols for transferring cases of child abuse. This includes promptly and accurately identifying relevant case information and providing guidance on the transfer process. Simultaneously, it is essential to guarantee that the rights and safety of children are protected during the transfer to responsible authorities or organizations tasked with processing and providing support.

An investigation is the subsequent step outlined in Article 19(2) of the CRC. This activity, as explicated by the CRC committee, “must be undertaken by qualified professionals who have received role-specific and comprehensive training and require a child rights-based and child-sensitive approach. Rigorous but child-sensitive investigation procedures will help to ensure that violence is correctly identified and help provide evidence for administrative, civil, child-protection, and criminal proceedings. Extreme care must be taken to avoid subjecting the child to further harm through the process of the investigation. Towards this end, all parties are obliged to invite and give due weight to

⁵³² Ibid.

⁵³³ CRC committee, General comment No. 13 46.

⁵³⁴ Ibid.

⁵³⁵ Ibid 47.

the child's views"⁵³⁶. This means that member states must ensure that their legal systems articulate requirements for investigative procedures that are both rigorous and child-sensitive. The aim is to ensure accurate identification of violence while avoiding any exacerbation of harm to children during the investigative process. Additionally, respecting and listening to the opinions of children during the investigation process is also a noteworthy consideration.

One of the essential services outlined in Article 19(2) of the CRC is therapy or treatment. According to the CRC committee "treatment" is one of the many services needed to "promote physical and psychological recovery and social reintegration" for children who have experienced violence and must take place "in an environment that fosters the health, self-respect, and dignity of the child"⁵³⁷. This implies that member states must ensure that their legal systems clearly stipulate procedures and specific measures for providing psychological, physical, and emotional treatment and support for abused children.

Processing is the final requirement in the procedure outlined in Article 19(2) of the CRC. However, this term is not explicitly explained by the convention committee in the general comment. Perhaps this is due to its clarity and comprehensibility within the context of the discussed issue. From the legislative perspective of member states, encompassing the requirement of processing implies that the law must clearly define the authorities or organisations responsible for handling cases of child abuse. This includes specifying the tasks and responsibilities of each authority or organization. Additionally, the law should distinctly outline the specific measures that the competent authority can employ to address cases of child maltreatment.

In summary, Article 19 of the CRC has instigated a fundamental shift in safeguarding children from violence. Specifically, violence is not only deemed morally and socially unacceptable but also constitutes a transgression of the fundamental rights of children.

4.4.2. The Right to be Protected from Violence in Vietnamese Law

Children are individuals who have not yet attained full physical and intellectual maturity, thus necessitating protection from both the family and society. However, in reality, many children endure prolonged exposure to violence. The issue of violence against children constitutes an urgent concern in Vietnam, where, on average, seven children experience abuse each day⁵³⁸, despite Vietnam being one of the first Asian countries to demonstrate early attention to the well-being of children⁵³⁹. Hence, a pressing concern arises for rigorous and comprehensive research on this matter, aiming to provide appropriate recommendations for legislators in constructing a safe social environment for children. With this objective in mind, this section endeavours to scrutinise the legal provisions in Vietnam pertaining to the safeguarding of children against violence. This analysis aims to evaluate and assess the compatibility of these regulations with their corresponding counterparts in international law.

⁵³⁶ Ibid.

⁵³⁷ Ibid 48.

⁵³⁸ ĐINH, On average, seven children experience abuse daily.

⁵³⁹ The rights of children to be cared for, educated and protected recognized in the 1945 Constitution in Article 14 in Vietnam. Besides, Vietnam is the first country in Asia to ratify the CRC in 1990.

In Vietnam, the right to be protected from personal violence is stipulated in Article 20, Clause 2 of the 2013 Constitution. Accordingly, “everyone has the inviolable right to their body, legally protected in terms of health, dignity, and honour; not to be tortured, subjected to violence, persecution, humiliation, or any other form of treatment violating the body, health, or infringing upon dignity and honour”. This provision explicitly delineates the inviolable right to the body and the right to be protected in terms of health, dignity, and honour for every individual, including children. Regarding the rights of children, Article 27 of the Children Act 2016 stipulates that “Children have the right to be protected in all forms to prevent violence, abandonment, and other acts that may harm the comprehensive development of children”. From the perspective of protecting the rights of children, this provision demonstrates that Vietnamese law is attentive to safeguarding children from violence, ensuring their comprehensive development in physical, mental, psychological, and social aspects. Moreover, this provision also preliminarily reflects the alignment of Vietnamese law with international standards and commitments regarding the protection of children from violence. Nevertheless, for a specific assessment of the effectiveness and feasibility of the relevant regulations within Vietnamese law, a detailed analysis is required, contrasting them with the obligations set forth by the CRC for member states, particularly outlined in Article 19.

Regarding the concept of violence, within the aforementioned regulations, although there is mention of prohibiting violent behaviour towards children, what constitutes violence or violence against children is not explicitly delineated. From a social perspective, “violence is a force used to coerce, oppress, or overthrow”⁵⁴⁰. According to sociological dictionaries, “violence is employed as a last resort to exercise power”⁵⁴¹. These concepts share a similar explanation of violence, specifically as the behaviour of one party using force to suppress, coerce, or punish the other party when they do not comply with the commands of the powerful party.

The legal framework in Vietnam does not incorporate the concept of violence in general; instead, it specifically addresses the notion of domestic violence, as stipulated in Article 2, Clause 2, and Article 1 of the Domestic Violence Prevention and Control Law 2022. Accordingly, “domestic violence is the intentional behaviour of a family member causing or capable of causing harm in terms of physical, mental, sexual, or economic aspects to other members within the family”⁵⁴². According to the Marriage and Family Law 2014, “family is a collection of individuals connected by marriage, blood relationships, and foster relationships, creating rights and obligations among them under the Marriage and Family Law 2014”⁵⁴³. Thus, based on the three relationships listed in the concept of family according to the Marriage and Family Law 2014, it can be concluded that members of the family will include: spouses, formed through the marital relationship; parents, children, siblings, grandparents, aunts, uncles, maternal and paternal relatives; foster mothers and foster children, formed through blood relationships; and foster mothers and foster children, formed through foster relationships.

⁵⁴⁰ HOANG, Vietnamese dictionary 39.

⁵⁴¹ ENDRWEIT - TROMMSDORFF, Sociological dictionary 22.

⁵⁴² The Domestic Violence Prevention and Control Law No. 02/2022 .

⁵⁴³ Article 3 of The Marriage and Family Law No. 52/2014.

According to Article 2, Clause 1 of the Domestic Violence Prevention and Control Law 2022, there are nine behaviours considered domestic violence in Vietnam. They include: “(a) physical abuse, mistreatment, torture, or other intentional actions causing injury to the health and life of others; (b) insult or other actions intended to harm the gender, dignity, and reputation of others; (c) isolation, exclusion, or continuous psychological pressure on other family members, resulting in serious consequences; (d) hindering the exercise of legal rights and obligations in relationships between grandparents and grandchildren, parents and children, spouses, as well as among siblings; (e) coercion into forced marriage; compulsory marriage or divorce and interference with the right to autonomy and progress in marriage; (f) appropriation, destruction, or other purposeful actions to damage the personal property of family members or the common property of family members; (g) forcing other family members to work excessively or contribute more money than their capabilities; controlling the income of other family members to make them financially dependent; (h) engaging in illegal activities to evict other family members from their residence”. However, based on the concept of children and the content of the behaviours mentioned above, it can be concluded that the forms of domestic violence against children will be concentrated into four groups as follows: firstly, abuse, mistreatment, physical violence, or other intentional actions causing harm to the health or life of children; secondly, insults or actions intended to harm dignity and reputation; thirdly, coercion; and fourthly, forced marriage for children.

From the above provisions, the author makes several observations. Firstly, the regulations on forms of domestic violence in Vietnamese law are quite detailed, as they can encompass various actual forms of domestic violence. Secondly, victims of all forms of violence defined in Vietnamese law are members of the family, not limited to children or women. In other words, as long as both the perpetrator and the victim of violent behaviour are family members, the action is considered domestic violence. Thirdly, allowing children to witness domestic violence may not be explicitly defined, but by examining the manifestations and consequences of children witnessing domestic violence, it can be concluded that this constitutes emotional abuse against children.

Weithorn states that “over the past two decades, accumulating experimental data has impressively demonstrated the negative impact of exposure to domestic violence on the psychological development and functioning of children. Exposed children may develop a range of social, psychological, and academic problems, including aggressive behaviours, anxiety symptoms, emotional withdrawal, and serious difficulties in school learning”⁵⁴⁴. This research also indicates that these children are more likely to develop emotional and emotion regulation problems as they grow up than children from non-violent families. This includes repeating patterns of violent behaviour they observed when they were young. Clear data shows that growing up in a violent family environment is harmful to children, even if they are not direct victims of physical or sexual abuse⁵⁴⁵. Furthermore, this is also a contributing factor to future domestic violence.

The Children Act 2016 lacks provisions addressing preventive measures against violence directed at children. Instead, preventive measures against domestic violence are recorded in Chapter II, from Article 13 to Article 18 of the Domestic Violence Prevention and Control Law 2022, with

⁵⁴⁴ WEITHORN, Protecting children from exposure to domestic violence 56.

⁵⁴⁵ *Ibid.*

various diverse measures. Accordingly, measures related to information, communication, and education on domestic violence prevention are first outlined in Article 13, specifying the purposes and requirements of these activities. Article 14 details the content of information, communication, and education, stipulating that information and propaganda on preventing and combating domestic violence must ensure “knowledge about marriage and family; skills in family interaction; protection skills; support for victims of domestic violence; prevention, intervention, and handling of domestic violence behaviours”⁵⁴⁶. Domestic and international experiences in preventing and combating domestic violence are also contents that, according to Vietnamese legislators, should be included in the information and propaganda on preventing and combating domestic violence. Additionally, Article 16 of the Domestic Violence Prevention and Control Law 2022 further regulates “consulting on the prevention and control of domestic violence”. According to this, “the subjects of counselling are victims of domestic violence and individuals displaying domestic violence behaviours”⁵⁴⁷.

Mediation is the second measure stipulated for preventing and combating domestic violence, according to Domestic Violence Prevention and Control Law 2022. Accordingly, “mediation in the prevention and control of domestic violence is the act of the mediator guiding the parties to voluntarily resolve conflicts and disputes among family members to prevent the occurrence or recurrence of domestic violence behaviours”⁵⁴⁸. In the same provision, Vietnamese legislators also emphasise that “mediation in the prevention and control of domestic violence does not replace measures to handle individuals with domestic violence behaviours”.

The handling of reports and denunciations of domestic violence behaviours is covered in Article 20 of the Prevention and Control of Domestic Violence Law 2022. For the police agencies and border posts near the location of the domestic violence incident, upon receiving reports and denunciations, they must promptly, within their jurisdiction, prevent and handle domestic violence behaviours according to their authority. Simultaneously, they are required to notify the chairman of the People’s Committee at the commune where the domestic violence incident occurred⁵⁴⁹.

For organisations and individuals such as the heads of educational institutions, village chiefs, and telephone hotline operators, upon receiving reports and denunciations of domestic violence behaviours, they are required to notify the chairman of the People’s Committee at the commune where the domestic violence incident occurred. The chairman of the People’s Committee at the commune level is responsible for handling or assigning the handling immediately upon receiving reports and denunciations of domestic violence behaviours or receiving reports on domestic violence behaviours from organisations and individuals as specified in Clauses 1 and 2 of this article, except in cases specified in Clause 4 of this article⁵⁵⁰. In the case of reports and denunciations of domestic violence where the victim is a child, a pregnant woman, a woman breastfeeding a child under 36 months old, an elderly person, a person with disabilities, or a person incapable of self-care, or the domestic violence behaviour has or is likely to pose a danger to the health or life of the victim, the chairman of the

⁵⁴⁶ Article 4, Section 14 of the Domestic Violence Prevention and Control Law 2022.

⁵⁴⁷ Article 2, Section 16 of the Domestic Violence Prevention and Control Law 2022.

⁵⁴⁸ Article 1, Section 17 of the Domestic Violence Prevention and Control Law 2022.

⁵⁴⁹ The law on local government organization - Article 36 on responsibilities of the chairman of the People’s Committee in handling domestic violence behaviours.

⁵⁵⁰ Article 36 of the Local Government Organization Law.

People's Committee at the commune level assigns the communal police, ward police, or township police (hereinafter collectively referred to as communal police) to handle the matter.

The measures to prevent domestic violence behaviours are outlined under Article 22 of the Domestic Violence Prevention and Control Law 2022. These measures include preventing domestic violence behaviours and protecting and supporting victims of domestic violence. It involves terminating domestic violence behaviours. According to the provisions of Article 23 of the Domestic Violence Prevention and Control Law 2022, those with the authority to handle domestic violence cases apply the necessary measures, as stipulated by law, to immediately terminate domestic violence behaviours. If the authorised person is not present at the time of the domestic violence incident, the person present at the scene, according to their abilities and the nature of the domestic violence behaviour, has the responsibility to demand an immediate cessation of the violent behaviour.

Subsequently, the commune police station where the domestic violence occurred requests that the individual engaged in domestic violence come to the police station to clarify information and resolve the case. According to the provisions in Clause 1 of Article 24 of the Domestic Violence Prevention and Control Law 2022, the commune police chief has the authority to request the individual with violent behaviour in the following two cases: first, when the victim of domestic violence is a child, a pregnant woman, a woman breastfeeding a child under 36 months old, an elderly person, a person with disabilities, or a person incapable of self-care; second, when there is evidence that the domestic violence behaviour has or may continue to pose a danger to the health or life of the victim of domestic violence. In Clause 3 of the same law, the legislator also stipulates: "In cases where the individual engaged in domestic violence does not comply with the request, the commune police may use supportive measures as prescribed by law to bring the individual engaged in domestic violence to the commune police station".

The measure of restraining contact is stipulated in Article 25 of the Domestic Violence Prevention and Control Law 2022, serving as one of the measures to prevent and simultaneously protect the victim of domestic violence. According to this, the commune People's Committee chairman in the locality where the act of domestic violence occurs has the authority to decide on the application of this measure. However, each application should not exceed 3 days. Additionally, the application of the restraining contact measure is limited to the following two cases: first, when there is a request from the victim of domestic violence, the guardian, or the legal representative of the victim of domestic violence, or the competent authority, organisation, or individual regarding the act of domestic violence causing harm or threatening harm to the health or life of the victim of domestic violence⁵⁵¹; second, when "The act of domestic violence threatens the life of the victim of domestic violence"⁵⁵². If it is observed that the measure of restraining contact does not provide effective protection, the victim of domestic violence may be arranged to stay in a temporary shelter, during which time they will receive support for essential needs⁵⁵³.

When necessary, victims of domestic violence can receive care and treatment at healthcare facilities. Article 29 of the Domestic Violence Prevention and Control Law 2022 requires healthcare

⁵⁵¹ Point a, Clause 1, Article 25 of the Domestic Violence Prevention and Control Law 2022.

⁵⁵² Point b, Clause 1, Article 25 of the Domestic Violence Prevention and Control Law 2022.

⁵⁵³ Article 28 of the Domestic Violence Prevention and Control Law 2022.

facilities to take responsibility for receiving, caring for, and treating patients who are victims of domestic violence⁵⁵⁴. Additionally, individuals who have experienced domestic violence are entitled to legal assistance, psychological counselling, and skills training to cope with domestic violence, as outlined in Article 30 of the Domestic Violence Prevention and Control Law 2022.

To achieve long-term effectiveness in the work of preventing and combating domestic violence, the Domestic Violence Prevention and Control Law 2022 also stipulates education and support for behaviour transformation for individuals exhibiting domestic violence. The education covers legal aspects related to domestic violence prevention, knowledge of interpersonal skills within the family, knowledge and skills for controlling domestic violence behaviour, and knowledge and skills for relieving pressure and stress. Simultaneously, measures such as advising and criticising individuals with domestic violence behaviour within the community should be implemented in the following cases: first, when a person engages in violent behaviour two or more times within 12 months without reaching the threshold for administrative penalties or enforcement of administrative handling measures; second, when an individual, previously penalised for administrative violations related to domestic violence, continues to exhibit such behaviour⁵⁵⁵.

“Children not only have to face the immediate impacts of violent situations but also have to deal with the subsequent consequences of violence, such as the stress and depression of parents or changes in their family dynamics”⁵⁵⁶. Therefore, it is necessary to clearly define measures for handling domestic violence violations to, in part, minimise the consequences and prevent those engaging in domestic violence.

In Vietnam, there are three groups of measures applied to address violent behaviours towards children. These include administrative measures, civil measures, and criminal measures. Concerning administrative measures, fines are a form of handling used for those engaging in domestic violence against children more lightly under Administrative Law. Specifically, according to Articles 49, 50, 51, and 52 of Decree 167/2013/ND-CP, fines are imposed for various forms of domestic violence, including behaviours causing harm to the health of family members, with the highest fine of up to 2,000,000 VND; abuse and mistreatment of family members, with a maximum fine of 2,000,000 VND; and insulting the honour of family members, with the highest fine being 1,500,000 VND; and continuous psychological pressure, with a maximum fine of 300,000 VND. Secondly, civil procedural measures are employed. According to the Civil Code 2015, compensation will be applied to those who have abused the survival, health, honour, dignity, and reputation of children. If the authorities cannot apply administrative measures and criminal penalties for an act of domestic violence, they may simultaneously use both civil procedural measures and criminal penalties. For example, if an individual engages in physically violent behaviour towards a child and receives an administrative penalty, they cannot be subject to criminal penalties. However, if an individual engages in sexual abuse towards a child, they may be subject to both civil procedural measures and criminal penalties. The third facet concerns the implementation of criminal sanctions. To address transgressions against the life, well-

⁵⁵⁴ Point a, Clause 1, Article 29 of the Domestic Violence Prevention and Control Law 2022.

⁵⁵⁵ Clause 1, Article 32 of the Domestic Violence Prevention and Control Law 2022.

⁵⁵⁶ BLUCKLEY - HOLT - WHELAN, Listen to Me! 301.

being, reputation, and integrity of minors, the Penal Code 2015⁵⁵⁷ delineates the ensuing criminal offences: Homicide, as defined in Article 123, specifies that the murder of an individual under 16 years of age constitutes an aggravating factor for this category of offence, carrying the most severe penalty, including the possibility of capital punishment. Homicide or abandonment of a new-born, as outlined in Article 124, pertains to instances where a mother, influenced by antiquated ideologies or unique circumstantial factors, causes harm to her offspring. Rape of an individual under 16 years of age, as stipulated in Article 142, involves exacerbating circumstances such as incest, leading to pregnancy, inflicting bodily injuries, or causing harm to the victim's health, with a body injury rate ranging from 31% to 60%. This crime may also induce mental and behavioural disorders ranging from 11% to 45%. Offenders are obligated to undergo care, education, and treatment, with the maximum penalty set at 20 years of imprisonment. In cases where the victim is not yet ten years old and subsequently succumbs or commits suicide, the most severe penalty may be the imposition of the death penalty. Perpetrating the offence of engaging in sexual intercourse or other sexual acts with an individual aged 13 to under 16 incurs a maximum penalty of up to 15 years of imprisonment. The offence of lewdness against a person under 16, as per Article 146, encompasses elements such as inducing the victim to commit suicide and causing mental and behavioural disorders exceeding 46%, warranting a maximum prison term of seven years.

In general, the measures to address violent behaviour towards children under administrative, civil, and criminal law in Vietnam reflect the diversity and consideration within the legal system in dealing with this serious issue. Concurrently, they also demonstrate the state's efforts to protect the rights and safety of children from the negative impacts of domestic violence. Each type of measure carries its own characteristics, advantages, and disadvantages that need to be assessed for improvement in effectiveness. Specifically, administrative measures, primarily relying on monetary fines, can help establish financial penalties to prevent and address domestic violence behaviours. However, attention should be given to the drawbacks of applying low fines and the lack of an effective management mechanism. Civil remedies, particularly compensation, serve as a way to protect the rights of abused children, provide justice, and restore the consequences of domestic violence. Nonetheless, it is essential to consider the fairness and effectiveness of implementing this measure. Criminal measures, encompassing specific offences, represent a robust means to punish severe acts of domestic violence, especially those impacting the life, health, and mental well-being of children. However, ensuring a fair and effective criminal justice system is crucial. Additionally, for adults witnessing acts of violence against children without reporting them, Vietnamese law only recognises administrative penalties without determining criminal liability for them.

In summary, a harmonious combination of administrative, civil, and criminal measures can create a comprehensive and more effective legal system for preventing and addressing domestic violence against children in Vietnam. However, this requires continuous and regular evaluation to ensure flexibility and an accurate reflection of society's actual needs.

⁵⁵⁷ The Penal Code No. 100/2015 was amended on June 20, 2017

5. PROTECTING THE RIGHTS OF CHILDREN UNDER THE LEGAL FRAMEWORK OF EUROPE AND HUNGARY

5.1. GENERAL INTRODUCTION TO THE PROTECTION OF CHILDREN'S RIGHTS IN EUROPE

Children represent the future generation of society and communities. Therefore, safeguarding and ensuring the rights and well-being of children significantly contributes to the construction of a sustainable future. In Europe, member countries have demonstrated a strong commitment to the protection of children's rights by actively participating in international organisations and programs. This section will provide a brief introduction to the institutions and treaties in Europe that play a significant role in safeguarding human rights in general and the rights of children in particular.

5.1.1. Legislative and Judicial Institutions in Europe

The legislative and judicial bodies in Europe play a crucial role in safeguarding the rights of children. The European Commission (EC) is one of the three principal institutions of the European Union (EU)⁵⁵⁸. It functions as the proposer, enforcer, and manager of EU policies and legislation, some of which are related to human rights. The EC does not bear direct responsibility for the protection of human rights. The primary role of the EC is to propose, implement, and manage the policies and legislation of the EU. Nevertheless, the policies and legislation proposed by the EC and deliberated upon and adopted by the European Parliament and the Council of the EU may impact human rights. For instance, regulations about security, labour rights, personal freedom, and equality may be relevant to the protection of human rights.

Besides, the Council of Europe is an international organisation focused on promoting democratic values, human rights, and peace in Europe. The Council of Europe has established numerous conventions and charters related to human rights, including the ECHR. The Council of Europe is an organisation primarily focused on protecting and promoting human rights in Europe. The ECHR and related conventions issued by the Council of Europe are binding and applicable to all member states.

While some regions of the world still do not have supranational structures for the protection of human rights and fundamental freedoms, Europe has two systems that are competing on some levels and complementary on others⁵⁵⁹. That refers to the Court of Justice of the EC (CJEU) and the European Court of Human Rights (ECtHR). The ECtHR is an international court established in 1959. It renders decisions on individual complaints or those submitted by states pertaining to violations of civil and political rights as stipulated in the ECHR⁵⁶⁰. In alternative terms, the CJEU in Strasbourg is the guardian of the ECHR and accepts complaints by individuals alleging a breach of one or more

⁵⁵⁸ EC, "Strategy and policy of the European Commission.

⁵⁵⁹ EMMERT - CARNEY, The European Union charter of fundamental rights 1047.

⁵⁶⁰ ECtHR, Court in brief.

Convention articles by acts or omissions of the authorities of one of the forty-seven contracting parties of the Council of Europe, provided certain conditions of admissibility are met⁵⁶¹. Since 1998, it has functioned as a full-time court, and individuals can directly submit applications to it. The court has examined hundreds of thousands of complaints since its establishment. Its decisions are binding on the involved nations and have prompted governments to amend their laws and administrative practices in various areas. The court's jurisprudence has transformed the ECHR into a vibrant and potent instrument for confronting new challenges and reinforcing legal principles and democracy in Europe⁵⁶².

The CJEU was established in 1952 in Luxembourg. Its mission is to interpret EU law to make sure it is applied in the same way in all EU countries and to settle legal disputes between national governments and EU institutions. It can also, in certain circumstances, be used by individuals, companies, or organisations to take action against an EU institution if they feel it has somehow infringed on their rights⁵⁶³. The CJEU is the guardian of the EU Charter of Fundamental Rights (CFR) and decides in specific cases whether acts or omissions of the EU institutions and/or certain acts or omissions of the authorities of one of the twenty-eight member states of the EU conform with the guarantees provided in the charter. While there are differences in geographic coverage and the substantive scope of protection, some cases can and have been brought before both supranational courts⁵⁶⁴.

In summary, although all four organisations have an impact on protecting human rights in Europe, the Council of Europe and the ECHR play a primary role in ensuring compliance and enforcement of human rights in Europe.

5.1.2. Agreements Safeguarding Children's Rights in Europe

Europe has established a robust legal framework to protect the rights of children through the signing and implementation of agreements within the region. The ECHR holds the most significant role in human rights within European territory. It was ratified in Rome, Italy, on November 4, 1950. The original version of ECHR was drafted in both English and French (English: European Convention on Human Rights, French: La Convention européenne des droits de l'homme) and became effective on September 3, 1953. As of now, ECHR has been supplemented with 15 (14 + 14bis) accompanying protocols⁵⁶⁵. Between the years 1950 and 2004, a total of 46 countries signed this convention, signifying their commitment to upholding rights and freedoms as well as recognising the jurisdiction of the ECHR. The act of signing the ECHR implies that anyone can bring a case before the ECHR, whether it concerns their own country or another nation, regarding violations of human rights guaranteed by the convention and its supplementary protocols⁵⁶⁶.

⁵⁶¹ ECtHR, Bringing a case to the ECtHR 64.

⁵⁶² ECtHR, Court in brief.

⁵⁶³ CJEU, Search all EU institutions and bodies.

⁵⁶⁴ For additional details, refer to footnote 3 in: EMMERT - CARNEY, The European union charter of fundamental rights 1049.

⁵⁶⁵ GUTIC, The right to privacy 335.

⁵⁶⁶ Ibid.

The CFR is a document of the EU containing a list of fundamental rights and freedoms that all citizens in the member countries of the EU possess. This agreement holds significance in ensuring human rights within the scope of the EU. The CFR of the EU, which enshrines certain civil, political, social, economic, and cultural rights in EU law, was given full legal effect by the entry into force of the Treaty of Lisbon on 1 December, 2009. This brief description belies a long and convoluted journey that began with the decision of the European Council in 1999 to draw up a CFR and resulted quite quickly in the publication of a first draft in 2000. By December 2000, the charter had been enshrined in the Treaty of Nice. But between 2001 and 2004, the charter became enmeshed in the ultimately unsuccessful effort to introduce an EU constitutional treaty, and by the end of 2004, with votes in the Netherlands and France having gone against the constitutional treaty, it appeared that the charter would remain forever in legal limbo. Remarkably, it was revived by the Treaty of Lisbon, which at the same time provided for the accession of the EU to the ECHR. Although the latter has not taken place, the place of the charter in EU law is now secure: the charter provides a standard against which the EU institutions and, in some circumstances, the institutions of the member states are held to account.

It is now just over a decade since the CFR of the EU entered into force together with the Lisbon Treaty on December 1, 2009, as primary EU law on an equal footing with the EU Treaties. It is, moreover, just over two decades since the Charter was first proclaimed as an indicative catalogue of rights at Nice on December 7, 2000. Of course, fundamental rights protection in the law of the union predates the charter, having been recognised as a general principle of law over fifty years ago, first in 1969 in *Stauder v City of Ulm* and then even more explicitly a year later in the *Internationale Handelsgesellschaft* case. However, there is no doubt that the charter has, particularly since its formal entry into force, afforded much greater visibility to the rights that it protects and, in so doing, has significantly enhanced legal certainty for those seeking to rely on those rights⁵⁶⁷.

In addition to the aforementioned two agreements, several other agreements may follow to protect human rights in Europe. These include the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT); the Council of Europe Convention on Action Against Trafficking in Human Beings (CETS No. 197); the Council of Europe Framework Convention for the Protection of National Minorities (FCNM); the United Nations Convention on the Rights of Persons with Disabilities (CRPD); and the Istanbul Convention on preventing and combating violence against women and domestic violence. However, in this section, the author focuses the analysis on the two aforementioned agreements. Furthermore, the Treaty on European Union (TEU), although primarily focused on the organisation and powers of the EU, also clearly establishes obligations for the protection of children in its content. Specifically, Article 3(3), as amended by the Lisbon Treaty, stipulates that “the rights of the child shall be protected” as a core value of the Union. According to *Stalford*, this recognition holds significance in “reaffirming the obligation to protect children inherent in the CFR of the EU”⁵⁶⁸.

⁵⁶⁷ PEERS - HERVEY - KENNER - WARD, *The EU charter of fundamental rights* 78.

⁵⁶⁸ STALFORD, *Children and the European Union* 169.

The CRC and the Protection of Children in Europe (Lanzarote Convention). Deployed by the Council of Europe, this convention focuses on protecting children from sexual violence and safeguarding them against trafficking.

Hague Convention on protection of children and cooperation in respect of intercountry adoption. This convention establishes principles to ensure the rights of children in cases of international adoption and creates rules for cooperation between countries.

The European Social Charter was developed by the Council of Europe. This convention focuses on ensuring fundamental rights for children, including the right to access education and healthcare services.

European Convention on Contact concerning Children. This agreement addresses the rights of children to maintain contact with family members following situations of family separation, such as divorce.

While focusing on violence against women, the Istanbul Convention also underscores the protection of children from domestic violence and coercion.

The Brussels IIbis Agreement is an accord of the EU designed to specify rules regarding jurisdiction, recognition, and enforcement of decisions in matters related to marriage and child custody within the context of member states. This agreement was signed on November 27, 2003, in Brussels and became effective on March 1, 2005.

5.1.3. European Endeavours in Safeguarding Children's Rights

Europe has demonstrated a robust commitment to safeguarding children's rights through various endeavours and programmes. The following are some notable examples of the significant efforts that Europe has undertaken to protect the rights of children:

In 2007, the EC created the role of “coordinator for the rights of the child”, who endeavours to ensure that the rights of the child are considered in all policies and areas of commission activity. The process of mainstreaming children and children’s rights consideration into EU policy is a key area of development, ensuring greater awareness during the law-making process⁵⁶⁹.

One of the most significant contributions made by the EU is the funding of projects aimed at research into children’s rights and circumstances, both through the European Fundamental Rights Agency and other sources. This research has covered a wide range of issues, including child-friendly justice, child protection, including protection of rights and needs of care leavers, child migration, including immigration and asylum, and missing children; bullying; and children as victims of violence. There is greater engagement with research findings to inform and develop capacity in the reform of legislation and increasing awareness of the impact of EU activity in children’s lives across Europe concerning the rights expressed in article 24, particularly the best interests of the child.

For example, the Council of Europe has engaged with children’s rights in its wider activities. The “Council of Europe Strategy for the Rights of the Child 2016-2021”⁵⁷⁰, identifies five priority areas: equal opportunities for all children; participation of all children; a life free of violence for all

⁵⁶⁹ SCHUURMAN, Developing a model for mainstreaming children’s rights 49.

⁵⁷⁰ Council of Europe, Council of Europe strategy for the rights of the child (2016-2021).

children; child-friendly justice for all children; and rights of the child in the digital environment. As part of these activities, the Council of Europe has developed guidelines on child-friendly justice⁵⁷¹ which the EC has sought to promote⁵⁷² and has identified as relevant to the development of EU legislation on the rights of children as suspects in criminal proceedings⁵⁷³. These developments and the close identification of goals between the EU and the Council of Europe on children's rights mean that there should be an ongoing exchange of expertise and engagement between the institutions of both bodies to promote children's rights across Europe⁵⁷⁴.

In 2011, the commission formulated the "EU Agenda on the Rights of the Child"⁵⁷⁵, which created an inventory of how EU law affected children's rights, identifying the policy area and associated competence in the EC Treaty, the rights in the Charter and the CRC⁵⁷⁶. While the exercise of creating an EU agenda has not been repeated, the commission has maintained an inventory of EU law related to children's rights under the "Justice and Fundamental Rights" portfolio of activities. It periodically updates a portfolio document, "EU acquis and policy documents on the rights of the child"⁵⁷⁷.

In summary, safeguarding the rights of children in Europe is a crucial focal point, ensuring that the younger generation has a secure and nurturing environment for future development. The agreements and endeavours within this region have demonstrated a clear commitment to the welfare of children, making a significant contribution to shaping a promising future for all children in Europe.

5.2 PRINCIPLES OF PROTECTING CHILDREN'S RIGHTS

5.2.1. The Principle of Best Interests of the Child in Safeguarding Children's Rights

The principle of safeguarding the best interests of the child is articulated within the framework of the ECHR through various provisions. A notable manifestation of this principle can be identified in Article 8 of the ECHR, which safeguards the right to respect for private and family life. The ECtHR consistently interprets and applies Article 8, demonstrating a foremost awareness of the paramount importance of the principle of safeguarding the best interests of the child. In other words, the ECHR considers the best interests of the child as a crucial factor when assessing the proportionality of interventions in family life. The court acknowledges that the welfare of children is of utmost significance, and decisions affecting children must be made with a primary focus on their well-being.

The case of *Neulinger*, decided by the grand chamber of the ECtHR in July 2010, serves as an illustrative example. The case involved a mother who unlawfully took her 2-year-old son from Israel to Switzerland following the breakdown of her relationship with the child's father. When attempting

⁵⁷¹ Council of Europe, Child-friendly justice.

⁵⁷² EC, EU agenda on the rights of the child 58.

⁵⁷³ Directive 2016/800 on procedural safeguards for children.

⁵⁷⁴ Including the council of Europe's other treaties relating to children, including the convention on the adoption of children, convention on repatriation of minors, convention on the exercise of children's rights, convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children, convention on contact concerning children; convention for the protection of children against sexual exploitation and sexual abuse.

⁵⁷⁵ EC, An EU agenda for the rights of the child 60.

⁵⁷⁶ EC, Preliminary inventory of EU actions affecting children's rights 889.

⁵⁷⁷ EC, EU Acquis on the rights of the child.

to enforce the father's application for the immediate return of the child to Israel, the Swiss Federal Court rejected the mother's claim that there was a serious risk that returning the child to Israel would subject him to physical or psychological harm or otherwise place him in an intolerable situation. However, in the ultimate appeal to the ECtHR, it ruled that the execution of the return order would constitute an unreasonable interference with the mother's rights and the child's right to respect for private and family life, protected by Article 8 of the ECHR⁵⁷⁸.

Article 3 of the CRC in interpreting and applying Article 8 of the ECHR. Specifically, the court acknowledged that five years had elapsed since the mother's wrongful abduction, during which the child had successfully settled in Switzerland and had no contact with his father. Indeed, the majority of the council members (16-1) accepted that returning the child (potentially without his mother) would not be in the child's best interests given the uncertain family circumstances in Israel. Thus, automatic repatriation, as confirmed by the Hague Convention, is often considered to be in tandem with Article 8 of the ECHR, but this always hinges on an assessment of whether such action aligns with the best interests principle outlined in Article 3 of the CRC⁵⁷⁹. In summary, the ECHR, particularly through Article 8, underscores the principle of safeguarding the best interests of the child by placing a strong emphasis on their welfare as a primary factor in cases involving family life and privacy issues. The jurisprudence of the ECtHR continues to elucidate and reinforce this principle, emphasizing the necessity of a child-centric approach and protective measures in legal and administrative proceedings affecting children.

The principle of safeguarding the best interests of the child is also enshrined in the CFR of the EU through several crucial provisions. Article 24 of the charter establishes specific provisions related to the rights of children and the protection of their best interests. According to Article 24, children have the right to special protection and care, including the right to be heard in matters affecting them, based on their evolving capacities. This provision underscores the importance of the participation of children in decisions affecting their lives, aligned with the developmental and cognitive abilities of each individual. According to the analysis provided by *Steve Peers et al.*, "Article 24 does not adopt exactly the wording of the underlying provisions of the CRC, instead reformulating the rights contained in Articles 3, 9, and 12 of the convention with less detailed terms. It is not a direct adoption of the four general principles of the CRC, instead reflecting only two of them, Articles 3 and 9, alongside the additional concern of ensuring contact between the child and both of his or her parents and not directly including article 2 on non-discrimination in accessing the rights in the CRC"⁵⁸⁰.

Furthermore, Article 7 of the charter ensures the right to respect for private and family life, also embodying the principle of safeguarding the best interests of children. This right explicitly addresses respect for family life and the special protection of the rights of children. According to *Steve Peers et al.*, "Article 24 specifically focuses on the rights of children without specific context, potentially applicable wherever the interests of a child are affected. The interaction with other provisions in the

⁵⁷⁸ STALFORD, *Children and the European Union* 170.

⁵⁷⁹ *Ibid.*

⁵⁸⁰ PEERS - HERVEY - KENNER - WARD, *The EU charter of fundamental rights* 201.

charter, therefore, depends on the specific circumstances, but rights preventing abuse and ensuring protection for families are particularly crucial”⁵⁸¹.

Therefore, the combined application of Articles 24 and 7 of the charter serves as an illustrative example. The realisation of children’s rights will often take place in the context of family life, and the interaction of Article 24, which prioritises the rights of the individual child, with Article 7, the right to respect for private and family life, and the legal, social, and economic protection of the family under Article 33(1) is crucial. Article 7 protects the right to respect to family life of all family members, not just the child, and the relationship between the rights of family members and the additional children’s rights under Article 24 has been the focus of the protection of family law rights in the charter. In EU law on cross-border family life, and in relation to the rights associated with the free movement of persons and European citizenship, both Article 7 and Article 24 have been relied upon in tandem to uphold respect for the family relationships affected by the legal framework.

Regarding the principle of safeguarding the best interests of the child under Hungarian law, on November 20, 1989, the aforementioned declaration was officially promulgated in Hungary via Act No. LXIV of 1991, underscoring the paramount welfare of children. *Szeibert* states that “this engenders a significant departure from the convention's utilisation, albeit certainly marking a paradigm shift. At the very least, this shift in perspective holds significance akin to adjustments in post-divorce communication arrangements, consideration of the autonomous opinions of the child, and the facilitation of conditions for sole custody”⁵⁸². Similarly, *Visontal - Szabó* contends that “in the original English text, the phrase “child's best interest” does not precisely convey this meaning; rather, it speaks to ensuring the child's best or paramount interests. Because the interests of children, although significant, cannot always take precedence, especially in cases where the interests of many children conflict, the question of what constitutes a child's best interest has been a longstanding subject of debate. This question cannot be succinctly answered, but one thing is certain: the interests of the child are not synonymous with those of the parents because what is good for the parents, or what parents perceive as good for the child, may not necessarily be in the child's actual best interest”⁵⁸³.

According to *Nyitrai*, “during the process of incorporating the CRC into the national legal system, numerous criticisms regarding the significance of the principle have been articulated. Indeed, those who critique the “best interests” principle have emphasised, even before the formation of the agreement and indeed earlier, that the principle, due to the vagueness of its content, poses a risk of arbitrary decision-making”⁵⁸⁴. Nevertheless, *Nyitrai*⁵⁸⁵ also contends that “the indeterminacy of the principle, filled in by member states based on their local legal realities, may stem from legal practices or court decisions. This flexibility is not only an integral part of the principle but also an indispensable aspect of most human rights standards, enabling them to be applied flexibly within the legal-cultural context of each nation”⁵⁸⁶.

⁵⁸¹ Ibid.

⁵⁸² SZEIBERT, Role of the convention on the rights of the child in family law 145.

⁵⁸³ VISONTAL - SZABÓ, Közös vagy kizárólagos szülői felügyelet? 236.

⁵⁸⁴ NYITRAY, A gyermekjogi egyezmény 3. cikk 1. bekezdésének értelmezési és alkalmazási nehézségei.

⁵⁸⁵ Ibid.

⁵⁸⁶ Ibid.

Concerning the application of the principle of safeguarding the best interests of the child, according to *Szeibert*, “there are four principles introduced in family law to emphasise that family law is a distinct branch of civil law where specific legal rules are applied with special considerations. The principles are as follows: the protection of family marriage, the protection of the rights of children, marital equality, and, finally, justice and protection of the vulnerable party. All these principles have an impact on the position and best interests of the child”⁵⁸⁷.

Examining the specific provisions of the Hungarian Civil Code of 2013, it can be observed that the regulations regarding the rights and obligations of parents clearly reflect the principle of safeguarding the best interests of the child. This is evident both when the marital relationship of the parents is still in existence and even during the process of their divorce. While the marital relationship between the parents is still in existence, the Hungarian Civil Code specifies the responsibilities of parents in safeguarding the best interests of the child in various issues, including the determination of the child's name, care and education, establishment of residence, property management, legal representation, the appointment of a potential guardian in the event of the parent's demise, and the exclusion of certain individuals from guardianship rights⁵⁸⁸. Importantly, according to 4:147, § (1), parents must fulfil their responsibilities for the benefit of the physical, mental, and moral development of the child. These provisions are employed by the Hungarian legislature as tools to ensure the comprehensive development of children, as the regulations regarding parental responsibilities extend to various crucial aspects of children's lives. *Szeibert* states that “these principles were previously recognised in the Hungary's Family Law of 1952. This law stipulated that parental supervision must be for the best interests of the child, and its content was defined as the care of minors (providing care, education, and promoting physical and mental development) and the management of the child's property, as well as legal representation, rights and obligations of guardianship, appointment, and exemption from guardianship”⁵⁸⁹.

Furthermore, 4:147.§(2) specifies that parents must cooperate, and they have equal rights in fulfilling parental responsibilities. Parental equality is not only required in cases where the parents are married or were formerly married but also in cases of cohabitation or past cohabitation⁵⁹⁰. Indeed, Article 4:164 (1) asserts that parents jointly fulfil parental responsibilities even when they do not live together, in cases where there is no agreement between them or a court decision or an order from the competent authority. However, *Szeibert* argues that “while this provision may seem sensible, it gives rise to many contradictions when the parents' relationship has deteriorated or become a highly conflicted case with no resolution in sight. If they cannot agree and are awaiting a court decision, then this period is a “standby time”. Although the court can issue interim decisions, this rarely happens in Hungarian legal practice”⁵⁹¹. Similarly, *Visontal-Szabó* argues that “when parents live together and their relationship is functioning properly, exercising parental supervision typically does not lead to conflicts”⁵⁹². In cases where conflicts arise between them, such as an inability to reach an agreement

⁵⁸⁷ SZEIBERT, Parental responsibilities and the child's best interest 201.

⁵⁸⁸ Section 4:146. § (2) of the Civil Code.

⁵⁸⁹ *Ibid.*

⁵⁹⁰ *Ibid.*

⁵⁹¹ *Ibid.*

⁵⁹² VISONTAL - SZABÓ, Közös vagy kizárólagos szülői felügyelet? 237

on a significant issue related to the child's future (such as the child's name, the school the child will attend, the sports the child will participate in, or the language the child will learn), they can turn to the child protection authority⁵⁹³. This authority will intervene in the family's life and assist the parents in making the best decision for the child⁵⁹⁴.

The protection of the best interests of children is also ensured when parents go through a divorce. According to the legal provisions of Hungary, divorce between spouses can be based on mutual consent or grounds of conflict. However, as noted by *Herger and Pebr Erika*, “divorce based on mutual consent provides advantages compared to a contentious divorce, as in matters related to children, the parties are obliged to reach an agreement, especially regarding issues concerning the children. This can lead to both parties being satisfied to ensure the smooth implementation of the agreement without encountering obstacles after the divorce decision becomes effective. Nevertheless, to safeguard the interests of the children, if the agreement is found to impact the children's interests negatively, the court will not accept it. If there are any concerns regarding the children's welfare, the court will require evidence according to its decision. The perspective of the Supreme Court, which remains valid to this day, emphasises that “the court needs to carefully examine the necessary conditions for approving an agreement when the agreement of the parties affects the fate of their minor children” (BH. 1989.18)”⁵⁹⁵.

In cases of contentious divorce, what is certain to be beneficial for the child's interest is to avoid prolonging the legal proceedings, preventing the child from living in uncertainty for an extended period without knowing what will happen. Additionally, in the child's best interest, it is crucial for the court to make considerate and cautious decisions. These two requirements can easily conflict with each other because making a proper decision demands time. Furthermore, the court must render a decision that can ensure the child's stable life and positive development in both the short and long term, while maintaining relationships with both parents without disruption. The child should feel that both parents are accessible to them, both physically and emotionally⁵⁹⁶.

The child's interests need to be reflected not only in the final decision but also throughout the entire legal process, notably during the resolution of issues related to the arrangement of parental custody. According to the provisions of Law No. V of 2013 on Civil Law, parental custody rights are exercised by parents even when they do not live together⁵⁹⁷. However, *Visontal-Szabó*⁵⁹⁸ notes that this is a starting point but is rarely applied in practice. Instead, the arrangement of parental custody rights can be implemented through an agreement between parents or a court decision. Section 4:165(1) of the Civil Code stipulates that in the case of divorce by mutual consent or agreement reached after separation, parents living apart can divide the rights and obligations related to parental responsibilities, or they may agree that one of them should assume parental responsibilities. If they do not agree, the court will decide on parental responsibilities upon their request or by default if deemed necessary for the best interests of the child. Therefore, according to this provision of the Hungarian Family Law, it

⁵⁹³ Section 4:166. § (2) of the Civil Code.

⁵⁹⁴ VISONTAL - SZABÓ, Közös vagy kizárólagos szülői felügyelet? 237.

⁵⁹⁵ HERGER - PEHR ERIKA. *Magyar Családjog* 67.

⁵⁹⁶ VISONTAL - SZABÓ, Közös vagy kizárólagos szülői felügyelet? 237.

⁵⁹⁷ Section 4:164. § (1) of the Civil Code

⁵⁹⁸ VISONTAL - SZABÓ, Közös vagy kizárólagos szülői felügyelet? 237.

is evident that one of the parents may be entrusted with parental responsibilities, and this decision will be made by the court. Thus, the court must consider all situations, and the crucial aspect is how to promote the physical, mental, and moral development of the child.

In this case, the child will reside with that parent, and the non-residential parent will have the right to contact the child. The parent not exercising parental responsibilities still has the right to make decisions on important matters affecting the child, along with the custodial parent. These issues include determining and changing the name of the minor, the residence of the child, changing the child's nationality, education, and the person taking care of the child. In cases where parents cannot agree on any significant issues, the competent guardianship authority has the authority to decide. Previously, the court had jurisdiction, but the guardianship authority is now considered appropriate. On the other hand, the resident parent has the obligation to regularly inform the non-residential parent about the child's developmental, health, and educational status. If the non-residential parent requests information, the residential parent must provide the requested information. If the non-residential parent is granted certain rights and responsibilities concerning the child, this parent must also comply with the notification requirements for the other parent. These obligations are not balanced with any direct penalties. However, there may be indirect consequences in the long run. Thus, these regulations signify the parents' execution of parental responsibilities, emphasising that non-cohabiting parents must collaborate to ensure a balanced life for the child. However, *Szeibert* contends that “despite being obligatory principles, no direct penalties are stipulated in the event of non-compliance by either parent. If the collaborative duty is breached, it may occasionally yield indirect consequences on a long-term basis”⁵⁹⁹.

5.2.2. The Principle of Non-Discrimination

In the ECHR, the principle of non-discrimination concerning children is often delineated within the framework of Article 14, alongside other protective provisions in the convention. This may predominantly be applicable in matters related to the specific rights and freedoms of children. Article 14 of the ECHR explicitly states: “Everyone shall be treated equally and fairly without any discrimination based on gender, sexual orientation, language, religion, political, or any other grounds”. The legislation indicates that the convention does not encompass a blanket prohibition of discrimination as outlined in the UDHR. Instead, it prohibits discrimination based on the rights and freedoms articulated within the convention: “These rights shall be secured without discrimination of any kind”.

Article 14's prohibition of discrimination pertains to the rights and freedoms delineated in the convention. This includes not only articles 2 to 13 of the convention but also the substantive rights under protocols No. 1, 4, 6, and 7 as far as these protocols have been ratified by the member states in question. It adds the requirement of non-discrimination to the fundamental guarantees of the convention⁶⁰⁰. Moreover, the prohibition of discrimination under Article 14 forms an integral part of

⁵⁹⁹ SZEIBERT, Parental responsibilities and the child's best interest 201.

⁶⁰⁰ ECtHR, *Marckx v BEL* No. 6833/74 32. See also: ECtHR, *Gaygusuz v Austria*, No. 17371/90, § 36.

each of the substantive articles of the convention laying down rights and freedoms⁶⁰¹. There is no room for the application of Article 14 unless the facts of a case fall within the scope of the convention. This means that Article 14 never applies independently but only in conjunction with a substantive convention right. For example, in the case of *Elmazova and others v. North Macedonia*⁶⁰², the issue pertains to discrimination in the exercise of the right to education. The case revolves around allegations of the segregation of Romani students in two state-managed primary schools in Bitola and Shtip. Specifically, in the first school, they were placed in a facility deemed exclusively for Romani students, and in the second school, they were assigned to classrooms exclusively designated for Romani students. The plaintiffs filed complaints asserting violations of their rights under Article 1 of Protocol No. 12 to the ECHR and Article 14 of the ECHR.

Or in the case of *G.L. v. Italy*⁶⁰³, which concerns discrimination in the realisation of the right to respect for private and family life. Specifically, the case involves *G.L.*'s complaint regarding discriminatory treatment as single mothers caring for their young children, whose fathers are unknown, based on the refusal by governmental authorities to grant them family allowances provided to families with “single-parent children”. Furthermore, Article 14 also enumerates prohibited grounds of discrimination, constituting a list of types for which individuals may not be treated differentially through state measures. Accordingly, those in similar or related situations can only be treated differently on these grounds if there is an objective and reasonable justification.

The grounds for discrimination under Article 14 are quite explicit, including gender, sexual orientation, language, religion, political opinion, or any other status. Additionally, according to the Court's provisions, race and ethnic origin are interconnected concepts, and discrimination based on a person's ethnic origin is also a form of racial discrimination⁶⁰⁴. “A reason not explicitly listed in Article 14 is the distinction between legitimate and extramarital children; however, it is encompassed within the protection of the right to birth”⁶⁰⁵. Thus, it can be observed that “the wording of the article shows that the list of grounds contained therein is not exhaustive”. Article 14 does not contain a list of legitimate aims for Article 13, the realisation of which a difference in treatment is permitted. Thus, when examining whether a state measure is discriminatory, the court does not have to determine which of the aims mentioned in these articles is pursued. Therefore, countries have a considerable degree of freedom in assessing whether and to what extent differentiation in similar situations has a justifiable basis for disparate treatment. The extent of this freedom varies depending on the circumstances, issues, and specific contexts⁶⁰⁶. In child custody cases and cases concerning a parent's personal contact with the child, the court finds it legitimate that states pursue the aim of protecting the health and rights of the children as well as their well-being⁶⁰⁷.

In general, when examining whether state measures are based on an objective and reasonable justification, the court accepts a wide range of sometimes very specific legitimate aims, such as the

⁶⁰¹ ECtHR, *The use of languages*, No. 1474/62 42. See also: ECtHR, *van der Musselle v Belgium*, No. 8919/80 43.

⁶⁰² ECtHR, *Elmazova and Others v. North Macedonia* No.11811/20 43.

⁶⁰³ ECtHR, *G.L. v. Italy*, No. 59751/15 37.

⁶⁰⁴ ECtHR, *Sejdić and Finci v. Bosnia and Herzegovina*, No. 27996/06 § 43.

⁶⁰⁵ GRABENWARTER, *European Convention on human rights* 26.

⁶⁰⁶ ECtHR, *Hoffmann v. Austria*, No. 12875/87 34. See also: ECtHR, *Hoffmann v. Germany*, No. 34045/96 59.

⁶⁰⁷ *Ibid.*

protection of the family in the traditional sense⁶⁰⁸, the protection of marriage⁶⁰⁹, or the desire to spare the feelings of unmarried childless women⁶¹⁰, some of which could as well fall within the aims expressly mentioned in Articles 8 to 11⁶¹¹.

In the CFR of the EU, the principle of non-discrimination is primarily delineated in Article 21. The pertinent part of Article 21 is as follows: “1. Any discrimination based on any ground, such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited. 2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited. 3. The European Union and its Member States shall comply with this principle in their respective activities, under all the powers conferred upon them”. This clearly articulates the EU's commitment to preventing all forms of discrimination and promoting fairness and equality in the treatment of individuals. To a certain extent, this parallels Article 14 of the ECHR, and as such, it would be applied in a manner consistent with Article 14.

Steve Peers et al. observe that “Article 21 has two limbs: a status discrimination limb (Article 21(1)) and a nationality discrimination limb (Article 21(2)). Although nationality can also be viewed as a status ground, the very two-limb structure of Article 21 of the Charter, whereby nationality discrimination is treated separately and differently from discrimination on other status grounds, signals the distinctive contours nationality discrimination has been given in the EU. To highlight and interrogate that difference, all the grounds other than nationality will be referred to as “status discrimination”, covered by Article 21(1), whilst nationality discrimination, covered separately in Article 21(2), will be considered as a special category in EU law”⁶¹².

In Article 21, there is no specific reference to the concrete concepts of discrimination, nor does it articulate the specific elements or details of these concepts. Nevertheless, “a prime example of how the court associates the concepts of discrimination can be found in “Articles 1 and 2(1)” of RED⁶¹³, addressing the notions of direct and indirect discrimination”⁶¹⁴. Accordingly, it can be understood that discrimination can be divided into two categories: direct discrimination and indirect discrimination. Specifically, direct discrimination involves overt and explicit discriminatory behaviour based on a particular characteristic such as gender, race, or religion. In classical structures, direct discrimination is often indefensible, meaning it cannot be demonstrated as reasonable or necessary and must comply with strict justifications usually defined by legislation⁶¹⁵. Indirect discrimination, on the other hand, is a form of discrimination that is not carried out directly but may result in unfair effects for a specific group. In this case, a broader scope of “objectivity justification” may be accepted, meaning that various justifications are acknowledged. Unlike direct discrimination, indirect

⁶⁰⁸ ECtHR, *Karner v. Austria*, No. 40016/98 40. 2023..

⁶⁰⁹ ECtHR, *Serife Yigit v. Turkey*, No. 3976/05. 72.

⁶¹⁰ ECtHR, *an Raalte v. Netherland*, No. 20060/92 43.

⁶¹¹ ECtHR, *Jahn and Others v. Germany*, No. 46720/99 123.

⁶¹² PEERS - HERVEY - KENNER - WARD, *The EU charter of fundamental rights* 627.

⁶¹³ Directive 2000/43/EC.

⁶¹⁴ PEERS - HERVEY - KENNER - WARD, *The EU charter of fundamental rights* 628.

⁶¹⁵ *Ibid.*

discrimination is characterised by ‘a broader scope of “objectivity justification” that is often accepted’⁶¹⁶.

In summary, based on the analysis of the non-discrimination principles in Article 14 of the ECHR and Article 21 of the CFR, it can be observed that both articles establish fundamental principles prohibiting discrimination. They emphasise the rights of individuals to justice and protect them from any form of discrimination based on criteria such as gender, race, religion, or nationality. Simultaneously, they serve as evidence of the European Union's commitment to the principles of ensuring justice and respecting the rights of individuals, creating a robust legal foundation to address cases of discrimination.

Concerning the application of the principle of discrimination under Hungarian law. The right to equal treatment is described in Article 15 of the Constitution, with the following content: “(1) Before the law, all individuals are equal. Everyone has the right and capability to take legal action. (2) Hungary ensures fundamental rights for everyone without discrimination, including race, skin colour, gender, disability status, language, religion, political opinion, or other opinions, national or social origin, financial differences, date of birth, or other status. (3) Women and men have equal rights. (4) Hungary supports the realisation of equal opportunities and the improvement of social life through specific measures. (5) Hungary protects families, children, women, the elderly, and people with disabilities through special measures”⁶¹⁷. Thus, it affirms that everyone has legal capacity, and before the law, all individuals are equal. The concept of equality is not only defined as equality before the court but extends more broadly. It also acknowledges that everyone must be guaranteed fundamental rights without discrimination, emphasising particularly these situations without specifying them by name.

In Hungary, there is an exception to the general provision prohibiting discrimination concerning measures aimed at eliminating opportunities and inequality. Only positive discrimination is allowed. The limitations of this are defined more broadly within the context of the prohibition of discrimination based on the interests of each individual concerning differences related to individual interests. The prohibition of discrimination based on the interests of each individual and their fundamental rights is explicitly affirmed in the Constitution⁶¹⁸. Hungary supports social integration and equal opportunities through specific measures. For instance, the State Secretariat for Social Affairs and Social Inclusion is established under the Ministry of Human Resources. Its mission is to address the needs of individuals living in disadvantaged areas, thereby promoting social integration and minimising inequality arising from territorial or social disadvantages as well as nationality, including ensuring equal access to public services. Legislators also emphasize the protection of certain groups: families, children, women, the elderly, and people with disabilities⁶¹⁹.

The Law No. CXXV of 2003 on Equality and Promotion of Equal Opportunities marks a significant legal advancement in the domestic fight against discrimination. Legislators crafted these detailed provisions based on the principles established in the constitution and the Civil Code, while

⁶¹⁶ Ibid.

⁶¹⁷ Article XV of the Fundamental Law.

⁶¹⁸ BARBARA, Az egyenlő bánásmód elméleti és gyakorlati kérdései 34.

⁶¹⁹ Ibid.

also considering Hungary's international commitments. The imperative of equality necessitates the assurance of uniform conditions and the prevention of discrimination, while advocacy for equal opportunities suggests the provision of supplementary conditions for groups encountering disadvantages. While the scope of the law does not encompass family relationships and relationships with relatives, as well as relationships directly related to the religious activities of a religious community, as well as relationships related to members between organisations, legal entities, and organisations without legal personality, unless otherwise provided⁶²⁰, this law still holds applicability concerning the prevention of discrimination against children.

The law contains detailed provisions on forms of discrimination. Article 7 of the law specifies various forms of discrimination, including direct harmful discrimination, indirect harmful discrimination, harassment, unlawful discrimination, retaliation, and related directives. Additionally, a particular form of discrimination is the omission of the obligation to create favourable conditions for persons with disabilities. Articles 8 and 9 of the law stipulate direct and indirect forms of discrimination. According to the analysis by *Antal Barbara*, “to establish direct harmful discrimination, three conditions must be met: unfair treatment, the presence of the protected characteristic, and a connection between the two. Consequently, the disadvantage cannot be the protected characteristic itself, meaning the basis for protection must exist independently and be related to each other”⁶²¹. The following case serves as an example: “The council rejected the complaint of a rural police station, who complained about the actions of the town's administrative clerk in April 2006. The clerk informed the police that in the future, she could not provide opportunities for public work anymore because the previously designated workplace did not want to accept individuals who violated traffic laws for public work. In contrast, in February 2007, the clerk informed the police that a town resident had contacted the facility's manager, who agreed to allow this individual to perform public work at the facility. The council concluded that “Those who participated in performing public work but did not receive the opportunity to do so do not possess the protected characteristic under Article 8, item t) of the political security guarantee law; this does not highlight harmful discrimination. The lack of assurance for them to perform public work cannot be considered a protected characteristic, as it is precisely the disadvantage. There is a connection between the disadvantage and the protected characteristic, meaning the protected characteristic cannot be the disadvantage itself”⁶²².

The remaining forms of discrimination are further elaborated in Article 10(1) regarding harassing behaviour, unlawful discrimination in Article 10(2), retaliation in Article 10(3), and specific preferences in Article 11(1). According to the observations of *Anikó Orbán*, “the obligation of non-discrimination outlined in the 2003 law is as follows: the requirement for equal treatment is, on the one hand, a positive obligation. It necessitates individuals, groups, and their organisations to restrain any direct or indirect discriminatory behaviour or retaliation against specific individuals or groups based on certain characteristics, leading to harassment or unlawful discrimination. In other words, it imposes an obligation not to violate the equal dignity of others. On the other hand, regarding the rights-holder, this leads to the fact that it can be enforced as a right for all individuals to be treated

⁶²⁰ Section 6. § (1) The Law No. CXXXV.

⁶²¹ BARBARA, *Az egyenlő bánásmód elméleti és gyakorlati kérdései* 34.

⁶²² Case No. EBH 440/2007 cited from: GYULAVÁRI - KÁDÁR, *Outline of Hungarian Non - Discriminational Law* 73.

with equal dignity. Consequently, the state is a victim of the violation primarily because it must provide a system of tools to take action against violations of the law”⁶²³.

Orbán Anikó also contends that “simultaneously, the formal treatment of individuals with difficult circumstances in an equal manner will be linked to maintaining a disadvantaged position. To enable those with challenging circumstances to engage in gainful employment and ensure their equal rights like others is not sufficient; rather, affirmative measures are necessary to minimise or eliminate the disadvantages arising from their circumstances. The state primarily has the obligation to implement these affirmative measures. A specific form of positive discrimination cannot be considered a subjective right and cannot be based on a request or demand under the constitution, as stated in the constitutional court's decision (Decision 650/B/1991. AB, ABH 1992. 660, 661)”⁶²⁴. Moreover, to establish consistency in the legal management of anti-discrimination measures, the legislature has replaced previous provisions prohibiting unfair discrimination in sector-specific regulations with the obligation to comply with the “requirement for equal treatment”. An example of sector-specific regulations amended by the Equal Treatment Act to create uniformity in the legal framework against discrimination includes the labour law, the public education law, which has been gradually replaced by the law on national education that has been repealed, or the law on health.

In summary, the principle of non-discrimination in the Hungarian Constitution and the 2003 Equal Treatment and Promotion of Equal Opportunities Law serve as a crucial legal foundation to protect rights and ensure equality in society at large, specifically for children. The 2011 Fundamental Law acknowledged and affirmed provisions on the principle of non-discrimination, safeguarding individuals against discrimination based on gender, religion, ethnicity, or any other personal characteristic. The 2003 Equal Treatment and Promotion of Equal Opportunities Law focuses on preventing discrimination and promoting the creation of a fair and equal environment in various areas, including education, labour, and public services. Both pieces of legislation provide the necessary legal framework to protect rights and ensure the equality of all members of the Hungarian community.

5.2.3. The Principle of Listening to the Opinions of Children

In addition to the best interest principle, another normative principle influencing the development of European family law is the right of children to participate in decisions affecting them, as clearly outlined in Article 12 of the CRC. This right is reflected in legal measures reinforcing the child's right to be heard in judicial proceedings, not only in the context of detention, access, and abduction but also in criminal and care proceedings⁶²⁵. The ECtHR has emphasised the importance of protective measures to ensure that the views and interests of children are adequately considered in the decision-making process. This reflects a commitment to promoting the active participation of children in matters concerning them, aligned with their developmental capabilities.

In addition, the provisions of the Brussels IIbis also impose a clear obligation on the courts of the member states to consider the views of children on issues related to custody, access, and return.

⁶²³ ARATÓ, *Esélyegyenlőség a mai Magyarországon* 52.

⁶²⁴ ORBÁN, *Az esélyegyenlőség javítását* 37.

⁶²⁵ STALFORD, *Children and the European Union* 108.

Paragraph 19 of the preamble expresses the viewpoint: “Listening to the opinions of the child plays an important role in this agreement, although this instrument is not intended to amend existing national procedures”⁶²⁶. The principles of protecting the best interests of children and respecting and listening to the opinions of children are closely intertwined. Open and direct discussions with children are essential means to ascertain what is most beneficial for them. This was succinctly captured by *Lady Hale* and *Lord Wilson* in their landmark ruling in the case of *E (children)*⁶²⁷ in the Supreme Court of the United Kingdom (UK).

There are situations where general assumptions about what would serve the best interests of children may not hold value. We now understand that, while children may not always know what is best for themselves, they can have a profound awareness of what is happening around them and their authentic perspective on the appropriate problem-solving direction. There are many cases supporting this viewpoint. For example, in *F (Abduction)*⁶²⁸, involving two children, aged 12 and 13, born in Poland to a British mother and a Polish father, the parents divorced in 2002, but the mother, the primary custodian, continued to live and work in Poland. The father had regular contact with the children and was granted “limited rights” to jointly decide on important issues such as the children's education and healthcare. In December 2006, following continuous disputes between the couple over rent arrears and access agreements, the mother took the children to the UK without notifying the father. She claimed that this helped her secure a better job to independently support the children. The move was discussed with the children, and they fully consented. She also claimed that the children informed their father about the plan to move to the UK, and he seemed to accept it. Upon arrival in the UK, the mother did not inform the father of their new address, and the father's first contact address with the children was in September of the following year, about nine months after the move. Subsequently, the father filed an application under the Hague Convention and Brussels IIbis to request the return of the children, but the mother raised the children's objection as a defence. To support this, she primarily relied on the written and oral evidence of the English CAFCASS⁶²⁹ officer in 2008, based on interviews with the boys and assessments of school reports. The CAFCASS officer forwarded their unequivocal objection to returning as well as their satisfaction with life in the UK. The evidence also mentioned that the father did not respond to phone calls and letters the boys sent since arriving in the UK. While acknowledging that the overarching goal of the Hague Convention - and by implication, Brussels IIbis - is to expedite the return of abducted children so that custody and access issues are determined by the courts of the requesting state, the children's objection was considered persuasive enough to justify judicial decisions to deny their return. The judge clarified the factors that need to be taken into account when making this decision, stating: “If a child objects to going back only from a desire to stay with the abducting parent, and this child does not want to go back, then the child's objection has very little or no weight... However, I do not think that is the reason in this case.

⁶²⁶ Ibid.

⁶²⁷ The Supreme Court of the UK, *E (children)* UKSC 2716.

⁶²⁸ The Supreme Court of the UK, *F (Abduction: rights of custody)* [2008] EWHC 272 (Fam). See also: The supreme court of the UK, *A v H* [2008] 3 WLR 527.

⁶²⁹ CAFCASS is the children and family court advisory and support service, an independent agency established by law to represent the interests and wishes of children in private and public family court proceedings.

The objections are largely based on the happiness and sense of security of the children at school, as well as their overall environment and sense of security in the UK⁶³⁰.

Accordingly, the father's application to return was rejected, and the children were allowed to stay with their mother in the UK. In making this decision, the judge heavily relied on the House of Lords (at that time) decision in *M*⁶³¹, in which *Baroness Hale* clarified and to some extent, corrected previous explanations of exceptional cases not requiring return based on the child's objections. She stated: "In the case of a child's objections... the exception (not to return) is only triggered when two things apply. First, the child objects to being returned, and second, the child has attained an age and degree of maturity at which it is appropriate to take account of her views. Nowadays, and especially under Article 12 of the CRC, courts increasingly consider it appropriate to take into account the child's views"⁶³². *Baroness Hale* further elaborates on the nuances that the judge needs to consider when assessing the significance of a child's views in making a determinative decision: "Considering does not mean that those views are always decisive or assumed to be so. When the decision-making power is engaged, the court may have to evaluate the nature and strength of the child's objections, the extent to which they are "truly her own" or a product of the influence of the abducting parent, the extent to which they coincide with what is, or is not, in her best interests, as well as the broader considerations of the convention... The older the child, the more weight her objections are likely to carry"⁶³³.

Presently, it is widely acknowledged that supporting consultation with and involvement of children in family litigation proceedings does not equate to relinquishing decision-making authority to the child. Their perspectives serve primarily to contribute information to the process and represent only a small part of the overall evidentiary picture⁶³⁴. As *Griffiths et al.*⁶³⁵ note, these are not desires expressed by children but rather needs they articulate that have the greatest impact... This places children in a situation akin to that of a witness (sometimes inadvertently) about themselves, arguing that the right to participate is a useful tool rather than a resistance to the principle of safeguarding the best interests of the child. Within a certain scope, actively consulting with children opens up valuable opportunities to fill in the gaps between events described explicitly by parents, identify any additional factors influencing the child, and provide the child with sensitive and truthful terms explaining why a specific decision regarding custody, access, or return may or may not have been made⁶³⁶.

This principle is also articulated in Article 24 of the CFR of the EU. However, in practice, the consultation of children's opinions is not consistently undertaken by national courts and the CJEU. When applying the Brussels IIBis agreement and Article 24 of the charter, the CJEU tends to favour a more conventional political process, even when there are serious issues regarding the welfare of children, as evidenced by the case of *Zarraga*⁶³⁷. In this instance, Mr. Zarraga, a Spanish national, married Ms. Pelz, a German national, in Spain in 1998. They had a daughter together in 2000, while the family was still residing in Spain. The couple's relationship deteriorated in the subsequent years,

⁶³⁰ The Supreme Court of the UK, *F (Abduction: rights of custody)* [2008] EWHC 272 (Fam) para 45.

⁶³¹ *Ibid* para 52.

⁶³² *Ibid*.

⁶³³ *Ibid* 45.

⁶³⁴ EEKELAAR, *The interests of the child and the child's wishes* 57.

⁶³⁵ GRIFFITHS - KANDEL, *Hearing children* 283.

⁶³⁶ POTTER, *The voice of the child* 145.

⁶³⁷ CJEU, *Aguirre Zarraga v Pelz* [2011] IL 32.

and in 2007, they filed for divorce in a Spanish court, both desiring custody of the child. In the first instance, custody was awarded to the father, and access rights for the mother were granted based on evidence suggesting that the father was better suited to ensure the maintenance of the child's family, school, and societal environment. The mother expressed a desire to settle in Germany with her new partner and their daughter, leading the court to reconsider the custody decision as it was deemed to conflict with the findings of the report and also detrimental to the best interests of the child⁶³⁸.

The mother permanently relocated to Germany with her new partner in 2008. The daughter visited her at the end of that summer but did not return home with her father. Due to the mother's violation of the custody and access agreements, the Spanish court issued new rulings upon the father's request. These included suspending the mother's access rights and issuing a temporary order preventing the child from leaving Spanish territory with her mother or any member of her mother's family. By January 2009, the child had not returned to her father, prompting the Spanish court to issue an immediate return order under the Brussels IIbis Agreement. The mother successfully appealed this decision, arguing that the return order contradicted the legal provisions regarding the expression of the child's wishes.

Procedures related to the custody rights of the mother were subsequently resumed before the Spanish court. The court requested new expert evidence to determine what would be in the best interests of the child, including evidence from the child herself (who was now 9 years old). Neither the mother nor the child attended the requested hearings, perhaps because the Spanish court had rejected the mother's application, allowing her and her daughter to freely leave Spanish territory during the trial. The court also disagreed with the mother's explicit request that *Andrea* (her daughter) be processed through video conferencing. In December 2009, the Spanish court granted custody to the father, a decision immediately appealed by the mother. She argued that the custody procedures were flawed as it was difficult to accurately assess *Andrea's* best interests due to the lack of relevant information (including their testimonies) available to them⁶³⁹. The German court upheld their appeal and refused to enforce the return order, citing that the Spanish court had failed to consider the child's viewpoint and concluding that it constituted a violation of the child's fundamental rights as stipulated in Article 24(1) of the CFR.

The German court seeks the opinion of the CJEU regarding whether they have an obligation to enforce the return order or whether they have specific authority to review the substance of the case if the judgement rendered by the Spanish court is deemed to seriously violate the fundamental rights of the child recognised by the charter. While acknowledging that the Brussels IIbis regulation, along with article 24 of the charter, has established an obligation to consider the child's viewpoint, the CJEU has concluded that the assessment of whether such a violation has occurred falls within the exclusive jurisdiction of the original member state court (Spain), and the German courts, despite alleging a violation, are not authorised to adjudicate on these matters. The Brussels IIbis regulation is fortified by the principle of mutual trust among member states, extending to the assumption that each jurisdiction will have an equally robust legal system “capable of providing equivalent and effective

⁶³⁸ Ibid 19.

⁶³⁹ WALKER - BEAUMONT, *Shifting the balance* 239.

protection for fundamental principles”⁶⁴⁰. However, this decision, with its uncritical adherence to the principle of mutual recognition, undermines the potential for the rights of the child to be considered a legitimate exception to automatic return⁶⁴¹. Prolonged litigation exacerbates the already protracted legal proceedings and positions the German court in opposition to the ECHR in its interpretations of the same law⁶⁴².

Therefore, *Stalford* has remarked that “the application of the principles of the Brussels IIbis agreement is indeed restricted to a certain extent. Accordingly, the provisions are limited to the realm of transnational family justice procedures, specifying jurisdictional rights, and ensuring the recognition and enforcement of cross-border judgments. Courts are explicitly prohibited from reviewing the substance of any legally issued decision in another member state⁶⁴³. Consequently, one may question how the principle of the best interests of the child can be invoked or indeed challenge the application of legal provisions, decisions, recognition, and enforcement if, in practice, courts are excluded from scrutinising critical events related to the welfare of the child. Indeed, Brussels IIbis appears to operate under the implicit assumption that current regulations regarding recognition, jurisdiction, and enforcement are already consistent with the best interests of the child”⁶⁴⁴.

Concerning the application of the principle of listening to the opinions of children under Hungarian legislation. Respect and consideration for the opinions of children are stipulated in Hungarian law across various dimensions, such as issues within the family of children and aspects related to healthcare. In fact, the educational aspect is also one with numerous provisions reflecting the commitment of Hungarian legislators to respecting and listening to the opinions of children. However, to avoid redundancy in content, the author will provide a detailed presentation of this aspect in the subsequent section when analysing specific rights regarding the education of children. When the marital relationship of parents persists and they jointly care for, nurture, and educate their children, Hungarian family law also includes provisions aligned with the CRC during this phase of the family relationship. It requires parents to inform their children of decisions related to them and ensure that the child has the ability to form their own opinion. Specifically, at 4:148. §, there are regulations regarding the child's participation in decisions, which state: “Parents must inform their children about decisions related to them, ensuring that children can express their opinions in the decision-making process”. According to legal provisions, in specific cases, the child, along with the parents, may make joint decisions. Parents must consider the child's opinion with appropriate weight, taking into account the child's age and maturity. With the requirement that parents must inform their children about decisions related to themselves, this provision demonstrates a contribution to ensuring that children are provided with adequate information about issues affecting their lives and rights. Simultaneously, it also reflects the foremost respect of legislators and, subsequently, parents for the viewpoints and rights of children. *Szeibert* states that “this rule is one of the so-called general rules of parental custody in the Civil Code which introduces the special rules on parental responsibilities. The importance of the child's voice and the child's right to participate in the decision-making of the family

⁶⁴⁰ Ibid 70.

⁶⁴¹ Art 13 Hague Abduction Convention 1980.

⁶⁴² STALFORD, *Children and the European Union* 109.

⁶⁴³ Art 26 and 48.

⁶⁴⁴ STALFORD, *Children and the European Union* 102.

is emphasized. It is the right of the child and an obligation of the parents, but the parents' failure to hear the child does not result in any direct legal consequence. It might be sanctioned, but only indirectly, and no such legal case has yet been published⁶⁴⁵.

When parents divorce, demonstrating parental concern for the children not only reflects the respect of the parents but also helps children perceive care from both parents even after the family has broken apart. Therefore, Section 4:171(4) of the Civil Code V of 2013 stipulates that: “During proceedings, the court, unless an insurmountable obstacle exists, must listen to both parents and inform the child, if capable of understanding, about the ability to express their opinion. If the child requests to be heard, or if the court deems it reasonable without a request, the court will listen to the child directly or through an expert. If the child is 14 years old or older, decisions regarding custody and residence may be made with the child's consent unless the child's choice threatens its development”. This provision has been amended by legislators and has been effective since August 1, 2022. In essence, the amendment only adds a half-sentence to the existing provision, providing notification about the possibility of making a statement for a child capable of expressing an opinion. However, this sole change demonstrates the emphasis of Hungarian legislators on the principle of respecting and listening to the opinions of children.

In the observation of *Visontal - Szabó*, “the expansion of § 171(4) has elicited strong opposition, or perhaps indignation, as it explicitly states that the court must notify the child of the opportunity to make a statement. This implies that the child must be given a genuine and effective opportunity to express their viewpoint but not necessarily be heard, as this is a right, not an obligation⁶⁴⁶. Furthermore, an analysis of the content of § 171(4) reveals that what constitutes a child's capacity to express an opinion is not explicitly explained. However, the subsequent content of the same paragraph stipulates that if the child is fourteen years of age, decisions regarding custody and arrangements for that child may be made with the consent of the parents [...]. Thus, it can be inferred indirectly that Hungarian law acknowledges that children over the age of 14 can express opinions in court.

According to certain legal documents, such as Section 2(a) of Government Decree 149/1997 (IX. 10.), a child with the capacity for judgement is considered a minor, aligning with their age and intellectual and emotional development. They can comprehend the fundamental content of events and decisions affecting them while also understanding the potential consequences. Therefore, the law essentially does not link judgement capacity to age but rather to the level of a child's maturity. Additionally, relevant academic literature on the matter shares a similar perspective⁶⁴⁷. *Visontal-Szabó*⁶⁴⁸ argues that children need to be listened to and asked for their opinions, but at the same time, undue responsibility should not be placed on the shoulders of the child, as it would create excessive pressure for them.

In the practical context of legal proceedings, according to the research conducted by A, it is evident that: “In two of the three cases, siblings were affected, and both of them declared - in one

⁶⁴⁵ SZEIBERT, The voice of the child 73.

⁶⁴⁶ VISONTAL - SZABÓ, Recent modifications in the Civil Code, presented at the Family Workshop in Szeged, June 7, 2023.

⁶⁴⁷ Ibid

⁶⁴⁸ VISONTAL - SZABÓ, Közös vagy kizárólagos szülői felügyelet? 238.

case, ‘several times’ - that they wanted to be taken care of by the nominated parent⁶⁴⁹ The exact date of the hearing is not given in the compiled materials, but in one case, the children were born in 2005 and 2008, and the decisions of the three different instances of the court were made between 2014 and 2016; in another case, the children were born in 2004 and 2008, and the decisions were made between 2015 and 2017; in the third case, the children were born in 2006 and 2006, and the decisions were made between 2015 and 2016⁶⁵⁰. In a case in which children born in 2004 and 2005 had lived within peculiar familiar circumstances, they declared in the course of the examination conducted by the forensic psychologist that the circumstances were appropriate for them and they wanted to be brought up together with their half-sibling⁶⁵¹. In a further case, the court of first instance made the decision concerning parental custody affecting children born in 2002 and 2005 in 2015. The children preferred to be placed with their mother, and later the Hungarian Curia referred to the fact that the older child, who was 12 years old at the time, was heard by the court of first instance twice, once directly and once by the forensic psychologist⁶⁵². In another case, the court of the second instance held that the hearing of the child, who was 9 at the time, was unnecessary, also with regard to the fact that the child had been heard earlier. The analyses above somewhat demonstrate that Hungarian law ensures a commitment to the international and regional community in respecting and listening to the opinions of children in matters related to them.

In the matter of children's healthcare, under the provisions of Article 13 of Health Care Act No. CLIV of 1997, patients have the right to receive information related to their health condition, tests, and proposed medical interventions... However, they also have the right to refuse information, according to Article 14(1). These regulations also apply to individuals who have reached the age of 16. This indicates that Hungarian law is concerned with the issue of listening to and respecting the opinions of children in matters related to their health. Not only that, but the Health Care Act also stipulates that patients have the right to autonomy under Article 15(1), and in the exercise of this right, patients have the freedom to decide whether they want to use medical services or not. During this process, they may consent to or refuse specific interventions. These provisions under Article 15(1) must also apply to individuals who have reached the age of 16⁶⁵³. However, this right to autonomy is not absolute and can only be restricted in specific cases and in the manner prescribed by law. For instance, when a patient is unable to make safe decisions and poses a risk to themselves or others, the right to autonomy may be limited to protect health and safety. For example, there is a patient named *Peter* suffering from a severe mental illness. *Peter* decides to refuse further treatment and leave the hospital. However, *Peter's* doctor and family are concerned that this decision may pose a danger to *Peter* and others. In this case, *Peter's* right to autonomy may be restricted to ensure the safety and health of all parties involved. This limitation may involve legal interventions, such as a court decision or the decision of a legal representative. It can be observed that this restriction on the right to autonomy

⁶⁴⁹ Pfv. II. 20.253/2016/8; Pfv. II. 21.224/2016/5; Pfv. II. 22.004/2016/5 cited from SZEIBERT, The voice of the child 79.

⁶⁵⁰ SZEIBERT, The voice of the child 79.

⁶⁵¹ Pfv. II. 21.509/2017/4 cited from SZEIBERT, The voice of the child 79.

⁶⁵² Pfv. II. 22.244/2017/6 cited from SZEIBERT, The voice of the child 79.

⁶⁵³ Section 16(6) of Health Care Act No. CLIV of 1997.

only applies to individuals with cognitive impairments, not to children who have demonstrated the progress and humanity of Hungarian law. This indicates that, while age may influence awareness, it does not mean that minors cannot discern what would be in their best interests.

In summary, the analyses above have demonstrated a clear awareness of the rights and role of children in the decision-making processes related to their lives and health. Informing children about decisions, encouraging their participation in expressing opinions, and even allowing children to make joint decisions with parents are crucial steps in creating a legal environment that benefits the development and autonomy of children. Additionally, considering the opinions of children with appropriate weight based on their age and maturity is an expression of establishing a flexible and fair legal system. These regulations not only protect the rights of children but also promote acceptance and understanding of the diverse perspectives of children in society.

5.3. CERTAIN RIGHTS OF CHILDREN IN EUROPEAN AND HUNGARIAN LAW

5.3.1. The Right to Birth Registration

There are no specific provisions regarding the right-to-birth registration of children in the ECHR. The CFR of the EU, under Article 24, outlines the rights of children without explicitly addressing the legal status of children in the territory where they are born or reside. However, based on the content of Article 7 of the CRC, the right to birth registration of children encompasses various facets, including the right to be registered at birth, the right to a name, the right to nationality recognition, and the right to know one's parents⁶⁵⁴. Furthermore, an analysis of Article 24 of the charter reveals that it “employs a very broad formula, namely, “children have the right to such protection and care as is necessary for their well-being”. It is emphasised in the explanation of this provision that it is based on various foundations, including the CRC. Therefore, it can be inferred that the scope of Article 7 of the CRC has been integrated into Article 24 of the EU Charter”.

In particular, concerning the right to nationality, in 1997, the Council of Europe adopted the European Charter on Nationality (ECN)⁶⁵⁵. It states that the right to nationality and the prohibition of statelessness are the main principles of the convention (Article 4) and that these principles also apply in situations of territorial changes (Articles 18 to 20). The convention contains some provisions that are aimed at avoiding statelessness among children. The provisions listed above indicate several key issues that are important to ensuring the rights of a child. The first issue is the recognition of a child immediately after birth by the legal order of the state concerned. The main instruments of such recognition are the registration of a child with the name and deciding on his or her nationality.

Regarding the right to birth registration under Hungarian legislation, it is regulated by Law No. 01 of 2010 on Residency Registration Procedures. Article 7(1) specifically stipulates that “the birth shall be recorded in the registration book by the residency administrator within the jurisdiction where

⁶⁵⁴ ZIEMELE, A Commentary on The United Nations Convention on the rights of the child 268.

⁶⁵⁵ Council of Europe, European convention on nationality.

the birth event takes place⁶⁵⁶. Additionally, within the same law, there are provisions regarding birth events in certain special circumstances, such as births on mobile vehicles, multiple births at the same time, or births from unknown parents. The mentioned provision does not explicitly specify the timeframe for registering the birth of a child. However, in Article 61 of the same law regarding the notification of residency events, it is stipulated that “the birth event - except for cases specified in Clause 3 - must be reported to the competent registration officer within the first working day after the birth for residency registration purposes⁶⁵⁷. For cases where children are born in medical facilities, the healthcare service provider is required to report to the residency registration officer immediately⁶⁵⁸.

Therefore, these regulations play a crucial role in ensuring the right to birth registration for children in Hungary. Firstly, when assessing the level of compliance with commitments regarding birth registration for children under the CRC, Hungary has excellently fulfilled its commitments. The provisions on birth registration require parents or authorised individuals to report the event for residency registration purposes - birth registration for children either immediately after birth or within 1 working day from the point of birth - ensuring the prompt implementation of the right to birth registration for children. This aligns well with the obligations set forth by the CRC for its member states. Additionally, the CRC promotes the protection of children's rights even in special circumstances, and Hungarian residency registration laws also ensure this criterion by having regulations related to children born in special situations such as on public transportation, the birth of multiple children at once, or when the parents are unidentified.

The provisions regarding the naming of children in Hungarian law are intricate and cover a multitude of situations, including those in which a child is born within the bounds of marriage or when paternity is undetermined. Specifically, Section 4:150 of the Hungarian Civil Code governs the selection of names for children: “(1) Children shall be given a name - through the agreement of parents - based on the given name at birth or the surname chosen by the mother or father. If the parents are not married, the child shall not use the mother's maiden name unless the mother indicates her marital status by using that name. The child may use a combination of the parents' surnames as its own, even if the parents did not combine their surnames after marriage or if the parents are unmarried. The child's surname cannot consist of two parts. (2) If parents are married, all jointly born children within their marriage shall share the same surname, unless the parents change their surname during the marriage. If parents use a joint married surname, their children may use the joint married surname. If either parent uses their combined surname as their married surname, the child shall be named - through the parents' agreement - based on the father's name or the combined surname of the parents without indicating the marital status. (3) If no one is considered the father of the child, the child shall use the mother's maiden name from birth or through marriage, unless the mother uses her full name or her husband's surname, indicating marital status. (4) The mother may request the guardianship authority to record an imaginary person as the father of her minor child. When recording an imaginary person as the father, the mother has the right to decide whether the child should use the name of the imagined father. In the absence of such a statement, the child will continue to use the

⁶⁵⁶ The Law on Residency Registration No. 01/2010.

⁶⁵⁷ Article 61(1) of the Law on Residency Registration.

⁶⁵⁸ Article 61(3) of the Law on Residency Registration.

mother's surname". This regulation demonstrates a clear and flexible process for naming children based on the marital status of parents and determining paternity in cases where the father is not identified. The provision reflects a consideration for the rights and freedoms of children in naming while maintaining flexibility to accurately reflect the family situation.

To ensure the right to nationality for children, Hungarian law stipulates the determination of nationality for children as follows: First and foremost, crucial to this process is the provision outlined in Article G of the Fundamental Law⁶⁵⁹. Accordingly, "The child of a Hungarian citizen shall be a Hungarian citizen from birth". In determining nationality under this law, the regulations of the civil code regarding lineage and parentage status are applicable. For instance, provisions in Chapter IX of Part 4 of the Civil Code concerning the establishment of paternity govern the determination of parent-child relationships. This relationship can be established through events such as marriage, reproductive procedures, acknowledgement of paternity, or court decision⁶⁶⁰. For example, consider a married Hungarian couple named *Anna* and *Gábor*. *Anna* becomes pregnant, and they subsequently marry before the child is born. According to the provision, "The child of a Hungarian citizen shall be a Hungarian citizen from birth", the child will automatically acquire Hungarian citizenship upon birth since both parents are Hungarian citizens. In another scenario, if *Anna* and *Gábor* do not marry before the child is born but later decide to acknowledge paternity following the regulations in Chapter IX of Part 4 of the Civil Code, the child can still be determined as the child of Hungarian citizens, thereby acquiring Hungarian citizenship.

It can be observed that the Hungarian legislators have created conditions whereby children born to Hungarian parents are immediately recognised as Hungarian citizens from birth without the need for complex procedures or additional waiting and verification time. Additionally, the acknowledgement as the child of a Hungarian citizen aligns well with the provisions of the civil code, establishing consistency in the application of relevant legal regulations. This, in turn, facilitates the determination of nationality for children flexibly and promptly. In addition, to fulfil the state's obligations under the CRC regarding the right to nationality of children, Hungary also recognises cases where a child is born to parents who are not Hungarian citizens or when the child is born in Hungary but the origin of the parents is undetermined. These provisions demonstrate the noteworthy concern of the Hungarian State for the right to nationality of children, even in special circumstances.

Specifically, as follows: when a child is born to parents who are not Hungarian citizens, Section 3(1) of the Hungarian Nationality Act stipulates that "the Hungarian nationality of a child born to parents who are not Hungarian citizens shall arise on the day the child is born if a close family relationship is directly based on conception between the person with Hungarian nationality and the child and is established after the child's birth"⁶⁶¹. For example, *Peter* (a Hungarian citizen) lives with *Maria* (not a Hungarian citizen). *Maria* becomes pregnant, and the child is born in Hungary. After the child's birth, *Peter* acknowledges the paternity and establishes a family relationship with the child. According to this provision, the Hungarian nationality of the child will be determined on the day of

⁶⁵⁹ Article G(1) The Fundamental Law.

⁶⁶⁰ Section 4:98 Civil Code.

⁶⁶¹ Section 3(1) of the Hungarian Nationality Act.

the child's birth because there is a close and direct family relationship based on conception between *Peter* and the child.

In the case where a child is born in Hungary but the parents are stateless or the origin of the parents cannot be determined, Section 3(3) of the Hungarian Nationality Act states: “Until proven otherwise, the following persons shall be considered Hungarian citizens: (a) a child born in Hungary to parents without nationality residing in Hungary; (b) a child found in Hungary, and the origin of the parents is unknown”. Therefore, based on the analyses presented above, it can be observed that these provisions provide a flexible and suitable legal framework for determining nationality for children, even in special cases. They ensure consistency and transparency in the application of relevant laws. It can be argued that these regulations not only guarantee the right to nationality for children from birth but also demonstrate the considerable concern of the Hungarian state for protecting the birth rights of children in general and the right to nationality in particular.

The CRC on the rights of the child establishes fundamental principles to protect the right to know one's parents, irrespective of the family circumstances of the child. Accordingly, children have the right to have their identity determined and to know about their family origins, whether born within marriage, outside of marriage, through assisted reproductive procedures, or even through adoption. In this section, the author will analyse the right to know one's parents under the laws of Hungary. Section 4:98 of the Hungarian Civil Code stipulates that the parent-child relationship shall be determined through events such as marriage, reproductive procedures, acknowledgement of paternity, and court decisions. This serves as the foundational law to enforce the right to know the origins of children. These regulations collectively establish a robust and clear legal framework regarding family relationships and the origins of children, creating favourable conditions for children to accurately and promptly determine their identity.

The determination of the nationality of children born within a marriage is stipulated by Section 4:115 of the Hungarian Civil Code, which states as follows: “The woman who gives birth shall be considered the mother of the child”. Additionally, in Section 4:99, it is noted that “unless otherwise provided in this code, the man with whom the mother cohabits in marriage from the time of conception until the birth of the child, or at least for part of this period, shall be considered the father of that child. The nullity of the marriage shall not affect the presumption of the father-child relationship”. These regulations recognise three principles regarding the determination of parents for children: (i) it pertains to identifying the mother; (ii) it concerns determining the father; and (iii) it acknowledges that the dissolution of a marriage does not affect the presumption of the parent-child relationship. These principles within the Hungarian Civil Code ensure compatibility with international law, as they represent commonly acknowledged rules for determining the origin of children born within a marriage.

For children born outside of marriage, Section 4:101(1) of the Hungarian Civil Code stipulates the following: “If the mother is not married from the time of conception until the day the child is born and does not participate in a reproductive procedure invoking the presumption of paternity, or if the presumption of paternity is rebutted, a man who acknowledges in a valid statement of paternity that he is the father of the child shall be considered the father of that child”. This provision indicates that the mother's marital status is not a mandatory condition for establishing the paternity of a child

born to her. In addition, Section 4:103 of the Hungarian Civil Code also acknowledges cases where the determination of paternity for a child is based on a court decision. Accordingly, if the father of a child cannot be identified based on the mother's marriage, reproductive procedure, or a valid acknowledgement of paternity, the parent-child relationship can be determined through a legal process⁶⁶². The provisions outlined demonstrate a humanistic approach that ensures the legal rights and interests of children. The right to determine the father of a child is not influenced by the marital status of the mother. Therefore, with regulations facilitating the determination of paternity in various cases, such as acknowledgement by the father, the implementation of reproductive procedures, or reliance on a court decision, Hungarian law has ensured the protection of children in all circumstances.

Regarding children born through assisted reproductive techniques, the determination of the father for children born through reproductive procedures is acknowledged in Section 4:100 of the Hungarian Civil Code. Accordingly, if the father-child relationship cannot be established based on the assumption of the mother's marital status, the man participating in the reproductive procedure with the mother during their partnership will be considered the father of the child if the father-child relationship is a result of that reproductive procedure⁶⁶³. For example, if *Dóra* and *Ferenc* undergo a reproductive procedure, and the result is the birth of *Zsolti*, if the father-child relationship cannot be determined based on the assumption of *Dóra's* marital status, *Ferenc* will be recognised as *Zsolti's* father. If, after the successful reproductive procedure and before the birth of the child, the mother marries another man, Section 4:100(2) stipulates that “this shall not activate the assumption of the father-child relationship for the new husband”. This means that the individual who participated in the reproductive procedure with the mother remains recognised as the father of the child. For example, *Anna* and *Gábor* undergo a reproductive procedure. While pregnant with *Gergő*, *Anna* marries *Dávid*. The marriage to *Dávid* does not re-activate the assumption of the father-child relationship for *Dávid*, meaning that *Gábor* continues to be recognised as the father of *Gergő*. Section 4:100(3) regulates the scenario where the mother has married and subsequently terminated that marriage, engaging in a reproductive procedure with another man. According to the Hungarian civil code, it states that “the mother's partner shall be considered the father of the child if the anticipated time of conception does not fall between the end of the mother's previous marriage and the date of birth of the child”. For example, *Mari* and *József* married in 2020 but divorced on March 1, 2022. Afterwards, *Mari* and *László* undergo a reproductive procedure, and the anticipated birth date of the child is September 15, 2022. According to the aforementioned regulation, *László* will be considered the father of the child because the anticipated time of conception does not fall between the end of *Mari's* previous marriage and the date of birth of the child.

In summary, the regulations regarding the determination of fathers for children born through reproductive procedures are comprehensive and detailed. This ensures the rights of children in complex situations. Hungarian law has created as many conditions as possible to enable every child to determine their family origin.

Regarding adopted children, Hungarian family law recognises two cases of adoption: (i) open adoption (Section 4:125) and (ii) secret adoption (Section 4.126). In an open adoption, the biological

⁶⁶² Section 4:103(1) of Civil Code.

⁶⁶³ Section 4: 100(1) of Civil Code.

parents approve the adoption to an adoptive parent known to them (Section 4:125(1)). Although not explicitly mentioned in the legal text, it can be understood that when the biological parents are aware of the adoptive parent, the adopted child has a greater opportunity to learn about their biological parents. This is because the adoptive parents themselves have no intention of concealing the fact that they are not the biological parents of the adopted child. Secret adoption means that the biological parents agree to the adoption of their child while keeping the identity and identifying information of the adoptive parent confidential (Section 4:126(1)). Additionally, Section 4:126(6) further stipulates that “During secret adoption, natural identification information about the biological parents and the adoptive parent shall not be disclosed to each other”. It can be understood that this regulation was established to protect the privacy rights of adoptive parents. However, to some extent, this regulation has an impact on the right to know the origin of the adopted child.

The issue raised is whether keeping the information about the adoptive parents confidential is permanent or for a limited time. In other words, when an adopted child becomes of age and has the need to learn about their origin, is their right to know guaranteed or not? The content recorded in Section 4:135 regarding the right of the adopted person to access information about blood relationships is as follows: Firstly, when the adopted person is over 14 years old, “the adopted person has the right to request information from the guardianship authority regarding whether they have been adopted, about their birth parents, and whether they have siblings”. In this case, the adopted person can submit the request without the need for the permission of their legal representative. This provision ensures the right to know about the origin of adopted children, following the provisions of the CRC. However, it is important to note that, to ensure the best interests of the child, the family law of Hungary also acknowledges exceptions related to accessing information about blood relationships for adoptees. Specifically, this includes the possibility of rejecting the request of the adopted person when “it is not in the best interests of the child under 18, especially if the court has deprived the birth parents of guardianship due to their misconduct causing serious harm to or threatening the interests of the child, including the physical, mental, or moral integrity of the child”⁶⁶⁴. Secondly, when the adopted person is under 14 years old, the request for access to information about blood relationships of the adopted person will be provided by the guardian authority upon the request of the legal representative of the child.

5.3.2. The Right to Education

The right to education is not explicitly delineated in the main text of the ECHR. Instead, this right is safeguarded through various provisions of the ECHR, such as the right to life, the right to freedom of thought and expression, and the right to family life. Stating that the right to education is protected through the right to life is grounded in the understanding that education and personal development through learning play a crucial role in enhancing the quality of life and mental well-being of individuals. Education not only imparts knowledge but also provides skills and opportunities for the personal development of talents. These acquired knowledge and skills can lead to better careers and

⁶⁶⁴ Section 4:126 (4c) of Civil Code.

lives, as well as the ability to actively engage in society. The right to freedom of thought and expression, as stipulated in Article 10 of the ECHR, also plays a crucial role in the right to education. For an individual, the right to access information and knowledge is integral to the learning and development process. The ability to think critically, absorb information, and express personal opinions are essential factors for maximising the right to education. Therefore, the right to freedom. The right to family life, as defined in Article 8 of the ECHR, is also relevant to the right to education, particularly for children. The family plays a crucial role in creating favourable conditions for the learning and development of children. It provides a safe and stable environment, as well as emotional and financial support to help children access education. Therefore, protecting the right to family life may be closely connected to safeguarding the right to education for children.

However, the right to education has been further supplemented and specified in Protocol 1 of the ECHR. The right to education is the only child-focused right in the ECHR in Article 2, Protocol 1 as follows: “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”. Although Prima Facie Clause 1 of Article 2 Protocol 1 of the ECHR (2P1) would appear to be a freedom right⁶⁶⁵, it has been held by the ECHR to provide the right of everyone under the jurisdiction of the state to be granted equal access to the existing education institutions⁶⁶⁶. According to the observations made by *Claire Fenton and Glynn*, “this constitutes a unique provision. This is because this provision is unique for several reasons. The first sentence, starting with “no person shall be denied”, is formulated in a negative manner, in contrast to the majority of rights under the convention, which have a positive formulation: ”Everyone has the right to . . .”⁶⁶⁷.

From the perspective of the court, the right to education for children corresponds to the duty of providing equal and non-discriminatory education for all children. Additionally, the court asserts that this provision “does not compel the contracting parties to establish or subsidise any specific form of education using their financial resources. In other words, this provision does not imply that parents can demand the state provide a specific form of education”⁶⁶⁸. Instead, the legal obligation imposed on member states is to ensure that education is available and maintained at a minimum level, which they provide. This holds significant implications for the enforcement of the right to education for children in practice. If member states fulfil this obligation, it establishes a system of necessary educational facilities, thereby affording children more opportunities to access education and develop themselves. According to the court, once educational institutions are established, the state must also ensure effective access for entitled individuals⁶⁶⁹. This is crucial in ensuring that the right to education is “practical and effective, rather than theoretical and illusory”⁶⁷⁰.

⁶⁶⁵ “No person shall be denied the right to education”.

⁶⁶⁶ PEERS - HERVEY - KENNER - WARD, The EU Charter of fundamental rights 436.

⁶⁶⁷ FENTON-GLYNN, Children and the European court of human rights 223.

⁶⁶⁸ ECtHR, *Leyla Sahin v Turkey*, No 44774/98 135.

⁶⁶⁹ ECtHR, *Ponomaryovi v Bulgaria* No 5335/05 49.

⁶⁷⁰ ECtHR, *Leyla Sahin v Turkey* No 44774/98 136.

The second clause of Article 2 is also notably distinctive. As *Rozakis* has pointed out, “this right, although linked with the right to education, does not vest in the basic recipient of that right. Instead, it vests in parents, whose direct right to education is not at stake”⁶⁷¹.

The right to education is also stipulated in Article 14 of the CFR of the EU, with the following content: “1. Everyone has the right to education and access to vocational and continuous training. 2. This right includes the possibility of receiving free compulsory education. 3. The freedom to establish educational institutions is encompassed by this right, with due respect to democratic principles and the right of parents to ensure that the education and teaching of their children conform to their religious, philosophical, and educational convictions, in accordance with national laws governing the exercise of this freedom and right”. This article is based on the common constitutional traditions of member states and Article 2P1 of the ECHR⁶⁷². This means that “the meaning and scope of Article 14 cannot be “less” than the meaning of 2P1, as defined not only by the convention itself but also (according to the explanations to the charter) by the case law of the ECHR”⁶⁷³. In other words, ensuring the right to education is determined not only by the principles delineated in legal normative documents but also affirmed through court rulings.

In the European context, the right to education holds particular significance. This is primarily due to the “transnational nature” of the right to education within the EU framework⁶⁷⁴. This arises from the fact that citizens of an EU member state have the entitlement to access and participate in the educational systems of any EU member state they choose⁶⁷⁵. However, member states remain the providers of education since the EU legal order will most probably never entail such a role for the EU institutions⁶⁷⁶. Thus, EU citizens may claim a right to equal access to education in any member state as a consequence of the prohibition against direct or indirect discrimination based on nationality or other grounds, such as race or ethnicity, age, sexual orientation, etc., imposed by EU law⁶⁷⁷.

As regards the material scope, Article 14 and Article 2P1 ECHR share common features: they both encompass a right to education consisting of an individual right of equal access to all levels of education and to the existing institutions. The respect of the state’s power and duty to organise the education system may be implied by Article 2P1⁶⁷⁸, and is explicitly affirmed by Articles 165 and 166 TFEU, and is reiterated by the CJEU case law⁶⁷⁹. However, Article 14 also represents the consolidation of the right to education for EU citizens developed in the context of free movement. Accordingly, “when exercising the [organisational] power, member states must comply with EU law, in particular, the provisions on the freedom to move and reside within the territory of the member states”, and when they guarantee equal access, they must comply with the principle of non-discrimination (direct

⁶⁷¹ ECtHR, *Lautsi v Italy* No. 30814/06 34.

⁶⁷² PEERS - HERVEY - KENNER - WARD, *The EU Charter of fundamental rights* 147.

⁶⁷³ *Ibid.*

⁶⁷⁴ *Ibid.*

⁶⁷⁵ MOSCHONAS, *Education and training in the European Union* 34.

⁶⁷⁶ PEERS - HERVEY - KENNER - WARD, *The EU Charter of fundamental rights* 443.

⁶⁷⁷ *Ibid.*

⁶⁷⁸ The Strasbourg Court’s case law however has openly recognised the role of the state as organiser of the education system; see recently *Ponomaryovi* (n 34).

⁶⁷⁹ CJEU, *Bressol* No C-73/08 28: “it should be recalled that whilst European Union law does not detract from the power of the Member States as regards the organizations of their education systems and of vocational training pursuant to Articles 165(1) and 166(1) TFEU”.

and indirect) based on nationality”⁶⁸⁰. This implies that, as regards equal treatment for access to education, Article 14 goes beyond what is provided by the ECHR because of the goal of integration which presides over the development of this right in the EU context.

Regarding the relationship between Article 14 of the Charter and Article 2P1 of the ECHR, Article 52(3) of the Charter stipulates that “when the rights in the charter correspond to the provisions of the ECHR, the meaning and scope of those rights shall be the same as those laid down in the same convention”. Thus, as allowed for by Article 52(3), Article 14 provides for more extensive protection about the specific nature of the EU integration process and not only with regard to vocational training as mentioned in the explanations. More precisely, paragraphs 1 and 2 mean that, when moving to other member states, EU citizens enjoy the right to receive free basic compulsory education and to be granted equal access to all levels of education.

In summary, a comparison of the content between Article 2P1 of the ECHR and Article 14 of the EU Charter reveals that Article 14, Clause 1, of the Charter affirms both the entitlement to education and access to vocational and ongoing training. This entitlement is similarly ensured in a broader sense by Article 2P1 of the convention. Article 14, paragraph 2, of the Charter ensures the potential to access compulsory education free of charge. This entitlement represents a novel addition when contrasted with the convention; specifically, Article 2P1 does not mandate the state to guarantee education of a specific type or at a specific level. Article 14, paragraph 3, of the charter delineates two rights. Firstly, the freedom to establish educational institutions is recognised. Secondly, parents have the right to ensure that their children receive education and instruction in accordance with their family's beliefs. The first right appears to be an inherent component of the right to education, as articulated in Article 2P1. The second right is nearly explicitly referenced in the aforementioned provision.

If the CRC constitutes a significant document recognising the right to education for children from an international perspective, then the ECHR is acclaimed as “the most significant expression of this right within Europe”⁶⁸¹. The CRC makes provision for education rights in a way that reflects more fully their complexity and significance. The right ‘to’ education in Article 28 is not phrased in the negative as in the ECHR. Rather, it expands on Article 13 of the ESCR through an additional provision requiring states to encourage regular attendance at school and reduce drop-out rates⁶⁸². It also addresses a significant aspect of children’s rights ‘in’ education by requiring states to take measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and other CRC rights. Likewise, Article 29 expands on children’s rights “through” education: not only must education be directed to the development of the child’s personality and respect for human rights and preparation for life in a free society in a “spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples”, but it must also develop respect for the child’s parents and culture, as well as the country in which they are living, the country from which they originate, and for a civilisation different from his or her own (Article 29(c)).

⁶⁸⁰ CJEU, Bressol No C-73/08 28-29.

⁶⁸¹ LUNDAY, Children's rights and educational policy in Europe 410.

⁶⁸² Ibid.

Examining the obligation perspective of member states, both the ECHR and the CFR of the EU do not stipulate specific duties such as ensuring free education, guaranteeing accessible and available education, implementing measures to encourage regular attendance and reduce dropout rates, ensuring children's participation in consultations related to education, and prohibiting corporal punishment in schools, akin to Article 28 of the CRC. This can be readily comprehended as the CRC was adopted after the aforementioned European human rights instruments, implying that its provisions on the right to education for children embody more progressive standards. Furthermore, one could perceive this as an objective of the ECHR and the EU Charter to maintain a level of flexibility that enables nations to tailor their educational policies to their unique local circumstances and contexts.

To assess the compatibility of specific policies and legal regulations within a particular European country in meeting these obligations, the subsequent analyses will scrutinise the right to education of children in Hungary. According to the perspective of a Hungarian researcher, it is asserted that the “right to education” is contingent upon the obligation of nations to sustain educational institutions. Consequently, the state must ensure that everyone, regardless of their social or financial circumstances, has the opportunity to access knowledge⁶⁸³.

Primarily concerning the objectives of education, in the introductory section of the 2011 CXC Law on Hungary's National Education⁶⁸⁴, it is acknowledged that: “To ensure the development of the nation, there is a combination of the cherished traditions of Hungary's education system and the specific requirements of the current era, as well as the opportunities of the future. The educational goal is to instil ethics and ensure the quality of education for the younger generation, following the rights stipulated in the constitution regarding the right to access culture and the right to learn the native language of ethnic groups. It defines the rights and obligations of the parties involved in the education system, as well as their rights and duties. The objective is to govern and operate the education system to provide advanced knowledge”.

The CXC Law reflects the significant objective of education in Hungary, namely, the integration of preserving and developing the nation's cherished educational traditions with the demands of the contemporary era. Concerning learners, Hungary delineates the goal of establishing an ethical foundation for students, ensuring that education is not only about imparting knowledge but also supporting the development of values and personal qualities. This underscores Hungary's emphasis on the importance of education in shaping the ethical character of each individual and contributing to positive societal and cultural development. In addition, the quality of education is also identified as a crucial objective. This ensures that the knowledge and skills imparted to students are reliable and meet international standards. Hungary's educational goals also demonstrate a commitment to cultural and linguistic diversity in the country. This contributes to promoting social integration and respect for various classes and communities. Finally, the 2011 CXC Law also delineates the rights and responsibilities of the stakeholders within the education system.

⁶⁸³ BÁRÁNY, Az oktatás jogi környezete - Az oktatáshoz való jog érvényesülése 23.

⁶⁸⁴ The 2011 CXC Law on National Education.

Moreover, Hungary's educational objectives are reiterated once again in Article 1 of the CXC Law. Although expressed differently, both aim towards the core objective of developing students in terms of knowledge, skills, ethics, emotions, and physical well-being, contributing to social development. Concerning the educational objective of personal development, the appendix accompanying government decree No. 110/2012 (VI.4.) on the implementation and application of the national core curriculum provides specific and detailed regulations in this regard. The Hungarian government has outlined various areas of personal development and educational goals related to knowledge, ethics, patriotism, civic and democratic education, the development of self-awareness and culture, family life education, physical education, mental well-being, responsibility towards others, volunteering, economic and financial education, and the education of traditional awareness in Section I.1 on the mission and core values of public education⁶⁸⁵. These regulations are highly beneficial, contributing significantly to shaping a quality educational framework for educational institutions in Hungary.

There are certain similarities between the educational objectives in Hungary according to the 2011 CXC Law and the educational objectives stipulated in Article 29 of the CRC. Hungary, in line with the CRC, emphasises ensuring high-quality education for the younger generation and respecting the dignity, qualities, and values of individuals. Although the prominence of moral education for students is a notable aspect of Hungary's education law compared to the CRC, the explicit commitment to ensuring the equality of students in the educational process is not clearly articulated in the educational objectives of the 2011 CXC Law. Further analyses regarding the implementation of national obligations under the CRC within Hungary's policies and laws are expected to provide additional clarity on this matter.

In terms of fulfilling the national obligation to ensure the right to education for children, Hungary has effectively implemented the primary duty outlined in the CRC. This duty pertains to the provision of free education. Specifically, the constitution of Hungary declares the assurance of the right to cultural ownership through the provision of free and compulsory primary education, free and accessible secondary education for all, as well as university education based on the individual's capabilities, coupled with the provision of financial support for learners as stipulated by law⁶⁸⁶. Furthermore, the constitution also includes obligations related to education for parents. Article 16, Clause 3, stipulates that [these] parents have the obligation to care for their children under the age of 18. This obligation includes ensuring that their children receive an education⁶⁸⁷.

In light of the foregoing statements, it is evident that the constitution of Hungary establishes a fundamental legal framework for education, while detailed provisions are to be regulated through sector-specific legislation⁶⁸⁸. Article 2(1) of the 2011 Law on Education stipulates that: "Ensure the right to access free and compulsory basic and upper-secondary education, as mandated by the constitution, until the completion of the graduation examination". This provision indicates that Hungary has effectively fulfilled its commitment to the obligation of providing free education as

⁶⁸⁵ Government Decree No. 110/2012.

⁶⁸⁶ Article XI, Clause 1-2 of the Fundamental Law.

⁶⁸⁷ Article XI, Clause 1-2 of the Fundamental Law.

⁶⁸⁸ BÁRÁNY, Az oktatás jogi környezete - Az oktatáshoz való jog érvényesülése 41.

stipulated in the CRC at both the basic and upper-secondary education levels. This has contributed to ensuring the right to education for children.

Hungary has also effectively fulfilled the obligation of providing available education. *Bárány V. Fanny*⁶⁸⁹ identified the realisation of children's right to education in Hungary as follows: “The right to education also includes the right to choose an educational institution, meaning that individuals (or their legal representatives) have the right to choose the form of education they wish to participate in. This right entails a dual obligation on the part of the state—one to maintain a sufficient number of educational institutions and another to create legal and economic conditions for the establishment of non-state-maintained educational institutions (e.g., religious schools, private schools) through the right to freedom of establishment, which can also be understood as part of the right to education. This implies that in the obligation to ensure available education, the state must ensure the existence, maintenance, and operation of an educational institution system”⁶⁹⁰.

The National Public Education Act (Nktv.) establishes that, in addition to the state, organisations such as national minority self-governments, legal entities of churches, religious organisations, or other individuals or organisations may establish and maintain public education institutions under conditions and within the framework defined by law. This means that, besides the state's obligation to establish and maintain educational institutions arising from the right to education, the state also ensures the right to freely establish educational institutions and, consequently, the right to freely choose educational institutions. These rights, as mentioned earlier, stem from the right to education and the corresponding (partial) entitlements of individuals⁶⁹¹.

Regarding the term “accessible education”, the CRC explicitly addresses this in Article 28 concerning the right to education of children. However, as analysed, similar to the term “available education”, there is no official explanation from the committee on CRC for this term. To elucidate the term “accessible education”, one may consider the interpretation provided by the CESCR committee. According to the CESCR, the criteria for determining whether a country has fulfilled its obligation to ensure accessible education for children would include:

Firstly, educational institutions and programmes should be easily accessible to all children, without discrimination on any prohibited grounds. Special attention must be given to the most vulnerable groups in society, such as children with disabilities, girls, children in rural areas, and wandering children. In this criterion, Hungary has achieved compliance. Specifically, Article 2(1) of the 2011 law on public education stipulates: “Learning within the system of public education and training schools is free for students with special difficulties and students with special educational needs”.⁶⁹² This provision ensures that these groups of students do not face financial barriers to accessing education.

⁶⁸⁹ Ibid.

⁶⁹⁰ Ibid.

⁶⁹¹ Ibid.

⁶⁹²According to the explanation in article 4(25), children and students with special educational needs are defined as “children and students who require special treatment, based on the expert opinion of the specialized committee, due to physical, sensory (visual, auditory) disabilities, mental disabilities, or generally language disabilities. Cases where multiple disabilities occur simultaneously are referred to as complex disabilities or disorders within the autism spectrum or other psychological developmental disorders (severe learning disabilities, attention disorders, or behavioural control disorders)”.

Secondly, this concept addresses the physical accessibility of education: education must be provided within a reasonable and safe distance. The provision regarding the rights of students in Article 46(3) point b of the 2011 law on public education in Hungary states: “Children, students have the right to be nurtured and educated in educational and training institutions in a safe and healthy environment. The daily schedule of pre-schoolers and students needs to be tailored to their age and development, including rest time, free time, physical activities, providing opportunities to participate in sports activities, and providing suitable dining options based on their needs. This regulation has contributed to ensuring that students can conveniently and safely access education at educational institutions near their residences, ensuring convenience and safety for children in the exercise of their right to education. Additionally, by regulating schedules in line with their physical development, the curriculum must ensure rest time and provide opportunities to participate in sports activities, not only aiding children in balancing academics and recreation but also creating conditions for their comprehensive intellectual and physical development”.

Thirdly, there is an economic accessibility aspect, meaning that education must align with the financial capabilities of individuals. This criterion is also ensured by the Hungarian government through provisions in Articles 46(4) and (5) of the 2011 law on public education in Hungary. Accordingly, “Children, students have the right in schools and educational institutions, depending on the financial situation of the family, as specifically regulated by law, to request receiving free or discounted meal services or free or discounted learning materials. Additionally, they also have the right to be exempted in part or in full from the fees specified and applied by this law, and this may be permitted to be postponed or paid in instalments”. “In the public education system, in the form of daytime learning, the state ensures that textbooks are provided free of charge to students. If possible, textbooks should also be published free of charge in electronic form through the education system”. These regulations have facilitated economically disadvantaged children's access to education. Not only are they exempted from or receive reduced tuition fees, but they are also provided with free or discounted textbooks and learning materials. This not only alleviates the financial burden on the families of these children but also enables them to access resources conducive to effective learning.

Thus, based on the analysis of provisions in the constitution and the law on public education, it can be concluded that the Hungarian state has effectively fulfilled the obligation to provide available and accessible education for children within its national territory. Another equally crucial obligation that the CRC imposes on its member states is the duty to ensure that children are involved in consultations regarding issues related to their education, both at the individual and policy levels. With the provision in Article 46(6) Point g of the 2011 law on public education, Hungary has also fulfilled its commitment to this international community. Specifically, this regulation acknowledges that “students have the right to be respected as human beings. Students have the right to freely express their opinions on any issue, on educational work and teachers teaching them, and on school and dormitory activities. They also have the right to receive information about issues related to themselves and their studies, propose and ask questions to school leaders, teachers, the school council, the dormitory council, and the student council, and receive constructive answers within 15 days from the date of sending the question - at the first meeting after 15 days - from the school council or dormitory council”. This provision ensuring that children have the freedom to express their opinions on any

issues related to education has manifested an open and child-friendly learning environment, encouraging the active participation of children in the learning process. Furthermore, the regulation acknowledges the right to access information about issues related to children during their participation in learning, as well as the right to propose and ask questions to school leaders and teachers, creating a proactive and positive atmosphere for children.

Disciplinary measures are an indispensable aspect of the educational environment for children. However, the application of disciplinary measures must also ensure respect for the dignity and rights of children. This is one of the obligations that member states commit to when joining the CRC. Internalising this obligation into national law, Article 46(2) of the 2011 Law on Public Education in Hungary stipulates: “The personality, dignity, and rights of children and students must be respected, and protection against physical and mental violence must be ensured. Children and students cannot face corporal and mental punishment, torture, cruel and degrading treatment”. This provision demonstrates the compatibility of Hungarian law with international law in safeguarding the right to education for children. Specifically, these regulations are all oriented towards preserving the dignity of students, even when applying disciplinary measures. This underscores the important goal of protecting children from the negative impacts of severe disciplinary measures both, physical and mental.

The issue of international collaboration in education is also a matter of significant concern for the Hungarian government. Evidence of this commitment is found in Section 51 of the 2011 Law on Public Education, which encompasses numerous provisions related to international cooperation. Notably, some highlighted provisions include allowing foreign educational institutions to operate in Hungary⁶⁹³, or regulations permitting the establishment of temporary educational facilities to serve refugee children, as specified in Article 90(9). Article 91(1) further stipulates that Hungarian citizens may study abroad without requiring a permit and can fulfil their compulsory education programme in a foreign country. For non-Hungarian citizens, Article 92(1) also facilitates access to the right to education through the provision: “Non-Hungarian minor children shall have the right to attend kindergarten and also to attend school in Hungary”.

In summary, based on the analysis of Hungary's legal provisions on education, it can be concluded that Hungary has diligently fulfilled its commitments to the international community in ensuring and implementing the right to education for children.

5.3.3. The Right to Privacy

Privacy rights constitute a crucial facet of the respect and individuation of every individual. They create a framework for children to participate in decisions regarding their personal lives, thereby aiding in the development of decision-making skills, self-assurance, and responsibility. Moreover, safeguarding privacy rights also serves to shield children from instances of sexual exploitation and encroachments on their physical as well as mental well-being. Recognising the paramount importance of this right for individuals within society, particularly for children, European nations have proactively and vigorously engaged in the ratification and adherence to international instruments pertaining to

⁶⁹³ Article 90(1).

human rights and children's rights, such as the UDHR and the CRC. In this section, the author will elucidate the provisions of both the EU and Hungary in safeguarding the privacy rights of children based on the examination, assessment of compatibility, and alignment of these regulations with the provisions on the privacy rights of children protected in the CRC.

Article 8 of the ECHR provides for the right to respect for private and family life. The text of Article 8 reads as follows: “1. Everyone has the right to respect his private and family life, his home, and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary for a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. This right allows an individual to be protected not only from interference by authorities but also from interference by other individuals and institutions, including the mass media⁶⁹⁴.

The term “respect” encompasses the protection of individuals from arbitrary interference by public authorities in their private lives, and also imposes an obligation on the state to actively participate in ensuring this right⁶⁹⁵. Specifically, the provision imposes two types of obligations: a “negative” obligation to refrain from interfering with any rights enumerated in Article 8(1), unless the conditions specified in Article 8(2) are met, and a “positive” obligation to take steps to protect the individual's right to privacy, particularly against interference from others.

When addressing the negative obligation, two questions are posed: (i) whether there is any interference with one of the rights stipulated in Article 8(1); and (ii) if so, whether such interference can be substantiated under Article 8(2). To satisfy Article 8(2), the interfering measure must satisfy three requirements. First, it must be “in accordance with the law”, which means that the interference must have been made following a national law that is compatible with the rule of law⁶⁹⁶. The measure must then be shown to have served one of the “legitimate aims” specified in Article 8(2), namely, the interests of national security, public safety, economic well-being, the prevention of disorder or crime, or the protection of health, morals, or the rights and freedoms of other⁶⁹⁷. Lastly, the measure must be “necessary in a democratic society”. This means that there must be a “pressing social need for the interference”⁶⁹⁸ the establishment of which will depend, *inter alia*, on whether the measure was proportionate. Member states also have a positive obligation to protect individuals' private lives, particularly against interference by others. This is because “while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the state to abstain from such interference; in addition to this negative undertaking, there may be positive obligations inherent in an effective respect for private life even in the sphere of relations of individuals between themselves”⁶⁹⁹.

⁶⁹⁴ Council of Europe, Resolution of the parliamentary assembly of the council of Europe 9.

⁶⁹⁵ GUTIC, *The Right to privacy* 335.

⁶⁹⁶ ECtHR, *Peck v United Kingdom* No. 44647/98 36. See also: ECtHR, *Niemietz v Germany* No. 72/1991/324/396 29.

⁶⁹⁷ *Ibid.*

⁶⁹⁸ ECtHR, *Peck v United Kingdom* No. 44647/98 57. See also: ECtHR, *X v Iceland* No. 6825/74 86 at 87.

⁶⁹⁹ ECtHR, *Van Kück v Germany* No. 35968/97 70.

The right to privacy is enshrined in Article 7 of the CFR of the EU, which states the following: “Everyone has the right to respect for his or her private and family life, home and communications”. This provision recognises the fundamental right of individuals to enjoy a private life and family life free from undue interference by others, including public authorities. It also encompasses the right to privacy and protection of personal data, as well as the right to form and maintain relationships with family members.

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology, the word “correspondence” has been replaced by “communications”⁷⁰⁰. Article 7 is addressed to the protection of the right to family life within EU law and, as such, has general application to any field of EU law where family life may be affected. Furthermore, the fact that it replicates Article 8 of the ECHR has arguably led to an increase in the influence of the ECtHR’s case law with regard to its interpretation by the CJEU⁷⁰¹, the case law of which has, in turn, had some effect upon the reasoning of the ECHR with respect to Article 8⁷⁰². Thus, the CJEU has applied Article 8 ECHR in several judgements to emphasise the obligation of national authorities to take into account the right to family life and respect for proportionality⁷⁰³, and correspondingly, Strasbourg has referred to the treatment of transsexuals by the CJEU in considering their Article 8 rights. The CJEU has also specifically endorsed the view that the interpretation of Article 7 of the CFR.

The similarity between Article 8 of the ECHR and Article 7 of the charter also means that several matters may be confidently asserted. First, the scope of the family life aspects of Article 7, as with Article 8 of the ECHR, is wide-ranging, and its application will be relevant to a number of overlapping contexts. The well-established case law of the ECHR in this area has already served as an important source in its application in certain areas and may thus also serve as a good illustration of the potential scope of Article 7 in others. Second, Article 7 of the charter, as with Article 8 of the ECHR, will include both negative and positive obligations that will be imposed upon the institutions of the EU as well as member states when implementing EU law. Third, Article 7, as with Article 8 of the ECHR, is a qualified right; thus, any interference with family life will be prohibited unless it falls within the exceptions contained within it⁷⁰⁴. Therefore, to avoid redundancy in the content, the author solely concentrates on a detailed analysis of Article 8 of the ECHR from the perspective of safeguarding the privacy rights of children.

Concerning the concept of the right to privacy, unfortunately, however, the conventional right to respect for private life is not easily understood. The right is ill-defined and amorphous. The court has acknowledged that it extends beyond the “right to privacy, the right to live, as far as one wishes,

⁷⁰⁰ PEERS - HERVEY - KENNER - WARD, *The EU charter of fundamental rights* 472.

⁷⁰¹ *McGlynn* argued, prior to the Charter coming into effect, that although the CJEU had referred to Art 8 of the ECHR, it had done so with little effect - MCGLYNN, *Families and the European Union* 226.

⁷⁰² Some authors see this as evidence of a remarkable level of convergence between the two legal orders in certain areas. See MORANO - FOADI - ANDREADAKSI, *The convergence of the European legal system* 1071.

⁷⁰³ In relation to family members of EU citizens, see: CJEU: Case C-60/00 *Mary Carpenter v Secretary of State* 43 in JADOUL - VANNESTE. Case c-60/00; CJEU, Case C-127/08 *Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform in CAMBIEN, Nathan*. Case C-127/08 326.

⁷⁰⁴ PEERS - HERVEY - KENNER - WARD, *The EU Charter of fundamental rights* 450.

protected from publicity”⁷⁰⁵, but has consistently declined to define it further. Instead, it insists that it is “a broad term not susceptible to exhaustive definition”⁷⁰⁶ and repeats several broad statements about the nature of the interest.

“Private life”, it says, includes “activities of a professional or business nature”⁷⁰⁷, the right to establish and develop relationships with other human beings and the outside the world”⁷⁰⁸ “a zone of interaction of a person with others, even in a public context”⁷⁰⁹ the “physical and psychological integrity of a person”⁷¹⁰, the “right to...personal development”⁷¹¹ “the right to establish details of their identity as individual human beings”⁷¹². Interests as diverse as the right to live as a gipsy, to change one's name, and to be free from environmental pollution, as well as more traditional “privacy” rights such as protection against the dissemination of personal information and images, all fall within it. *Claira Fenton* contends that “the concept of “private life” under the convention is imprecise and ambiguous—and intentionally so”⁷¹³. The author further cites a statement made by the UK Minister of Justice at the time of drafting as evidence supporting this perspective. Specifically, “Vague and indefinite terms have been used just because they are vague and indefinite, so that all parties, hoping and expecting that the terms will be construed according to their separate points of view, could be induced to sign them”⁷¹⁴.

Regarding the aspects of the right to privacy, Article 8 delineates the protection of four aspects of privacy: private life, family life, home, and correspondence. Therefore, compared to the content of Article 16, the dignity and reputation of the individual are not explicitly acknowledged for protection within the provisions concerning the right to privacy. Non-interference in private life constitutes the primary aspect of the right to private life. Similar to the stipulations outlined in Article 16 of the CRC, respect for family life is safeguarded by Article 8 of the ECHR, as is the “interference with the exercise of this right” without the intervention of public authorities, unless it is “necessary in a democratic society” for the protection of the aforementioned interests⁷¹⁵.

Housing represents the second aspect addressed within the content of Article 8. Because respecting the inviolability of the home represents one of the fundamental rights of a person, its purpose is to protect one of the most important elements of the private sphere, where no one should be disturbed. An exception is outlined in Article 8(2), wherein it is acknowledged that member states “may deem it necessary to take measures, such as conducting searches to obtain material evidence of certain criminal activities”⁷¹⁶. However, Article 8(2) will only be satisfied if the search measures are

⁷⁰⁵ ECtHR, *X v Iceland* No. 6825/74 87.

⁷⁰⁶ ECtHR, *Peck v United Kingdom* at 57. See also: ECtHR, *Niemietz v Germany* 29; *Pretty v United Kingdom* 61; and *PG and JH v United Kingdom* No.44787/98 56 in *NASH*, *PG and JH v United Kingdom* 122.

⁷⁰⁷ ECtHR, *Niemietz v Germany* 29. See also: *Peck v United Kingdom* at 57.

⁷⁰⁸ ECtHR, *Peck v United Kingdom* at 57. See also: ECtHR, *X v Iceland* No. 6825/74 87.

⁷⁰⁹ ECtHR, *Peck v United Kingdom* 57. See also: *Von Hannover v Germany* 50.

⁷¹⁰ ECtHR, *Pretty v United Kingdom* 61.

⁷¹¹ ECtHR, *Peck v United Kingdom* at 57. See also: *X v Iceland* No. 6825/74 87

⁷¹² ECtHR, *Von Hannover v Germany* 50.

⁷¹³ FENTON-GLYNN, *Children and the European court of human rights* 187.

⁷¹⁴ Cabinet Office Memo CAB/130/64 cited in FENTON-GLYNN, *Children and the European court of human rights* 187.

⁷¹⁵ GUTIC, *The Right to privacy* 335.

⁷¹⁶ ECtHR, *Buck* (2006) E.H.R.R. 21 at 45. In this case, there was a breach of the right to “home” and not “private life”, but the dicta appear to apply equally in both contexts.

deemed “proportionate”. Primarily, this entails that “the relevant legal framework and practice must provide adequate and effective safeguards against abuse”⁷¹⁷. Secondly, the court “must examine the specific circumstances of each case to determine whether, in the particular instance, the interference in question is proportionate to the legitimate aim pursued”⁷¹⁸. This depends on criteria such as “the seriousness of the criminal behaviour involved in the search and seizure, the manner and circumstances in which the warrant was issued, notably the existence of supplementary evidence available at the time, the content and scope of the warrant, with particular attention to the nature of the premises subject to search and the protective measures implemented to confine the impact of the measure within reasonable bounds, and the potential impact on the reputation of the affected individual by the search”⁷¹⁹.

Correspondence constitutes the final aspect addressed in Article 8 of the ECHR. Sending and receiving correspondence is an integral part of an individual's private life. The right to respect for correspondence ensures that a person's mail will not be interfered with without a valid reason. The term “correspondence” primarily refers to written communication. However, it can also encompass telephone conversations and the transmission of information through telecommunication means (such as fax, email, or other means that did not exist at the time of the adoption of many international instruments). The correspondence of each individual is generally protected. Only limitations allowed by other provisions of Article 8 of the ECHR are permitted⁷²⁰. The confidentiality of letters and other means of communication is inviolable; exceptions are only permitted for a limited period and only based on a court decision, if it is necessary for the conduct of criminal proceedings or the defence of the country, in the manner provided by law⁷²¹. Unlike the inviolability of the home, the inviolability of correspondence can never be restricted without a court decision.

In summary, upon examining the aforementioned analyses, it is evident that human rights, along with the intricacies of privacy, have been meticulously scrutinised within the framework of the ECHR, demonstrating particular emphasis. Explicitly defined within a separate provision, it elucidates the significance of privacy rights as well as specifies when and what constraints may be deemed acceptable for this right. Although establishing the boundaries of privacy rights proves to be a challenging endeavour, it remains among the less unequivocally understood rights, akin to the right to fair and transparent legal proceedings or the freedom of speech. Furthermore, the right to private life, a prominent aspect of the ECHR, not only respects and safeguards the privacy of individuals and their family life but also forms the foundation for protecting the privacy of children. Similar to the CRC, the law continues to define and weigh the facets of family life and the privacy rights of children. This implies that ensuring the freedom and autonomy of each child in their life is still guaranteed within European society.

In Hungary, the right to privacy is regulated under Articles VI (1) and (3) of the Fundamental Law as follows: “Everyone has the right to be respected for their private and family life, home,

⁷¹⁷ ECtHR, *Funke* (1993) 16 E.H.R.R. 297 at 56 in KNERR, Harmonizing Europe’s human rights system. See also: ECtHR, *Chappell* (1989) 12 E.H.R.R. 1 at 60-66 in PATAKYOVA, Right to privacy 30.

⁷¹⁸ ECtHR, *Buck* (2006) E.H.R.R. 21 at 45.

⁷¹⁹ *Ibid.*

⁷²⁰ GUTIC, *The Right to privacy* 335.

⁷²¹ *Ibid.*

communications, and good reputation”. “Everyone has the right to be protected regarding their personal data”. Thus, the right to privacy enshrined in the Hungarian Constitution exhibits similarities with analogous rights delineated in Article 16 of the CRC and Article 8 of the ECHR. Specifically, these legal foundations all aim to safeguard personal rights in general and the rights of children to privacy and family life, counteracting undue interference in various facets of these rights, including private life, family, communications, and reputation.

The Hungarian Civil Code provides detailed provisions regarding the aforementioned in Article 46 of Book 2 as follows: “(1) The right to protect privacy shall encompass, in particular, the safeguarding of the confidentiality of correspondence, professional secrets, and trade secrets. (2) Infringements upon privacy shall notably include the unauthorised access and use of personal secrets, encompassing the disclosure and divulgence to unauthorised parties”. Furthermore, Hungary has also enacted a distinct law on the right to privacy of personal secrets, Law No. LIII of 2018 on Privacy Protection⁷²².

Article 1 of this legislation contains a provision stipulating that “every individual possesses the entitlement to be respected in regards to their private life, family, domicile, and the maintenance of relationships (collectively referred to as the right to privacy)”. Through this provision, Hungarian law has demonstrated coherence with international and regionally pertinent legal instruments in upholding and preserving the rights to privacy and family. However, the law does not provide specific elucidation on the concept of privacy rights but rather outlines various facets of this right in a manner akin to what international instruments have done.

Moreover, the compatibility of this law is also demonstrated by acknowledging this right as one subject to restriction as stipulated in Article 2(2): “Fundamental rules aimed at safeguarding the right to privacy are established by law. This right may only be restricted to the extent necessary, in pursuit of a legitimate aim, and while respecting the core content of the right to privacy and the dignity of the individual, to realise other fundamental rights or protect a constitutional value”.

Despite the existence of numerous provisions aimed at safeguarding individuals’ privacy within familial and personal spheres in Hungary, the legal framework does not explicitly delineate the specific elements comprising this right. However, being a member state of the European community, the regulations concerning the right to personal privacy in Hungary, as well as across Europe in general, are further ensured through enforcement by the ECHR. Consequently, this right has been elucidated to some extent through the court’s interpretations and applications of European human rights legal texts.

A detailed delineation of aspects pertaining to privacy rights is provided in Chapter II of Law LII of 2018. Within this chapter, certain fundamental aspects, as stipulated in Article 16 of the CRC and Article 8 of the ECHR, can be identified. For instance, the right to ensure privacy and family life, domicile, and communication of children is emphasised in Article 7(3), underscoring the guarantee of privacy and family life to secure the physical, mental, and moral development of children. Simultaneously, the law underscores this as an obligation incumbent upon all individuals.

Names, personal data, images, voices, honour, and reputation are aspects regulated by Article 8 of Law LII of 2018. According to this provision, “the misuse of personal data, secrets, images, or recorded audio that an individual wishes to retain, particularly concerning private life or infringing upon honour and reputation, may constitute a violation of the right to respect for private life”. Personal data on the Internet is also addressed in this law under Article 8(3). According to this provision, even though such data may have been provided on the Internet, others may only use it with the consent of the concerned individual, unless data management is mandatory⁷²³. Other aspects of privacy rights, such as family life, family domicile, and communication, are sequentially stipulated in articles 9, 10, and 11 of Law LII of 2018. A particularly notable and valuable feature of Hungarian law in safeguarding the privacy rights of individuals and children lies in the detailed provisions regarding the potential legal consequences that may arise when an individual's privacy is violated, as outlined in Chapter III of Law LII of 2018. Primarily, this establishes a clear legal framework, facilitating a smooth and expeditious application. Additionally, it serves to enhance awareness and deter violations of privacy.

In summary, the analyses above demonstrate that Hungarian law is dedicated to safeguarding the privacy rights of individuals, particularly children, seriously and effectively. Specifically, the provisions regarding various aspects of privacy rights as well as the legal consequences for privacy violations not only establish a clear legal framework but also lay the groundwork for legal accountability for offenders. Moreover, the establishment of domestic regulations that align with the provisions of Article 16 of the CRC and Article 8 of the ECHR serves as a clear testament to Hungary's commitment to protecting the privacy rights of children.

5.3.4. The Right to be Protected from Violence

As analysed above, Article 19 of the CRC introduces measures to protect children from all forms of violence. At the same time, it emphasises that member states must take appropriate measures to prevent and investigate violations, as well as provide support and care for child victims. According to the assessment by *Ivana Resetar Culo*, “the primary goal of the establishment of the EU was not the protection of human rights but the strengthening of the economic development of its member states. However, in the last few decades, the EU has become an important regional factor in human rights protection, including the protection of the rights of the child”⁷²⁴.

The two prominent human rights texts, the ECHR and the CFR in Europe, were enacted and came into effect before the CRC, so the compatibility in the content of the protection of children from violence in these texts compared to the CRC is not high. However, Article 3 of the ECHR prohibits all forms of torture and inhuman or degrading treatment for all human beings, and therefore, it does not exclude children. This provision contributes to protecting children from violence.

In the charter, there is no similar provision; however, Article 24 could be used as a legal basis to protect children from violence. This article stipulates that children have the right to protection and

⁷²³ Regulated by Law No. CXII of 2011.

⁷²⁴ CULO, Violence against children and integrated child protection systems 42.

care in accordance with the highest standards of development. Therefore, violent behaviour towards children cannot be acceptable according to these standards. Additionally, other substantive rights contained in the charter are also important in the context of child protection: the right to the integrity of the person⁷²⁵, the prohibition of torture and inhuman or degrading treatment or punishment⁷²⁶, the prohibition of slavery and forced labour⁷²⁷ and the prohibition of child labour and the protection of young people at work⁷²⁸. Indeed, although many fundamental rights in the charter can apply to the protection of children⁷²⁹, Article 24 recognises in a more general way the inherent vulnerability of children and the need for protection: “(1) children have the right to protection and care as necessary for their safety, and (2) in all actions concerning children, whether taken by public authorities or private organisations, the best interests of the child must be a primary consideration”⁷³⁰.

To ensure compliance with international instruments and standards, the EU as a whole and its member states have established numerous legal tools to protect children from all forms of violence. The development of these regulations has significantly progressed following the adoption of the CRC. Several EU secondary law documents relevant to child protection may include:

Directive 2011/92/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, replacing council framework decision 2004/68/JHA 4 7, establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography, and solicitation of children for sexual purposes. It also introduces provisions to strengthen the prevention of sexual abuse and exploitation of children and provisions on victim assistance and support measures.

The purpose of Directive 2012/29/EU of 25 October, 2012, establishing minimum standards on the rights, support and protection of victims of crime and replacing council framework decision 2001/220/JHA (2012), is to ensure that victims of crime receive the appropriate information, support, and protection and can participate in criminal proceedings. This directive includes extensive provisions for child victims and, inter alia, provides for special measures for the protection of child victims during criminal proceedings⁷³¹.

Directive 2016/800/EU of May 11, 2016, on procedural safeguards for children who are suspects or accused persons in criminal proceedings,⁷³² establishes procedural safeguards to ensure that children, who are suspects or accused persons in criminal proceedings, can understand and follow those proceedings, to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.

Furthermore, Europe has numerous programmes aimed at safeguarding children from violence, exemplified by initiatives such as the “DAPHNE Programme”. Most recently, the “European child maltreatment prevention action plan 2015-2020” has been prominent. This programme,

⁷²⁵ Article 3 of the CFR.

⁷²⁶ Article 4 of the CFR.

⁷²⁷ Article 5 of the CFR.

⁷²⁸ Article 32 of the CFR.

⁷²⁹ For example, Article 10 of the CFR.

⁷³⁰ STALFORD, Children and the European Union 170.

⁷³¹ Article 24 of Directive 2012/29/EU.

⁷³² Directive 2016/800 of the European Parliament 15.

formulated by the EU, is designed to concentrate efforts on the prevention and reduction of instances of child maltreatment within its member states.

As a European nation, Hungary aligns itself with the prevailing trend of safeguarding children from various forms of violence. Furthermore, policy planners in Hungary comprehend the imperative of ensuring the safety of children and shielding them from perilous situations of violence. In addition to adhering to international and regional legal frameworks, the formulation of policies and legislation at the national level is deemed essential. Consequently, numerous provisions on the protection of children in general, as analysed in the preceding sections, and specific regulations addressing the protection of children from violence are documented within the legal system of this nation.

Child violence, in particular, is not specifically defined in Hungarian law, ranging from the constitution to family law as well as criminal law. In the field of legal science, some studies recognise that this is a complex concept, making it challenging to articulate a clear-cut definition⁷³³. Instead, under Article 1(1) of Law No. LXXII of 2009 on the application of measures of isolation due to domestic violence, it is stipulated that domestic violence may be considered “(a) acts of the perpetrator against the victim, posing serious and direct threats to dignity, the right to life, the right to make decisions about sexual matters, as well as physical and mental health; (b) the perpetrator's failure to act (posing serious and direct threats to dignity, the right to life, as well as physical and mental health) concerning the victim (hereinafter referred to as domestic violence).

One of the first and foremost obligations that the CRC imposes on its member states is the requirement to establish legislative, administrative, social, and educational measures to prevent children from all forms of violence. The Hungarian Constitution, in Article 16, Clause 1, establishes the principle of protecting children through special measures, serving as a commitment from the state to employ all necessary measures to safeguard children. Based on an analysis of Hungary's law No. LXXII of 2009, it can be concluded that measures to prevent domestic violence are emphasised following the spirit of the CRC. This is evident as these provisions are established in Chapter II, immediately following the general provisions chapters. Moreover, the diverse range of subjects and actions stipulated in this chapter serves as effective evidence supporting the aforementioned recognition.

Examining the responsible entities related to preventing domestic violence, Article 2(1) of this law indicates the required participation and coordination of various components. Specifically, as follows: “The following institutions perform tasks related to preventing domestic violence within the scope of basic activities stipulated in the law: (a) healthcare service providers, especially obstetricians, family physicians, paediatric family physicians; (b) providers of personal care services, especially family support services, family support centres, child welfare services, child welfare centres, temporary shelters for children or families; (c) educational institutions, vocational training institutions, and educational counselling services; (d) guardianship authorities; (e) police; (f) public prosecutors; (g) courts; (h) monitoring services for concerned individuals; (i) organisations carrying out tasks to assist victims and mitigate damage; (j) reception centres for refugees, temporary residences for refugees; (k) charitable organizations and foundations”.

⁷³³ KURILLA, A gyermekbántalmazás megjelenési formái az X - Z generációk vizsgálatának tükrében 155. See also: GYÖNGYVÉR, Családon belüli erőszak 27.

Furthermore, to ensure the legal system's obligation to participate in identifying, reporting, transferring, investigating, and handling cases of child maltreatment, as necessary, Hungary's Law No. LXXII of 2009 includes the following provisions: Article 2(2) requires the agencies and individuals specified in paragraph (1) to report to the coordinating authority for family protection if they identify the risk of domestic violence; Article 3(1) stipulates that “the coordinating authority for family protection shall listen to the victim upon individual request. In this case, there will also be a hearing for the perpetrator, provided that the victim and the perpetrator will be heard separately at the request of the victim”.

According to the new Criminal Code⁷³⁴, if a child becomes a victim of a serious crime (such as manslaughter committed in a state of strong agitation, intentional severe bodily harm punishable by imprisonment of more than three years, kidnapping, human trafficking, violation of personal freedom, or crimes against sexual freedom and sexual morals), the rights of the injured child will not expire until the child reaches the age of 23 (or until the point when they would have reached that age). Thus, “in Hungary, a policy of zero tolerance is upheld concerning child maltreatment, whereby any instance of subjecting a minor to violence in any form triggers immediate authoritative intervention”⁷³⁵.

In summary, although specific regulations regarding forms of domestic violence in general and child violence in particular are not explicitly outlined, the Hungarian government has taken all necessary measures to enforce the principles set forth by the CRC, which unequivocally reject any form of violence against children. Consequently, all preventive measures, as well as prompt interventions, have been duly documented in the legal framework.

⁷³⁴ The Act C of 2012 on the Criminal Code, which came into effect on July 1, 2013.

⁷³⁵ GYÖNGYVÉR, Családon belüli erőszak: abuzált, bántalmazott gyerekek 48.

6. PRACTICES IN PROTECTING CHILDREN'S RIGHTS IN VIETNAM AND PROPOSED SOLUTIONS

6.1. SOME ACHIEVEMENTS IN PROTECTING CHILDREN'S RIGHTS IN VIETNAM

6.1.1. Achievements in Protecting the Right to Birth Registration

Respecting and promoting the right to birth registration yields numerous significant benefits in practice. However, according to a report by UNICEF, one-fourth of children under 5 years old worldwide, or approximately 66 million children, have never been registered at birth. This renders these children “invisible” entities, susceptible to vulnerability and harm⁷³⁶. Recognising the significance of the issue, the government of Vietnam has made substantial efforts to create the best environment for children, primarily by facilitating the recognition of children's legal identity through birth registration procedures. Therefore, the Vietnamese government has implemented numerous policies and measures to enhance birth registration for children. Specifically, initiatives such as strengthening education and community awareness regarding the importance of birth registration through activities like workshops, training sessions, and community education programmes have been extensively carried out at the local level⁷³⁷. The application of information technology has been employed to expedite the time and process of birth registration, simultaneously minimising administrative procedure-related issues⁷³⁸. Moreover, public feedback is actively sought to improve birth registration services for children⁷³⁹. These measures have significantly contributed to the improvement of birth registration for children in Vietnam. Consequently, the birth registration rate has increased significantly, ensuring that every child has an official record of their identity, including their name and date of birth⁷⁴⁰.

According to statistical data from the General Statistics Office of Vietnam⁷⁴¹, the registration rate of children under 5 years old has been steadily increasing nationwide over the years. (Chart 01).

⁷³⁶ UNICEF, Hundreds of millions of children are not registered at birth.

⁷³⁷ NGUYỄN - PHẠM, The procedures for birth registration, permanent residence registration, and issuance of health insurance cards for children under 6 years old.

⁷³⁸ NGUYỄN, Implementing software for birth registration in four cities. See also: KIM, In the near future, a software for birth registration.

⁷³⁹ NGUYỄN, Listening to the local residents to enhance birth registration services.

⁷⁴⁰ NGUYỄN - PHẠM, The procedures for birth registration.

⁷⁴¹ The General Statistics Office of Vietnam, The birth registration rate of children.

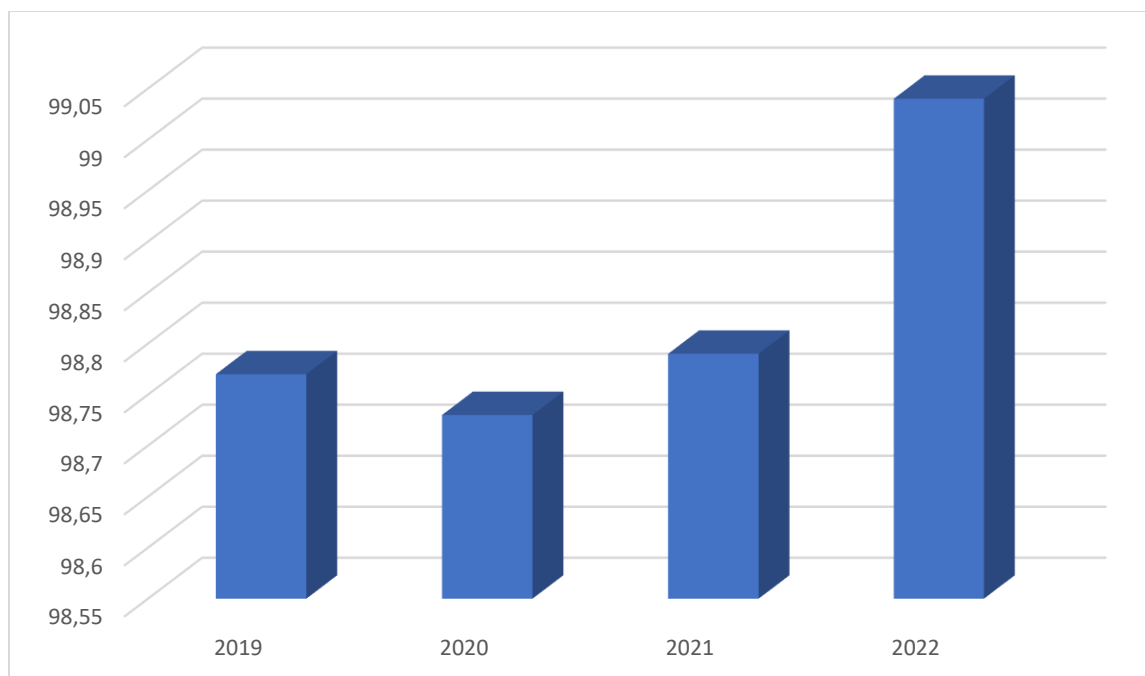


Chart 01. The nationwide proportion of children under 5 years of age who have been registered for birth.
Source: The General Statistics Office of Vietnam⁷⁴².

This chart illustrates that during the period from 2019 to 2022, the birth registration rate for children increased from 98.77% in 2019 to 99.04% in 2022. This signifies the government's efforts to enhance birth registration for children under 5 years old in Vietnam. Not stopping there, the government of Vietnam has set a target to increase the birth registration rate for children under 5 years old to 100% by the year 2030⁷⁴³.

6.1.2. Achievements in Protecting the Right to Education

Vietnam has endeavoured to implement numerous measures to ensure access to education for all children. In addition to waiving tuition fees for primary education, a mandatory obligation under the CRC for member countries to ensure the right to education for children, Vietnam has also implemented tuition waivers and reductions for lower secondary education in certain localities such as Hai Phong, Quang Ninh, Quang Binh, Da Nang, Vung Tau, and Can Tho⁷⁴⁴. According to the proposal made by the Minister of Education, *Nguyen Kim Son*, to the prime minister, there are plans to reduce tuition fees for lower secondary education nationwide in the near future⁷⁴⁵.

In addition, to ensure optimal conditions for the right to education of children, in recent years, despite budget constraints, the state has prioritised maintaining an expenditure level of approximately 20% of the total budget for education and training. Consequently, Vietnam has established a

⁷⁴² Ibid.

⁷⁴³ NGUYỄN, By the year 2030, 100% of children.

⁷⁴⁴ NGUYỄN, List of provinces exempted from tuition fees. See also: QUẢNG ET AL., Many students in various places.

⁷⁴⁵ LÊ, Minister of Education proposes the exemption of tuition fees.

comprehensive education system at all levels in various regions, with diverse types of educational institutions ensuring the educational needs of students at different age levels. In every commune, ward, and town nationwide, there are primary schools, lower secondary schools, or high schools; each district, district-level town, etc., has at least two high schools or higher-level secondary schools, meeting the educational needs of children within the appropriate age range. Additionally, all provinces with communities of ethnic minorities have vocational high schools, colleges, and ethnic boarding high schools⁷⁴⁶.

With the policy of promoting the socialisation of education, Vietnam has nearly 3000 non-public educational institutions at various levels, contributing to supplementing resources for education⁷⁴⁷. As analysed in Chapter 3, to ensure the participation of children in schools and foster the development of their skills, cognitive abilities, physical fitness, intelligence, and emotions through various learning activities, recreational pursuits, and community engagement, the *Ho Chi Minh* Young Pioneers Organisation⁷⁴⁸ and the *Ho Chi Minh* Communist Youth Union⁷⁴⁹ are two pivotal organisations contributing significantly to the success of this mission. Since their establishment, these two organisations have undertaken numerous activities, laying the foundation for nurturing generations of dynamic and creative Vietnamese students. They have collaborated with schools to organise various student activities, such as the “Three Good Students” initiative, “skills of student age”, “progressing together with a friend”, and “learning to be a useful person”⁷⁵⁰.



Picture 03. Students at the elementary school contribute old textbooks as gifts for poor students.

Source: HỒ⁷⁵¹

Vietnam closed completely or partially for a total of 31 weeks, including seven weeks of full closure due to the COVID-19 pandemic. Consequently, the Vietnamese government implemented remote learning activities. According to a report from UNICEF, Vietnam faced favourable conditions during the implementation of remote learning due to the nearly 100% nationwide electricity coverage. Additionally, teaching through television was highly regarded for its accessibility, as 90% of students aged 3 to 24 had access to television⁷⁵².

⁷⁴⁶ TA, The right to education in Vietnam.

⁷⁴⁷ LÂM, Vietnam consistently emphasizes the enhancement of international cooperation.

⁷⁴⁸ This organization was established by president *Ho Chi Minh* on May 15, 1941. See more: LÊ, The *Ho Chi Minh* young pioneer union.

⁷⁴⁹ Established on March 26, 1930. See more: PHẠM, The mission of the *Ho Chi Minh* communist youth union.

⁷⁵⁰ HỒ, Youth organization: accompanying youth. See more: PHAN, The school youth union; ĐỖ, The work of the youth union.

⁷⁵¹ Ibid.

⁷⁵² UNICEF, Summary report on education.

International cooperation in education is also an area where Vietnam has achieved considerable success. As of 2020, Vietnam has established educational cooperation relations with over 100 countries and territories. Additionally, it actively participates as a member of various international educational organizations⁷⁵³. According to the data presented in the report on the summary of international cooperation and integration in education and training released by the Ministry of Education on October 31, 2023, “From 2013 to 2023, there have been over 3,500 memoranda of understanding, cooperative training agreements, scientific research collaborations, and student and faculty exchange agreements signed between educational institutions in Vietnam and foreign counterparts. These signed documents have facilitated the expansion and development of international cooperation and integration activities within the education sector in Vietnam”⁷⁵⁴. During this period, “3,535 individuals, who are faculty members of universities and colleges, pursued academic studies and engaged in research activities abroad. Presently, approximately 200,000 Vietnamese international students are studying abroad at the secondary, tertiary, and postgraduate levels, equivalent to around 40,000 individuals studying abroad annually (an increase of approximately 2.5 times compared to the period before 2013)”⁷⁵⁵.



Picture 04. Mr. *Pham Quang Hung* (left), Director of the International Cooperation Department, Ministry of Education and Training, and Mr. *Osamu Sano*, CEO of Mizuno Corporation, exchanging a memorandum of understanding on physical education development cooperation in Vietnamese elementary schools.

Source: *Nguyễn*⁷⁵⁶

6.1.3. Achievements in Protecting the Right to Privacy

As analysed in Chapter 3, despite the delayed attention of the Vietnamese government to the recognition and protection of the privacy rights of children compared to international legal standards, continuous efforts from policy planners have resulted in the issuance of relatively comprehensive legal provisions. These regulations cover a spectrum, ranging from clearly elucidating aspects of children's privacy rights in general to outlining mechanisms for safeguarding the privacy of children on social

⁷⁵³ LÂM, Vietnam consistently emphasizes the enhancement. See also: VŪ, Promoting educational, scientific; VŪ, Educational collaboration.

⁷⁵⁴ TRẦN, 3,500 memoranda of understanding (MOUs).

⁷⁵⁵ Ibid.

⁷⁵⁶ NGUYỄN, Enhancing educational collaboration between Vietnam and Japan.

media platforms specifically. Additionally, administrative and criminal legal frameworks in Vietnam encompass punitive measures to address infringements on privacy.

To protect children in the online environment, the prime minister has issued decision No. 830/QĐ-TTg approving the programme for safeguarding and supporting children in healthy, innovative online interactions for the period 2021-2025. The programme aims to safeguard the confidential information and privacy of children as they access information and engage in activities online. It seeks to prevent and address any form of exploitation or prohibited behaviour towards children in accordance with legal regulations. Simultaneously, the programme focuses on equipping children with age-appropriate knowledge and digital skills to enable them to protect themselves and interact safely in the online environment. This includes promoting the use of healthy and secure online platforms and educating children on self-protection measures when engaging in online interactions. The programme also emphasises the identification, reporting, and denunciation of behaviours and incidents of child exploitation in the online environment. Furthermore, the programme conducts widespread social communication efforts, targeting parents, teachers, and carers, to enhance their knowledge and support skills. This aims to guide children towards safe, healthy, and innovative interactions in the online environment⁷⁵⁷.

Regarding the mechanisms for checking and supervising the implementation of online privacy rights for children, in 2022, Vietnam established the Information Safety Department under the Ministry of Information and Communications. According to decision No. 1499/QĐ-BTTTT⁷⁵⁸, which defines its functions, tasks, powers, and organisational structure, this agency is responsible for inspecting the implementation of legal regulations on network information safety and ensuring solutions for network information safety⁷⁵⁹. It monitors, collects, analyses, forecasts, and issues warnings about risks, malware, network attacks, and trends related to activities and developments in the online space in Vietnam⁷⁶⁰. Since its establishment, the Information Safety Department has engaged in activities contributing to the promotion of online privacy protection for children. Notably, its involvement in addressing misconduct in the “Meditation on the Edge of the Universe” case stands out. When this case garnered public attention early in 2022, various individuals and organisations, particularly on social media, disseminated numerous unverified and misleading articles related to the incident, particularly concerning some children involved. These contents not only directly affected the operational activities of relevant authorities but also infringed upon privacy, causing harm to the mental well-being and dignity of the children. Consequently, to safeguard the confidential aspects of children's private lives, the Children's Department⁷⁶¹ issued an official dispatch requesting the Information Safety Department to take protective measures. This action was deemed necessary, timely, and aligned with legal provisions for protecting the privacy of children⁷⁶². Furthermore, in April 2023, the Information Safety Department also released the results of its inspection and monitoring of the

⁷⁵⁷ VŪ, Program for safeguarding and supporting children.

⁷⁵⁸ Decision No. 1499/QĐ-BTTTT, a decision that stipulates the functions, tasks, powers, and organizational structure of the information security agency, issued by the Minister of Information and Communications on August 14, 2022.

⁷⁵⁹ Point a, Clause 1, Article 2 in Decision No. 1499/QĐ-BTTTT.

⁷⁶⁰ Point e, Clause 2, Article 2 in Decision No. 1499/QĐ-BTTTT.

⁷⁶¹ Which under the purview of the Ministry of Labour, Invalids, and Social Affairs.

⁷⁶² PHAN, Protecting the personal information rights of children.

TikTok platform in Vietnam, which revealed several violations such as: “lacking measures and tools to ensure the safety of confidential information related to the private lives of children; not sending warning messages about potential risks when children provide or modify private information; still allowing children under 13 to create accounts, even though the social media platform is intended for individuals aged 13 and above”⁷⁶³.

On the other hand, the Information Safety Department has also launched a network website dedicated to the rescue and protection of children on the online platform. The primary objective is to disseminate traditional and essential knowledge and skills for safeguarding children in the online environment. The website can be accessed at: <https://vn-cop.vn/>. The website encompasses various features, among which the “documents” feature shares multimedia materials aimed at enhancing awareness and providing skills and expertise for protecting children in the online environment. The “question and answer” feature allows users to pose questions and receive answers regarding issues related to protecting children in the online environment. The “express wishes” feature enables children and citizens to express their opinions and desires through the website. “This will serve as a reference channel for the state authorities to consult on policies aligned with the legitimate wishes of the people, especially the child demographic”, emphasised the Information Safety Department. Finally, the website also provides useful tools and software to assist children in engaging in healthy interactions online and to “report abuse,” facilitating the reception of reports on online behaviours that harm children.

The establishment of the vn-cop.vn website is one of the tasks aimed at implementing decision No. 830/QĐ-TTg dated June 1, 2021, regarding the protection and support of children for healthy and innovative online interactions in the period 2021-2025 issued by the Ministry of Information and Communications. This initiative reflects the determination to safeguard the future generation of digital citizens and aims to build and maintain a safe and healthy online environment for children, allowing them to unleash their creativity⁷⁶⁴.



Picture 05: The website dedicated to the rescue and protection of children on the online platform.

Source: LÊ⁷⁶⁵

To contribute to the successful implementation of the programme for protecting and supporting children in healthy, innovative online interactions in the period 2021-2025 the Vietnam

⁷⁶³ NGÔ, Six violations of TikTok in Vietnam. See also: NGUYỄN, Ministry of Information and Communications.

⁷⁶⁴ LÊ, The network rescue and protection website for children.

⁷⁶⁵ Ibid.

Information Security Association has established the Vietnam Child Protection Club on the online platform. The club's operational objective is to connect and gather organisations and businesses operating in the field of child protection, promote market development, and develop the ecosystem of products and services for child protection online. Additionally, the club will organise specialised seminars to disseminate, update knowledge, or promote international cooperation on child protection in the online environment. “With the determination of the club members and the support from the association, we aim to create valuable contributions and build a safe digital space for every child in Vietnam when participating in the online environment”, shared Mr. *Ngo Tuan Anh*, the club's chairman⁷⁶⁶.

6.1.4. Achievements in Protecting the Right to be Protected from Violence

In addition to policies and laws recognising the rights protected from violence for children, as well as mechanisms for preventing and addressing violent behaviour towards children, the enforcement of these rights in practice in Vietnam has also yielded certain achievements. In December 2019, the Prime Minister approved the National Action Plan for the prevention and combat of violence and child abuse for the period 2020-2025. The striving objectives include “providing 100% of families with children with knowledge and skills on child protection through various forms; guiding and educating 100% of students on knowledge, life skills, and self-protection skills against violent and sexually abusive behaviours appropriate to their age; striving for 100% of child protection officers at all levels, collaborators, and volunteers to enhance their capabilities in child protection; consolidating and developing emergency child protection services, especially in all provinces and cities”⁷⁶⁷. To achieve the above-mentioned goal, the prime minister has called for communication, education, and social mobilisation to enhance awareness, responsibility, and skills related to child protection and the prevention of violence and child abuse among governments at all levels, sectors, organisations, society, parents, and children. Specifically, training sessions, workshops, and courses on issues related to child protection and the prevention of violence and child abuse have been implemented in practice⁷⁶⁸. For instance, a workshop on preventing violence and child abuse in the family was organised in December 2020⁷⁶⁹. The workshop identified numerous shortcomings in Vietnam's relevant legal policies as well as limitations in law enforcement efforts. This constitutes the second phase of Vietnam's initiatives aimed at safeguarding children from violence. Previously, during the period spanning from 2011 to 2015, the Prime Minister had also endorsed the programme titled “Vietnam’s National Child Protection”. According to an assessment conducted by UNICEF in a global study on child violence in 2016, “Vietnam provides a good example of a policy to reinforce national capacity to protect its children, based on a holistic and systematic approach”⁷⁷⁰.

⁷⁶⁶ HUỖNH, Vietnam has a children's protection club in cyberspace.

⁷⁶⁷ NGÔ, National plan for the prevention and combat of violence and child abuse.

⁷⁶⁸ LÂM - TRẦN, Workshop on preventing violence and child abuse in the family.

⁷⁶⁹ Ibid.

⁷⁷⁰ UNICEF, Toward a world free from violence.



Picture 06: The conference on protection children from violence. Source: Ngô⁷⁷¹.

In addition, Vietnam has collaborated with UNICEF to carry out various activities, notably the “Blue Heart” campaign in 2020 and 2022 aimed at ending violence against children with a strong message of zero tolerance for violence against children and women⁷⁷². To contribute to the implementation of the “National Action Plan to Prevent and Combat Violence and Abuse Against Children for the 2020-2025 Period”, the prime minister assigned the Ministry of Public Security to “strengthen child-friendly investigative work and develop the model of Child-Friendly Investigation Units for Children and Adolescents”. Therefore, in September 2020, the Criminal Police Department, Ministry of Public Security, in collaboration with relevant units, organised online training on child-friendly investigative procedures for police forces at all levels⁷⁷³.

According to information provided by the People's Daily during a survey at the Criminal Police Department in Bac Kan province regarding the implementation of child-friendly investigation programmes, “We visited the Criminal Police Department and were introduced to the child-friendly investigation unit. The room is harmoniously arranged, equipped with air conditioning, and carpeted to retain warmth in the winter. The room is painted in warm, friendly colours, creating a comfortable atmosphere. Inside, recording and filming equipment with sound is installed, and connected to the command centre, following the regulations of the criminal procedure code. The room is also equipped

⁷⁷¹ Ibid.

⁷⁷² UNICEF, The blue heart campaign in 2020. See more: TRẦN, Many people are speaking out.

⁷⁷³ VŨ, Training on child-friendly investigation procedures.

with a medicine cabinet, changing table, children's bookshelf, toy cabinet, and pictures. *Luu Van Vinh*, head of the criminal police department at Bac Kan Police, stated: “According to regulations, when taking statements, investigators must wear official attire, but for cases involving children, they can flexibly choose to wear casual clothing to create a more intimate atmosphere”⁷⁷⁴.

For the prevention of domestic violence against children and women, the Ministry of Culture, Sports, and Tourism⁷⁷⁵ is implementing a model for preventing domestic violence at the commune-level people's committees. Accordingly, the commune-level people's committees will establish a domestic violence prevention and control team while issuing regulations for the team's activities. The goal of the team's activities is to ensure timely intervention in cases of domestic violence in the locality, including all days, including holidays, and to provide counselling and reconciliation for victims and perpetrators of domestic violence⁷⁷⁶. Vietnam also uses information technology to connect with the national child protection hotline (number 111). In 2022, the hotline intensified the development of online channels to receive information, reports, and disclosures from the public regarding the behaviours and risks of child abuse. Specifically, these include the 111 Hotline application, the National Child Protection Hotline fan page: <https://www.facebook.com/tongdaiquocgiabvte>, and Zalo National Child Protection Hotline: <https://zalo.me/1249273939821550616>⁷⁷⁸.

6.2. CURRENT CHALLENGES IN ENSURING THE CHILDREN'S RIGHTS IN VIETNAM

6.2.1. Challenges in the Implementation of the Right to Birth Registration

To elucidate the current barriers and challenges in implementing the right to birth registration for children, this section will analyse perspectives and evaluations of relevant legal provisions concerning the registration of births from two angles. The first perspective pertains to the authorities responsible for handling birth registration, and the second involves the perspectives of the child's carers. Examining a regulation from these multidimensional perspectives will assist Vietnamese authorities in gaining a comprehensive understanding and accurate evaluation of the practical application of birth registration rights for children.

As analysed in Chapter 4 of the thesis, the birth registration procedure for children in Vietnam is not complex. The data on the registration rate of children under 5, as presented in the earlier part of this chapter, serves as evidence of the feasibility of the relevant regulations. Furthermore, during interviews with two civil registry officials directly involved in handling these procedures at the People's Committee of Thoi Binh ward, Ninh Kieu district, Can Tho city, and the People's Committee of An Nghiep ward, Ninh Kieu district, Can Tho city, both officials affirmed that “the birth registration

⁷⁷⁴ HÀ, Enhancing child-friendly investigative activities.

⁷⁷⁵ Article 1 of Decree No. 01/2023 stipulates the functions, tasks, powers, and organizational structure of the Ministry of Culture, Sports and Tourism as follows: The Ministry of Culture, Sports, and Tourism is a government agency, carrying out the state management function on culture, family, physical education, sports, and tourism nationwide.

⁷⁷⁶ VŨ, The people's committee of the commune issues a decision.

⁷⁷⁷ VŨ, Enhancing the work of preventing and combating child abuse.

⁷⁷⁸ Ibid.

procedure for children is currently simple and easy to implement⁷⁷⁹. However, when asked about the timeframe for registering the birth of a child according to the current civil registry law, the civil registry official in Thoi Binh ward expressed the view that this timeframe is not suitable. In practice, there are many cases where parents work far from home, making it impossible to register the birth of their child within the stipulated 60 days. Consequently, this regulation imposes significant pressure on the carers of the children. This official suggested that the requirement for a specific timeframe for registering the birth of children should be completely removed. The perspective of the civil registry official at the People's Committee of An Nghiep ward is that this regulation is reasonable. In fact, in cases where mothers give birth outside of a medical facility, the official believes that the 60-day timeframe is appropriate for the mother to recover after childbirth and ensures timely birth registration for the child.

For those with the right to birth registration of a child, the Vietnamese civil registry law extends the provision to include grandparents and other close relatives who can register the birth of a child. In this regulation, despite providing different explanations, civil registry officials at both agencies believe that this provision poses practical difficulties. Specifically, the civil registry official in Thoi Binh ward believes that close relatives may not have clear information about the child's family background, leading to instances of incorrect information about the child's date of birth, place of birth, and even information about the parents' names in the birth registration. The civil registry official in An Nghiep ward believes that the civil registry law only specifies close relatives who have the right to the birth registration of a child, but it does not explicitly explain who these entities are. Comparing this with the explanations of this term in various legal texts reveals inconsistent interpretations. For example, the Civil Procedure Law 2016 implementation, includes the wife, husband, children, grandparents, parents, uncles, aunts, brothers, sisters, and other relatives of the parties, as well as the wife or husband of the parties. The Marriage and Family Law 2014 encompasses those with marital relationships, fostering relationships, those related by blood within three generations, and those sharing the same family name within three generations. Therefore, the official in An Nghiep ward suggests that the competent authority should issue clarifying documents to facilitate the consistent application of the law.

In urban areas, the expedient resolution of birth registration for children with complete parental information is contrasted with the challenges encountered in rural and remote regions of Vietnam. The facilitation of birth registration in urban locales is characterised by efficiency and promptness. Conversely, the rural and remote areas of Vietnam present impediments to the process, as evidenced by the need to gather information from secondary sources within the local populace. For instance, consider the case of *Giàng Seo Lừ*, residing in the Lù Dì Sán village within the highland district of Si Ma Ca, Lào Cai province, Vietnam. Mr. *Lừ* has never had the opportunity to receive a formal education. In 2011, his wife gave birth to a daughter, a common occurrence for many H'mong children in this region, with deliveries often taking place at home. Mr. *Lừ*, however, has not contemplated registering the birth of his child due to his perception of the cumbersome procedural requirements. To initiate the birth registration process, Mr. *Lừ* would need to traverse a two-hour journey downhill to reach the People's Committee of the commune. Subsequently, he would be obligated to furnish

⁷⁷⁹ In accordance with their exchange with the author via email.

various documents, some of which he lacks, such as marriage registration or the birth certificate of the child. Additionally, Mr. *Lan* faces the challenge of illiteracy, rendering him unable to independently compose a formal application or complete the necessary forms⁷⁸⁰.

In addition, children with special circumstances constitute a demographic facing numerous difficulties in the process of birth registration. The case of *N.L.P* (7 years old) serves as an illustrative example. *P*, since early childhood, has been living with her grandmother, Mrs. *Lan* (60 years old), as she is unaware of her biological parents. The formative years of *P* are confined to a cramped living space of less than 6 square metres, shared by the two generations. Mrs. *Lan* recounts that on the day *P*'s mother departed, she left behind only a birth certificate for *P*. Despite Mrs. *Lan*'s attempts to initiate the birth registration process for *P*, various impediments emerged, involving issues related to household registration and the status of an abandoned child. Lacking legal expertise and unsure of where to begin, Mrs. *Lan* has been grappling with these challenges for the past six years⁷⁸¹. Thus, it can be observed that, despite the regulations concerning birth registration for children, when viewed from the perspective of individuals with limited literacy skills, the understanding of the significance of birth certificates for the legal rights and benefits of children has led to delayed birth registration for this demographic. Consequently, tailored solutions are necessary for each specific group to ensure the timely and guaranteed birth registration rights of children.

To provide guidance on Article 26 of the Civil Code 2015 regarding the naming of children, on May 28, 2020, the Ministry of Justice of Vietnam issued Circular No. 04/2020/TT-BTP. According to Article 6 of the Circular, “determining the surname and naming a child must comply with the law and meet the requirements of preserving the ethnic identity, customs, and beautiful cultural traditions of Vietnam; names should not be excessively long or difficult to use”. However, Circular No. 04/2020/TT-BTP does not explicitly define what constitutes “excessively long or difficult to use”. Other legal documents in Vietnam also lack specific guidance on this matter, leading to challenges during the birth registration procedures at the local people's committee. Specifically, based on the author's interview with a civil registration official working at the People's Committee of Thoi Binh ward, it is evident that this regulation poses significant challenges for her—the individual directly involved in the birth registration process and recording names for children on birth certificates. She expressed, “I cannot determine what is considered excessively long or difficult to use. Occasionally, there are cases where parents choose names with more than five words, but I also fail to persuade them to consider a different name for their child. They believe it is their right, and the names of their children are intertwined with their desires, sentiments, aspirations, or emotional stories that outsiders like me cannot comprehend”⁷⁸². In agreement with this perspective, the civil registration official at the People's Committee of An Nghiep ward also believes that “effective solutions for this issue need to be promptly implemented”. The reality has provided ample evidence of names causing embarrassment for children during usage⁷⁸³. Furthermore, this official strongly emphasises that

⁷⁸⁰ NGUYỄN, Listening to the people to improve birth registration.

⁷⁸¹ PHẠM, Family complications - part 2.

⁷⁸² In accordance with her exchange with the author via email.

⁷⁸³ NGUYỄN, The complicated story behind the name.

“addressing the issue of children's names requires consideration not only from a personal and family perspective but also from the aspect of its impact on the community and society”⁷⁸⁴.

According to the provisions of the Vietnamese nationality law, children born to parents who are both Vietnamese citizens acquire Vietnamese nationality, regardless of whether the child is born within or outside the territory of Vietnam. Evidently, Vietnam is employing the principle of bloodline to determine nationality for children. Furthermore, *Cao Nhat Linh* asserts that “this principle is applied with considerable flexibility, stipulating that the presence of either parent being a Vietnamese citizen is sufficient to ensure that the child will unquestionably have and may obtain Vietnamese nationality. However, the current provisions of the Vietnamese nationality law still leave significant room for the possibility that children born within the territory of Vietnam may remain stateless”⁷⁸⁵.

The first scenario occurs when children have one parent who is a Vietnamese citizen while the other is a foreign national. This situation commonly arises in marriages with international elements, which are prevalent in Vietnam today. In such cases, a child born within the territory of Vietnam does not automatically acquire Vietnamese nationality; instead, Vietnamese nationality can only be determined for the child with the agreement of both parents. The issue arises when, in reality, there are cases where one of the young parents, who is a foreign national, returns to their home country and loses contact with the remaining parent in Vietnam. This becomes even more challenging when the foreign country of the parents does not adhere to the principle of determining nationality based on bloodline. For example, *Hai*, a Vietnamese citizen, marries *Emma*, a foreign national. They decide to reside in Vietnam and have a child named *Lan*. According to the current regulations, *Lan* will not automatically acquire Vietnamese nationality at birth but will require a mutual agreement from both parents. Moreover, if *Emma's* home country does not adhere to the principle of determining nationality based on bloodline, *Lan* may face a state of undetermined nationality, posing legal and practical challenges related to the child's nationality in this scenario.

The second scenario that may occur is when children have parents who are stateless and are born within the territory of Vietnam. Specifically, Article 17, Clause 2, of the nationality law stipulates that “Children born within the territory of Vietnam, with both parents being stateless but having a habitual residence in Vietnam, shall have Vietnamese nationality; children born within the territory of Vietnam, with the mother being stateless but having a habitual residence in Vietnam, while the father is unknown, shall have Vietnamese nationality”. However, this provision is not exhaustive. This is because, based on the content, nationality can only be determined for the child when the parents, or at least the mother, have a habitual residence in Vietnam. This means that in cases where the parents of the child are stateless and do not have a habitual residence in Vietnam but the child is born within the territory of Vietnam, the child will not acquire Vietnamese nationality. Example: *Minh* and *Laura*, a married couple without nationality, reside in Vietnam. *Laura*, the wife, lacks nationality and does not have a habitual residence in Vietnam. They have a new-born child named *Alex*. In this scenario, according to the current provisions of Article 17, Clause 2 of the Vietnamese nationality law, the child will not be determined to have Vietnamese nationality. Although Vietnamese law stipulates procedures for determining nationality for children born to parents without nationality, the current provisions do

⁷⁸⁴ In accordance with her exchange with the author via email.

⁷⁸⁵ CAO, Supplementing scenarios in establishing the nationality of children.

not allow for the determination of Vietnamese nationality for a child when both parents lack a habitual residence in Vietnam. This creates a challenging situation where the child's nationality depends on the habitual residence of the mother and, in this case, cannot be ascertained. This example clearly illustrates the limitations of the existing regulations when confronted with complex situations.

The regulations pertaining to ensuring the implementation of the right to know the origin of children in the legal system of Vietnam are relatively comprehensive, encompassing a wide range of practical cases of legal birth while also ensuring compatibility with international law. However, a detailed analysis reveals the existence of an outstanding issue that requires continued research and resolution, facilitating a more effective protection of children's rights in practice. Specifically, these challenges include: According to Article 88 of the marriage and family law, a child born within 300 days from the date of termination is considered the child of the wife if she was pregnant during the marriage. Therefore, this child, upon birth, is determined to be the common child of the couple who terminated their marriage. For example, Mrs. *Huong* and Mr. *Duc* divorced on January 1, 2020. Subsequently, Mrs. *Huong* gave birth to their child, *An*, on October 28, 2020. The time between the termination of the marriage and the child's birth is 300 days (counted from January 1 to October 28). According to the aforementioned regulation, *An* is recognised as the common child of Mrs. *Huong* and Mr. *Duc*. However, the situation becomes more intricate if Mrs. *Huong* marries Mr. *Hung* on February 2, 2020, after terminating her marriage with Mr. *Duc* in January 2020. Similar to the previous example, on October 28 of the same year, she gives birth to a child, *An*. In this scenario, determining whether *An* is recognised as the common child of Mrs. *Huong* and Mr. *Duc* or the common child of Mrs. *Huong* and Mr. *Hung* poses a legal challenge that the current Vietnamese law has yet to address.

6.2.2. Challenges in the Implementation of the Right to Education

The limitations in the implementation of the right to education in Vietnam are evident through the awareness of children regarding certain aspects of this entitlement, such as their participation in educational activities and issues related to discipline within the school environment. These constraints also manifest in how the right to education is ensured by competent authorities, particularly in the management of discipline within schools and addressing the prevalent issue of child dropouts.

Ensuring children's participation in consultations on issues related to their education is one of the obligations set forth by the CRC for its member countries. To ensure compliance with the nation's commitments to the international community, as analysed in Chapter 3, Vietnam has enacted legal provisions regulating this matter. However, the implementation of children's right to participate in educational issues, from the perspective of the children themselves, indicates that this undertaking has not been truly effective. According to the survey results conducted among students in Ninh Kieu district, Can Tho city, it was found that as many as 87.4% of students have never been consulted on matters related to education (Chart 02). These matters include aspects such as improving school methods, educational programmes, and textbooks.

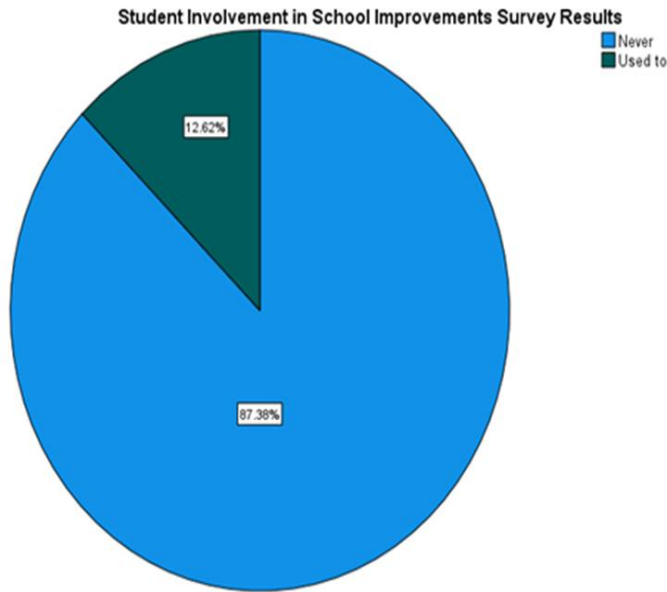


Chart 02: The proportion of students engaging in educational consultation on opinions and perspectives regarding education in Ninh Kieu district. Source: *Huynh Thi Truc Giang's* survey.

An explanation for their non-participation reveals that 62.7% of students responded that their schools did not organise consultations, while 31.2% of students believed that they were not class monitors, which led to their exclusion from the process (Table 03).

What are the reasons for never having participated in educational consultation on opinions and perspectives regarding education?	Percent
My school does not organise consultations	62.7%
I'm not the class staff	31.2%
Another idea	6.1%
Total	100.0%

Table 03: The reasons for not having previously engaged in student opinion consultations in Ninh Kieu district. Source: *Huynh Thi Truc Giang's* survey.

Despite variations in the obtained percentage compared to the Ninh Kieu district area, Can Tho city, the number of students who responded that they have never been consulted on educational issues in Phong Dien district still accounts for 64.40% among the 400 surveyed students (Chart 03).

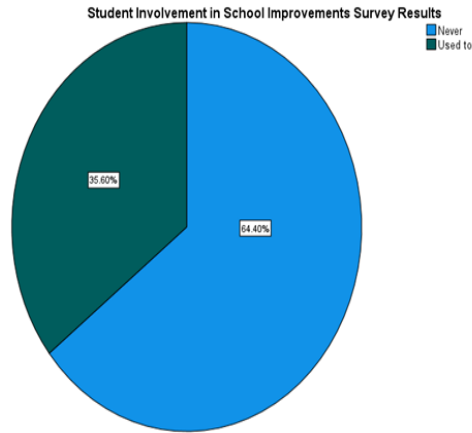


Chart 03: The proportion of students engaging in educational consultation on opinions and perspectives regarding education in Phong Dien district.

Source: *Huynh Thi Truc Giang's* survey.

Comparing the corresponding figures in the two areas reveals that, despite being located in Phong Dien district, a rural district of Can Tho city, students are still afforded the right to participate in education. In other words, the implementation of children's participation rights in education in Can Tho City is not dependent on whether the area is urban or rural.

Regarding the reason for not having participated in consultations on educational matters, the majority of students in Phong Dien also indicated that their schools do not organise consultations on relevant issues (Table 04).

What are the reasons for never having participated in educational consultation on opinions and perspectives regarding education?	Percent
My school does not organise consultations	63.1%
I'm not the class staff	27.1%
Another idea	9.8%
Total	100.0%

Table 04: The reasons for not having previously engaged in student opinion consultations in Phong Dien district. Source: *Huynh Thi Truc Giang's* survey.

When asked about the necessity of providing opinions and the desire to participate in matters related to education, the majority of surveyed students in both areas generally considered it unnecessary. Even if the schools organise such activities, they express a lack of interest in participating. In Ninh Kieu, as many as 64.7% of students surveyed believed that providing opinions was unnecessary; however, 53.72% of students indicated that they would still participate if their schools organised such consultations (Chart 04).

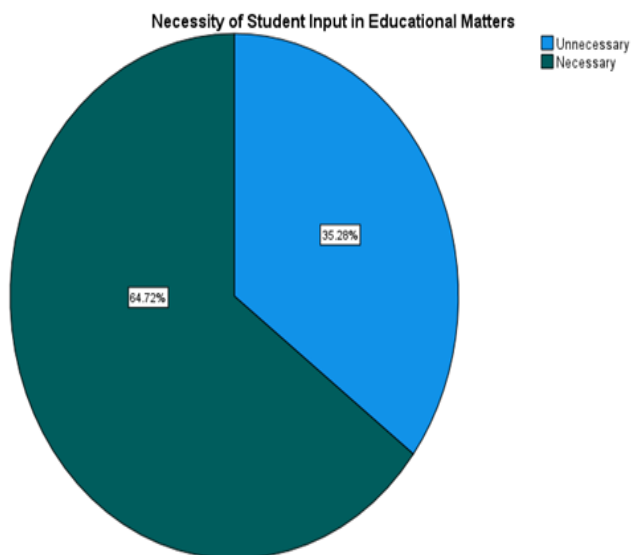


Chart 04: Opinions on the necessity of student participation in educational opinion consultations in Ninh Kieu district. Source: *Huynh Thi Truc Giang's* survey.

Meanwhile, in Phong Điền, 76.38% of students surveyed considered seeking opinions unnecessary; however, 56.31% of students responded that they would still participate if their school organised an opinion survey (Chart 05).

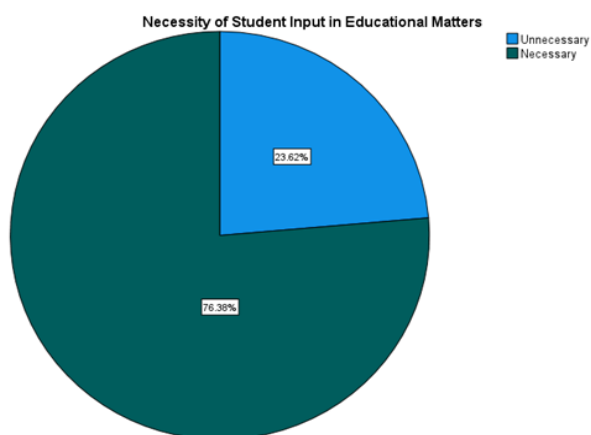


Chart 05: Opinions on the necessity of student participation in educational opinion consultations in Phong Dien district. Source: *Huynh Thi Truc Giang's* survey

Comparing the data reveals a significant difference in students' perspectives on the necessity of collecting their opinions on educational issues in the Ninh Kieu and Phong Dien districts. In Ninh Kieu, as many as 64.7% of students stated that collecting their opinions was unnecessary. Reasons

provided by students holding this view include a lack of interest (50.4%), believing it is the responsibility of adults (10.6%), and feeling inadequately informed (34.5%). In Phong Dien, this rate is even higher, reaching 76.38% of students who feel that consulting opinions on education is unnecessary. Reasons cited by students in this perspective include a lack of interest (27.8%), believing it is the responsibility of adults (25.3%), and feeling inadequately informed (44.3%) (Chart 06).

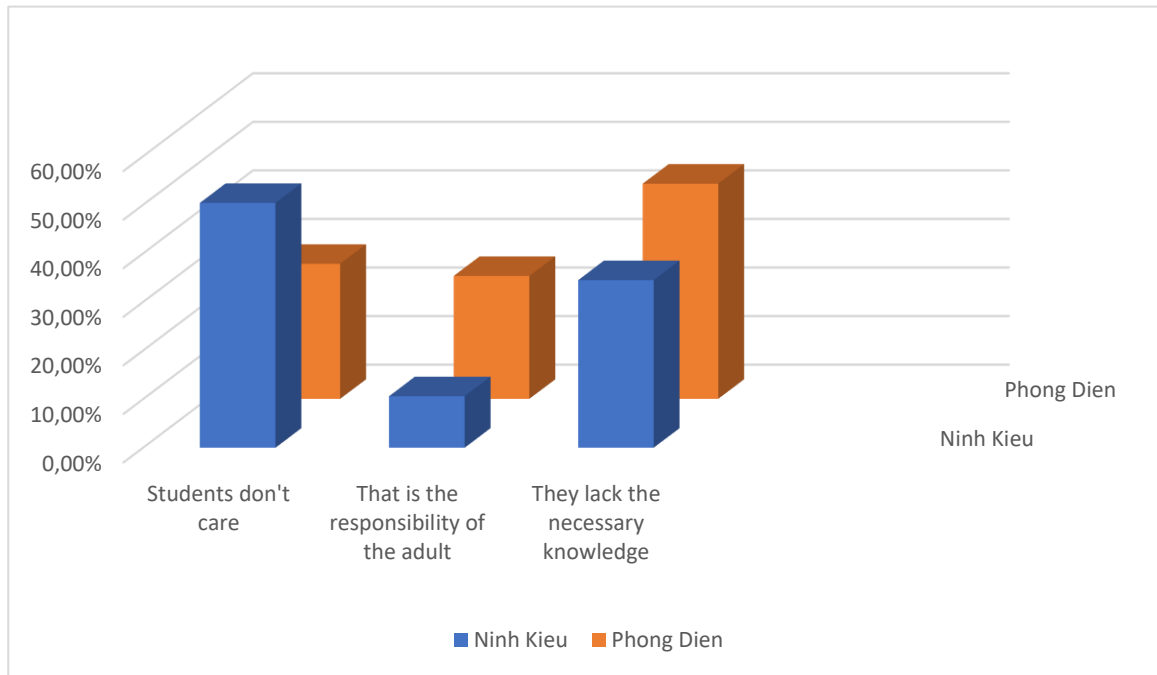


Chart 06: Comparing the rationale behind students in the Ninh Kieu and Phong Dien districts considering educational opinion consultations unnecessary. Source: *Huynh Thi Truc Giang's* survey.

However, 53.72% of the 400 students surveyed in Ninh Kieu indicated that they would still be willing to participate if their schools organised opinion-gathering. They believe they are the ones directly involved in such matters, such as the school's infrastructure, teaching programmes, and textbooks daily (40.9%), or that their participation reflects their interest in their school and learning environment (55.1%). The figures in Phong Dien are even higher, with 56.31% of students stating that they would participate if their schools organised opinion-gathering. The reasons for their participation, as reported by students, include their belief that they are directly involved in such matters as the school's infrastructure, teaching programmes, and textbooks daily (27.7%), or that their participation reflects their interest in their school and learning environment (69.6%).

This data indicates that students in both districts share a similar perspective, believing that their daily interaction with the learning environment, including infrastructure and educational materials, is a sufficient reason to participate in opinion surveys. Furthermore, the high percentage of students expressing concern for their school and learning environment reflects a dedication to their education. However, the higher percentage of students in Phong Dien suggests that the level of interaction and participation might be higher in this district (Chart 07).

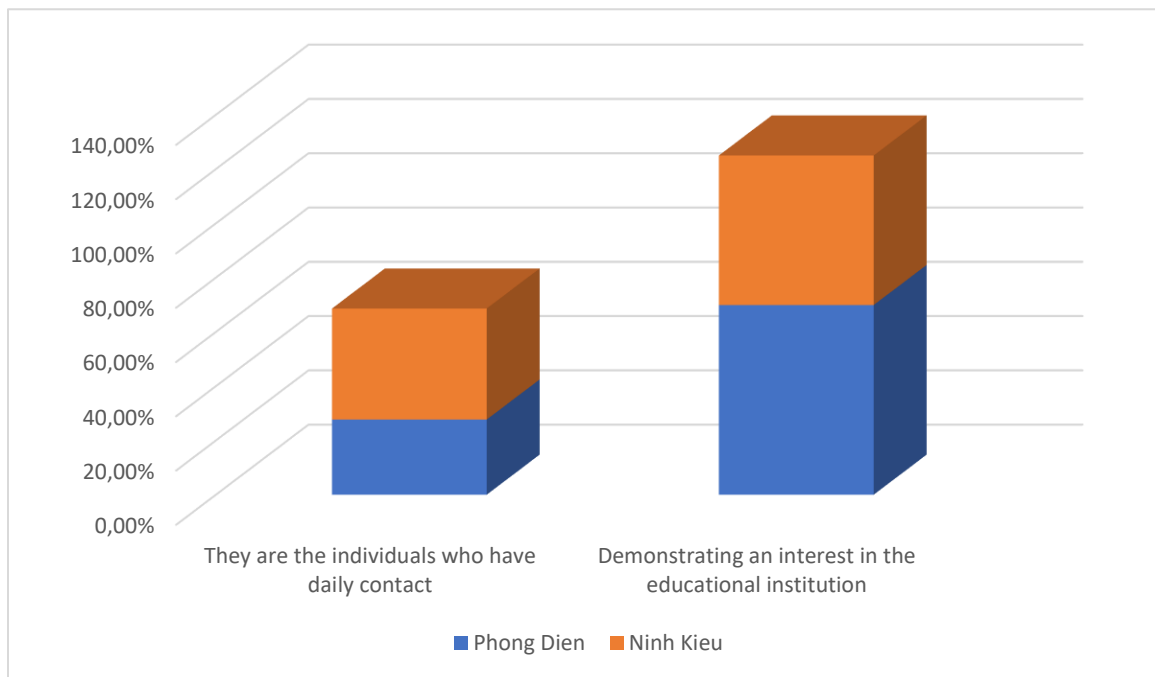


Chart 07: A comparative analysis of the reasons for participating in educational opinion consultations if organised by the school. Source: *Huynh Thi Truc Giang's* survey.

In summary, these results indicate that, although a significant number of students may question the necessity of expressing their opinions, a substantial portion in both districts remains willing to participate if given the opportunity.

Discipline in schools constitutes an indispensable component of the educational process; however, it necessitates a focus on equity and humaneness in the implementation of disciplinary measures. The cognitive awareness of children regarding disciplinary matters within the school context is a pivotal facet in the developmental trajectory of their personalities. Effectively administered discipline is instrumental in fostering adherence to regulations and cultivating individual responsibility within the academic environment. Conversely, ineffective disciplinary practices may engender psychological dissatisfaction and resistance and, in extreme cases, leave profound repercussions on the psyche of children. According to survey data conducted in the city of Can Tho, although the prevalence of children witnessing verbal expressions and behaviours causing harm to the physical and mental well-being of children in these two areas is lower compared to the rate among children who do not witness such incidents, nevertheless, this implies that these verbal expressions and behaviours continue to occur.

In the Ninh Kieu district, when asked about whether they have witnessed emotionally harmful remarks from school staff and teachers, 29.87% of students responded affirmatively, while the majority, accounting for 70.13%, indicated that they have not witnessed such incidents (Chart 08). The instances of such statements heard by these students are distributed as follows: once, accounting for 11.8%; twice, constituting 7.6%; more than twice, representing 34.6%; and a significantly high proportion of 46.0% reported hearing such statements on numerous occasions (Chart 09).

Have you heard statements or comments from teachers or school staff that may have hurt a student's morale?

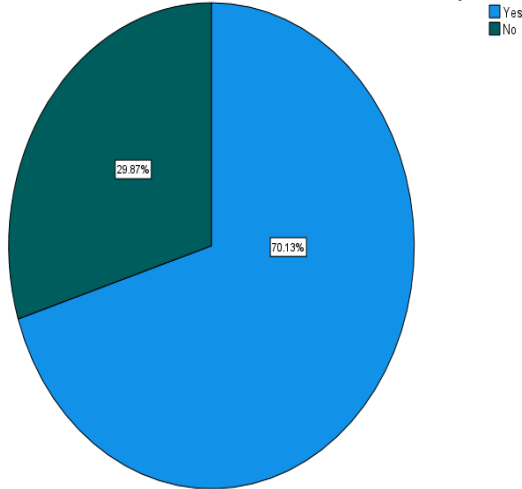
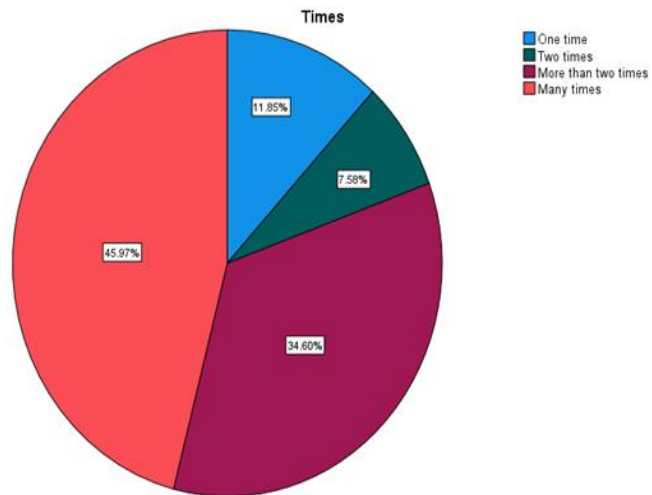


Chart 08: The percentage of students witnessing behaviours with the potential to cause psychological harm within the school premises in Ninh Kieu district. Source: *Huynh Thi Truc Giang's* survey.

Chart 09: The frequency with which students are exposed to psychologically injurious remarks from teachers or school staff in Ninh Kieu district. Source: *Huynh Thi Truc Giang's* survey.



Regarding corporal punishment, when asked, “Have you witnessed any behaviour from teachers or school staff that could harm the health of students?” 25.99% of the surveyed students responded in the affirmative (Chart 10).

Have you witnessed any behavior from teachers or school staff that could compromise the health of students?

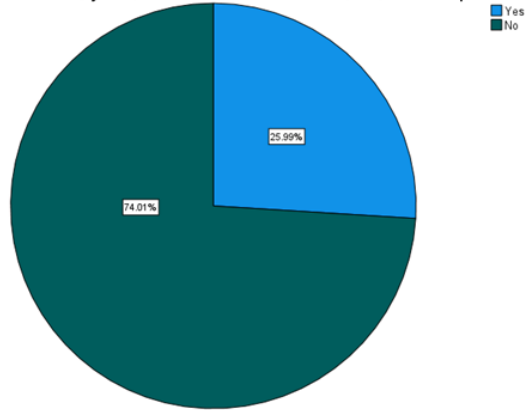


Chart 10: The percentage of students witnessing behaviours that could potentially harm the health of students within the school in Ninh Kieu district. Source: *Huynh Thi Truc Giang's* survey.

In the Phong Dien district, when asked about whether they had witnessed emotionally harmful remarks from school staff and teachers, 40,78% of students responded affirmatively, while accounting for 59,22%, indicated that they had not witnessed such incidents (Chart 11).

Have you heard statements or comments from teachers or school staff that may have hurt a student's morale?

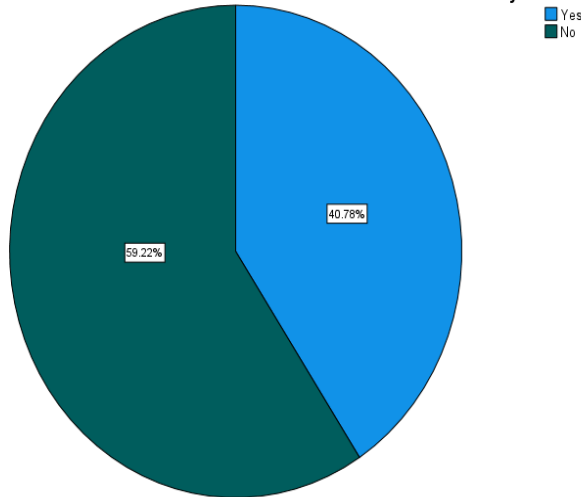


Chart 11: The percentage of students witnessing behaviours with the potential to cause psychological harm within the school premises in the Phong Dien district. Source: *Huynh Thi Truc Giang's* survey.

Regarding the frequency of witnessing hurtful remarks from school staff and teachers, survey results indicate the following frequencies among students: once accounts for 11.8%; twice accounts for 7.6%; more than twice accounts for 34.6%; and a significantly high proportion of 46.0% report having heard such statements numerous times (Chart 12).

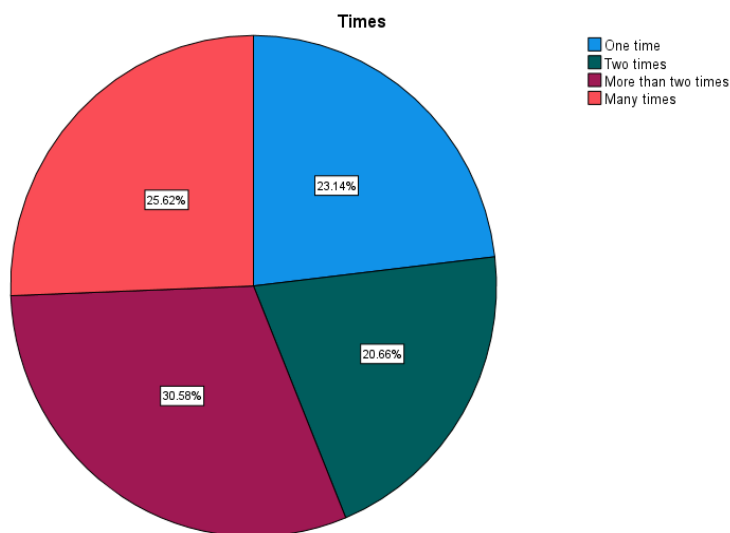


Chart 12: The frequency with which students are exposed to psychologically injurious remarks from teachers or school staff in Phong Dien district. Source: *Huynh Thi Truc Giang's* survey.

Concerning instances of physical punishment by school staff in the Phong Dien district, survey results reveal that approximately 81.55% of students claim not to have witnessed such behaviour, while the remaining 18.45% of students' assert having observed instances of physical punishment at the school (Chart 13).

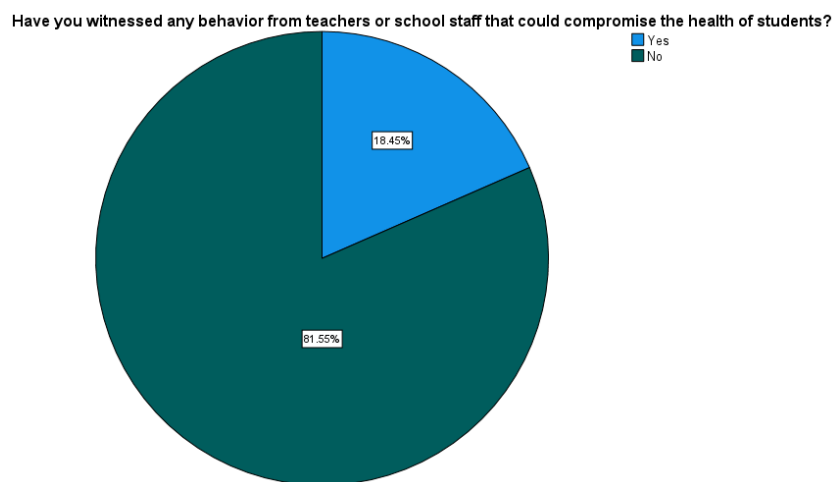


Chart 13: The percentage of students witnessing behaviours that could potentially harm the health of students within the school in Phong Dien district. Source: *Huynh Thi Truc Giang's* survey.

In summary, based on the comparative analysis of data obtained from two regions on the issue of discipline in schools, significant differences have been revealed in the experiences of students in Ninh Kieu district and Phong Dien district regarding verbal expressions or behaviours with mentally and physically harmful characteristics from teachers or school staff. Both locations recorded instances where students endured such situations. This underscores the need for attention to the learning environment and the impact of teachers and school staff on the mental and physical well-being of students. Additionally, specific measures should be considered to improve the discipline situation in schools and ensure a healthy and respectful learning environment.

The achievements in ensuring the right to education for children have demonstrated Vietnam's significant efforts in creating a safe and comfortable learning environment conducive to the comprehensive development of children. However, the discipline situation in schools remains a concerning issue in Vietnam, particularly at the preschool level. “To compel children to obey or eat obediently, many preschool teachers in Vietnam have resorted to tying hands, abusing, and physically assaulting the children”⁷⁸⁶. Among these instances, one of the most horrific involves two teachers who fatally beat a child who was only 17 months old⁷⁸⁷. Instances of physical discipline are less frequent at other educational levels, but not entirely absent. For example, in October 2023 in Ho Chi Minh city, a case occurred where a teacher allegedly broke a student's arm. According to information from the “Health & Life” newspaper, on the afternoon of October 4th, student *N.T.M.K.* (a first-grade student from Nguyen Van Troi Elementary School) complained of swelling and intense pain in her hand after returning home from school. The child reported that on the same morning, her homeroom teacher used a musical instrument stick to strike her right palm. On the morning of October 5th, *K's* mother, Mrs. *V.T.T.*, took *K* for an X-ray. The results showed that *K* had a fracture in the base of the metacarpal bone near the fourth finger of her right hand⁷⁸⁸.

The issue of teachers engaging in behaviours and using words that cause serious emotional harm to students is also a matter of public concern in Vietnam. For instance, at the end of September 2023, at a high school in Hanoi, an incident occurred where a teacher grabbed the collar of a female student named *N.T.P.* and dragged her outside the classroom corridor⁷⁸⁹. The parents of the student stated that their “hearts were bleeding” upon hearing other students recount that “the teacher told *N.T.P.* that she should grab her belongings and get out of the classroom”. After being taken to the corridor, *P* cried a lot. About 2 hours later, when the teacher came to the corridor, *P* went to apologise, but the teacher still uttered harsh words⁷⁹⁰. Or, as in the case of a female student who, for not enrolling in additional math courses offered by the teacher outside of school, was scolded and derogatorily labelled as “brain dead” right in the classroom, in front of other classmates⁷⁹¹. This incident left the student frightened and sleepless, causing mental disturbances⁷⁹². Also, in October 2023, the Vietnamese media reported on a male teacher who grabbed a student's chin and verbally abused them, using vulgar language such as “a dog”⁷⁹³ in the classroom. This incident stirred up public indignation and anger.

The incidents mentioned above somewhat indicate the prevalence of disciplinary measures, both physical and psychological, being imposed on students severely in Vietnam. These behaviours not only cause harm to physical health but also leave lingering effects on the mental well-being of

⁷⁸⁶ NGUYỄN, Preschool children were subjected to the act of abused.

⁷⁸⁷ LÊ, A nanny brutally beat a preschool child to death. See more: NGUYỄN, Preschool children were subjected to the act of abused; TRẦN, A nanny who abused 24 children in Saigon; HÀ, The nanny has been temporarily detained on suspicion of assaulting a 6-month-old infant.

⁷⁸⁸ LÊ, Disciplinary action issued, cautioning a teacher for causing a student's arm. See more, HUỖNH, Immediate suspension of a teacher.

⁷⁸⁹ NGUYỄN, The teacher grabbed the student's collar.

⁷⁹⁰ TRẦN, The female teacher seized the clothing.

⁷⁹¹ TRẦN - HOÀNG, Parents accuse the teacher of belittling, causing the student to suffer from mental distress.

⁷⁹² LÊ, The male teacher addressed students improperly.

⁷⁹³ This term implies that the person is an animal.

students, influencing their holistic development. Therefore, there is a need for comprehensive solutions to aim towards constructing a safe, healthy, and human rights-respecting learning environment for children.

According to the 2022 Vietnam education summary report, the dropout rate of Vietnamese children at the primary and lower secondary levels fluctuates between 1% and 2% within this age group. However, the dropout rate increases significantly to 4% during the later years of upper secondary education. Analysing regional perspectives, the highest incidence of child dropout occurs in the Mekong Delta region. The primary factors contributing to this phenomenon, as identified by research conducted by UNICEF Vietnam, are early marriage and child labour. Undoubtedly, the act of children dropping out of school will directly impact their individual skill and knowledge development. However, beyond that, this phenomenon contributes to influencing the future quality of the country's human resources. Therefore, there is a need for coordination among families, schools, and the government to implement solutions to minimise this situation.

6.2.3. Challenges in the Implementation of the Right to Privacy

The daily occurrence of infringements on the privacy rights of children persists in Vietnam, notwithstanding the efforts of the state and relevant authorities to prevent and mitigate such violations. This needs to be candidly acknowledged as an ineffectiveness in safeguarding children's privacy rights from a legal enforcement perspective. The violation of children's privacy in Vietnam is widespread in the context of social media, but that does not imply that beyond the realm of social media, children's privacy rights remain unharmed. However, this is less recognised, such as when parents read their children's diaries or access their phones and messages. Therefore, in this section, the author focuses solely on elucidating online infringements of children's privacy, with an emphasis on the perpetrators and their common methods of infringement.

It would be surprising to think that the primary entities capable of infringing upon the privacy rights of children on social media are their own parents. However, this is an undeniable truth. Although parents typically have the responsibility to care for and protect their children, in some cases, they may unintentionally or intentionally violate their children's privacy rights on social media. Certain behaviours that can be considered violations of children's privacy rights by their parents can be outlined as follows:

The sharing of humorous images featuring one's children constitutes an initial behavioural manifestation. The funnier or more outrageous the expression of a child, the more likely a parent is to post it on the Internet⁷⁹⁴. For example, during the outbreak of the COVID-19 pandemic in Vietnam in 2021, many children had to engage in online learning from home. Consequently, on the first day of school, numerous parents shared humorous images of their children participating in the opening ceremony through computerscreens. Furthermore, some online news outlets utilised these

⁷⁹⁴ Reasons my son is crying - A website devoted to documenting instances where a child is upset about something minor or absurd.

images to create articles⁷⁹⁵. This effectively deprives children of retaining privacy of expression until they reach an age where they can exercise their judgement as to what they should post online and what they should not⁷⁹⁶.

Secondly, the parents took the initiative to disclose their child's behaviours that should ideally remain private: tantrums, arguments with parents, and other inappropriate actions. As a consequence, these behaviours were exposed to the scrutiny and gossip of hundreds of thousands of people. Regrettably, this resulted in the child potentially experiencing significant psychological harm when confronted with criticism, humiliation, and judgment. As they grow older, the child will inevitably have to confront the undesirable images of themselves in a distressing and unwelcome manner⁷⁹⁷. Information shared on the Internet has the potential to exist long after the value of the disclosure remains, and therefore disclosures made during childhood have the potential to last a lifetime⁷⁹⁸. For instance, on March 13, 2022, the wife of a famous comedian in Vietnam posted a status expressing her anger when she discovered that her son had joined a private online chat group discussing sexual topics. However, her social media post received various conflicting opinions; some agreed with her approach as it was seen as sharing her personal experience in parenting, while others disagreed, arguing that she had violated her child's privacy⁷⁹⁹.

The act of sharing images and detailed information about one's child's school, as well as their educational materials, represents a third possible behaviour that may arise from parents. Moreover, in recent times, there have been cases in Vietnam where parents received phone calls informing them that their child had been involved in an accident and needed emergency medical treatment, accompanied by requests for monetary transfers. It was later discovered that these were fraudulent schemes, and the investigative authorities traced the origins of such incidents to parents who had carelessly shared their child's photos and personal information and even disclosed their child's location on social media platforms⁸⁰⁰.

Drawing upon the aforementioned analyses, it becomes apparent that parents have employed technology and social media not solely for sharing information about their own lives but also for deliberating upon the lives of their offspring. When parents use social media in this way, they often share personal information about their children⁸⁰¹. These disclosures offer families the opportunity to connect with their communities to share and seek support⁸⁰². At the same time, parents sometimes share without the permission of their children, and these disclosures may foreclose their children from the opportunity to create their digital footprints⁸⁰³. While it is uncomfortable to point the finger at parents as compromising their children's rights, it is time to consider how we might protect children's

⁷⁹⁵ NGÔ, Series of humorous photos on the opening day. See more, HUỖNH, Parents share amusing images; NGUYỄN, Humorous photo series of the sons of Xuân Bắc.

⁷⁹⁶ SORENSEN, Protecting children's right to privacy 160.

⁷⁹⁷ HOÀNG, The potential dangers arising from the habit of showcasing children on social media.

⁷⁹⁸ MCPPEAK, Social media snooping and Its ethical bounds 890.

⁷⁹⁹ LÊ, Xuan Bac's wife sparks controversy.

⁸⁰⁰ HOÀNG, Parents should proactively safeguard their children. See more: BUI, Disclosure of information through showcasing one's child on social media.

⁸⁰¹ WIRE, digital birth cited from: STEINBERG, Sharenting: children's privacy 870.

⁸⁰² Ibid.

⁸⁰³ These children might also become young adults who choose not to create a digital footprint at all.

privacy from even loving parents because even the most well-intentioned parent may be unknowingly compromising the autonomy of their child⁸⁰⁴.

It is evident that, apart from the collection of information from parents' social media accounts, children themselves constitute a distinct group that directly reveals their personal information. This circumstance has provided a convenient opportunity for malicious individuals with ill intentions to exploit the disclosed information about children. According to a report by UNICEF, as of August 2022, up to 82% of Vietnamese children aged 12-14 use the Internet, and this figure rises to 93% for children aged 14-15. This indicates a significant level of engagement in online activities among Vietnamese children. Similarly, the results of a survey conducted by the Vietnam Department of Child Affairs in 2022 (over approximately three months) also reveal that 89% of children access and use the Internet, with 87% using the Internet daily. Besides study-related activities, children, on average, spend 5-7 hours per day on social media. In contrast, only 36% of children and adolescents (mostly aged 16-17) receive education on ensuring online safety. This situation has heightened the risk of disclosing the personal information of children.

*Donath and Boyd*⁸⁰⁵ identified the potential reason behind this as “signalling”, which refers to providing selective information to present oneself in a positive light or to be seen in a certain way⁸⁰⁶. Specifically, when children use social media to convey a desired message or image to other users, they can share information about their interests, events they participate in, and things they like and care about. For example, in the case of MySpace, Facebook, and Instagram, users may, for instance, post photographs of themselves at certain events or disclose what type of music or movies they like to create a particular individual online image. As *George* conveyed, “It’s an opportunity to present yourself in a way you want others to see you”⁸⁰⁷.

One issue that arises is that the personal information, including images, private lives, and academic accomplishments of children, is openly shared by both parents and the children themselves on their respective social media accounts. Consequently, these pieces of information become readily accessible to all users of the social media platform without any limitations. Nevertheless, in cases where children and their parents confine their information sharing to a restricted audience, such as their friends within their friend list, can we assume that the aforementioned information will remain confidential, thereby enhancing the protection of children's privacy rights?

According to *A. McPeak's* research, the following is concluded regarding this matter: “Some parents are lulled into a false sense of security that the data they share about their children will not be seen beyond a select audience. Some parents choose to post pictures and data about their children on websites and social media sites such as Facebook, which offer the user the ability to choose the audience for each disclosure”⁸⁰⁸. Many parents believe this provides them with a safety net, and they use little discretion when sharing with their chosen audience⁸⁰⁹. “In reality, even these posts can reach

⁸⁰⁴ SORENSEN, Protecting children's right to privacy 163.

⁸⁰⁵ DONATH - BOYD, Public displays of connection 74.

⁸⁰⁶ Ibid.

⁸⁰⁷ GEORGE, Living online: the end of privacy 35.

⁸⁰⁸ MCPeAK, The facebook digital footprint 887.

⁸⁰⁹ Ibid.

a large audience, as the intended audience can save and repost the data in alternate forums⁸¹⁰. In addition, through the increased use of chat rooms, discussion boards, and promises of gifts, marketers could readily gather personal identifying information about children. This personal information was often organised into databases, which, in turn, were sold to third parties⁸¹¹. While the infringement upon children's privacy by parents or guardians is often not motivated by malicious intentions and may be limited to oversharing, the violation of children's privacy by other entities can pose a much greater level of danger and complexity.

The subsequent entities that can be mentioned include other users on social media who can unlawfully access and utilise children's personal information, such as their address, age, or family status. Advertising organisations and companies can also collect children's personal data through monitoring and analysing their online behaviour on social media for targeting and marketing to young individuals. Lastly, it could be malevolent individuals who create fake accounts, engage in deception, or exploit children through fraud, online abduction, or harassment.

The negative behaviours that this group of actors may engage in when unlawfully using children's personal information include: One aspect involves the illegal sharing of children's information. For example, images and videos of children, once collected by various actors, are disseminated across different social media platforms without the consent of the children or their parents. Although this sharing may not be inherently malicious and severe consequences may not have arisen, it nonetheless constitutes a violation of the privacy rights of children. However, this also has the potential to give rise to other serious consequences.

Children can fall victim to identity theft when personal information about them such as their full name, address, date of birth, school, and family circumstances is exposed. Their identities can be stolen and used for fraudulent purposes. For instance, *Nguyen Van A* (14 years old) had a traffic accident while going to school. To facilitate the search for *A*'s relatives, information about *A*'s full name, school, and images of *A* at the accident scene were publicly disclosed on the personal page of a man named *Lam Hung T*, who had taken *A* to the hospital. Some individuals with malicious intent exploited this information to solicit donations for *A*, but their true intention was to engage in fraud. An illustrative case involves *D*, who serves as the deputy class representative for the aesthetics and literature class. *D* frequently shares images depicting class activities and tags classmates on their personal profiles. Alongside this vivacity and enthusiasm, *D* actively participates in surveys suggested on the Facebook social media platform, promptly appearing and commenting in groups that discuss issues related to the Gen Z lifestyle. One day, *D*'s friends discovered that *D*'s personal images had become the profile pictures of an account under the name *T.K.H.*, representing themselves as a financial specialist specialising in advising on digital currency investments⁸¹².

The third reason is that children may experience online harassment and bullying. These are two common forms of harassment that occur in the digital space, especially in the current era where children are increasingly becoming targets of online bullies due to their limited understanding of risks and their limited self-protective skills. Once these individuals obtain personal information about the

⁸¹⁰ MCPEAK, The Facebook digital footprint: 888.

⁸¹¹ GADBAW, Legislative update 234.

⁸¹² NGUYỄN, Protecting children from online threats.

children, they proceed to send messages to threaten and manipulate them, causing distress and fear. Numerous serious consequences have resulted from such behaviours⁸¹³. The story of Mrs. *Do Hanh T.*'s (43 years old, Binh Thanh district) daughter, who became disheartened and withdrawn, serves as an example. Mrs. *T.* recounts, “My husband and I had to stay close to our child for nearly a week before she was willing to speak. She shared a post in an English language learning group at the centre. The post was shared anonymously, expressing her opinion about the grouping within the class, but somehow, the group admin revealed the information of the sharer. Her post was mimicked by her peers, and offensive comments were made. The family had to communicate with the English language centre and contact the group admin to promptly delete the post. However, despite this, the child was psychologically impacted, exhibiting reluctance in communication for a considerable period”⁸¹⁴.

According to experts, “children “wandering online” roam alone, traversing borderless territories without any accompanying guardians to protect them. They may be vulnerable to harm at any time, and adults may not be aware of it, as these harms are not physical wounds. The cybersecurity law, effective January 1, 2019, still lacks a specific definition of behaviours such as bullying, attacking, and stealing the identity of children in cyberspace”⁸¹⁵. This leads to challenges in determining the violations and applying appropriate measures for resolution. Currently, there is no tightly coordinated mechanism among functional agencies for detecting and addressing instances of cyberbullying, attacks, and identity theft against children online. This results in these incidents often being overlooked or handled untimely.

Regarding exploitation and grooming of children, in contrast to the fear and intimidation caused by online harassment and bullying, these two behaviours often begin with actions that create positive feelings towards children, such as showing empathy, building trust through chat messages, giving gifts, or offering praise to attract the child's affection. Subsequently, the perpetrator gradually manipulates the child by making requests, such as sending explicit photos or videos, and, in more extreme cases, engaging in sexual acts with the child.

Lastly, there are long-term consequences. When personal information is shared on social media by both parents and children themselves, it accurately reflects the thoughts and desires of children at the time of sharing, whether they intend to connect with friends online or with the consent of their parents. However, as time goes by and children grow older, they may no longer remember the posts they made on social media, whereas potential predators or malicious individuals still have access to that information. For example, in Vietnam, when the winners of Miss Vietnam have their past social media posts exposed by the media, it can have a negative impact on their reputation and credibility⁸¹⁶.

⁸¹³ LÊ, Children experience breakdowns. See more: NGUYỄN, Students undergo stress.

⁸¹⁴ BẠCH - NGUYỄN, Developing technical barriers.

⁸¹⁵ Ibid.

⁸¹⁶ THÁI, What does the newly crowned Miss Vietnam say.

6.2.4. Challenges in the Implementation of the Right to be Protected from Violence

While Vietnam has made progress in shifting perceptions and implementing practices in the care and protection of children, various forms of violence against children, such as physical abuse, psychological violence, and sexual exploitation of children, continue to persist widely. Therefore, in this section, the author will endeavour to elucidate instances of violations against the right to protection from violence for children, employing approaches that categorise transgressions to elucidate the culpability of the perpetrators.

Numerous instances of physical violence against children, perpetrated by their parents, have indeed occurred in reality. Case 1: A 6-year-old girl in Hanoi dies as a result of being beaten by her father with a bamboo stick and a broom handle⁸¹⁷. On the morning of January 14, 2022, according to a source from Thanh Nien newspaper, the Bac Tu Liem district police (Hanoi) concluded their investigation and recommended the People's Procuracy prosecute the accused, *Le Thanh Cong* (43 years old), for the offence of “intentional injury”. “According to the investigative conclusion, around 11:00 a.m. on September 16, 2021, *Cong* was teaching his daughter, identified as *L.H.A* (6 years old), at their home. During the learning process, noticing that *A.* was not concentrating and learning slowly, *Cong* used a wooden chopstick to hit her left palm, left arm, and left leg more than 10 times. Not stopping there, *Cong* then instructed his wife to get a broom to discipline their daughter, but as his wife couldn't find a broom, she handed a 50-cm-long bamboo stick to *Cong*. Subsequently, *Cong* continued to strike his daughter's buttocks and back”⁸¹⁸.



Picture 07: Bruises on the body of *H.A.*
Source: Trần⁸¹⁹

Case 2: The mother fatally beats her 6-year-old son⁸²⁰. The police of Quoc Oai district, Hanoi, reported that they are currently holding *Nguyen Thanh Th* for the charge of murder. The victim is *N.M.K.* (born in 2016), *Th*'s son. Previously, at 8:32 p.m. on December 9, 2022, *K.* was rushed to the emergency room by the family in a state of cardiac arrest, with blue lips, dilated pupils on both sides, circulatory arrest, and numerous injuries on the face and body. During the investigation at the

⁸¹⁷ TRẦN, A 6-year-old girl in Hanoi died.

⁸¹⁸ Ibid.

⁸¹⁹ Ibid.

⁸²⁰ NGUYỄN, Criminal prosecution of mother.

investigative agency, *Th* confessed that in mid-September 2022, she believed her son did not obey orders and was lazy in his studies, so she repeatedly used a 1.4-metre-long bamboo stick, a clothesline hook, a plastic pipe, and a plastic chair to physically assault her child. In early December, she continued to use a metal awl, approximately 25 cm long, to strike two blows to the top of her son's head.

Vietnamese people have a well-known proverb: “A ferocious tiger does not devour its cubs”, which signifies that despite being fierce and ruthless, even a tiger refrains from harming its offspring. Broadly construed, no parent should treat their children cruelly. However, events as outlined above are no longer isolated incidents in Vietnam. The prevalence of biological parents fatally beating their children is a pressing issue in Vietnam, causing enduring pain and irreparable loss for family members⁸²¹. This phenomenon has significant psychological and emotional repercussions for the community at large, undermining the ethical and cultural foundations that generations of Vietnamese people have endeavoured to build. Therefore, this issue demands serious attention and concerted efforts from society and the state to identify and implement effective solutions for prevention.

Subsequently, instances of physical violence against children stem from their stepfather or stepmother. Case 1: A stepmother abuses an 8-year-old girl, resulting in death⁸²². On December 28, 2021, the investigative authorities temporarily detained *Vo Nguyen Quynh Tr* for investigating the act of abusing the girl *N.T.V.A.* (8 years old), who is the biological daughter of Mr. *N.K.T.Th*. During the investigation, *Tr* confessed that around 2:00 pm on December 22, 2022, she was instructing the child *A.* with her husband *Th* at work. Due to *A.*'s slow comprehension and mistakes in her studies, *Trang* scolded her loudly and used a round wooden stick with a diameter of 2.2 cm and a length of 90 cm to strike her buttocks 5-6 times. She also kicked her buttocks once. Around 6:00 p.m. on the same day, *A.* went to her room to sleep. At this point, *Tr* discovered that *A.* had vomited, so she rushed to pick her up and called *Th* for first aid. They then transported her to the emergency room. *Tr* also admitted to abusing *A* for an extended period. Initially, she purchased a segment of rattan cane for this purpose. After the cane broke sometime later, *Tr* used wooden segments and various household items, such as a mop and a broom, to physically assault her stepdaughter⁸²³.



Picture 08: The wooden stick, wielded by *Tr*, was used to physically assault *V.A.* Source: Nguyễn⁸²⁴.

⁸²¹ LÊ - HOÀNG, Investigating the case of a mother using a hammer to fatally strike her son. See more: HÀ, The mother physically assaulted her daughter in Ho Chi Minh City. HỒ, The mother fatally assaulted her child following alcohol intoxication.

⁸²² VŨ, Temporary detention of stepmother for physically abusing.

⁸²³ HÀ, The full sequence of events.

⁸²⁴ NGUYỄN, The progression of the incident.

Case 2: The child was fatally injured with a nail in the skull. On January 20, 2022, the legal authorities initiated legal proceedings against *Nguyen Trung H* for the alleged abuse of his partner's 3-year-old biological child. In the course of the investigation, defendant *H* provided a statement admitting, "Fuelled by resentment arising from *A.* being the biological offspring of my romantic partner, I harboured the intention to subject the child to torture, physical abuse, and ultimately, lethality, as a means to evade parental responsibilities and forestall any adverse impact on the lives of the involved parties". Between September 2021 and the present, *H* admitted to subjecting *A.* to torment on four occasions, utilising methods such as administering pesticides, compelling her to ingest screws, and causing fractures to her limbs. During police interrogation, *H* recounted the most recent incident, occurring at approximately 8:00 a.m. on January 17, when the child's mother was away at work, leaving only the two individuals at home. *H* asked a question to which the girl did not respond, prompting him to administer multiple slaps. Subsequently, he perpetrated the cruel act of embedding several nails into the child's head⁸²⁵. Despite nearly two months of hospitalisation and medical intervention, child *A* succumbed to her injuries⁸²⁶.



Picture 09: The X-ray images of the skull of the girl. Source: *Dương*⁸²⁷

Case 3: A mother's partner forces a 3-year-old boy to inhale drugs⁸²⁸. On the afternoon of November 6, 2023, the People's Court of Hoc Mon district, Ho Chi Minh city, convened a first-instance trial for the defendant *Nguyen Thao Ng* on charges of inflicting harm on others and for *Le Van B* on two counts of causing harm to others and illegally possessing narcotics. The defendant, *Ng*, was granted bail as she had recently given birth. The victim in this case is the 3-year-old boy *T.N.A.T.*,

⁸²⁵ *DƯƠNG*, A three-year-old girl.

⁸²⁶ *Ibid.*

⁸²⁷ *Ibid.*

⁸²⁸ *HỒ*, Ho Chi Minh city police reported.

who is the biological child of the defendant *Ng*. “On April 10, 2022, *B* forced *T*. to hold a water bottle placed on a horizontally positioned speaker, with both hands holding the water bottle and not allowed to put them down. When *T*. became tired and put his hands down, *B* verbally abused and threatened him, holding *T*.’s genitalia as a means of intimidation, causing *T*. to cry out in fear”⁸²⁹. During the process of *B* abusing *T*. on April 10 and 24, 2022, *Ng* witnessed it all, used his phone to record a clip, and used Facebook to send the above clip to Ms. *L.T.B*. During the investigation, *B* revealed that because his child often cried and did not listen, he tortured him to scare him and entertain him. *Ng* said she enjoyed watching *B* torture his child, so she recorded a clip and sent it to his friends for entertainment⁸³⁰.



Picture 10: The images of the boy and the mother's accomplice. Source: Saostar⁸³¹.

Many similar cases occur in Vietnam⁸³², according to the assessment of lawyer *Tran Thi Ngoc Nu*, an individual with extensive experience in supporting abused children. She states, “Currently in Vietnam, there are numerous instances of children being abused by stepfathers, stepmothers, and even the romantic partners of parents. The origins of these cases often stem from drug abuse, personal animosities, jealousy, and individual selfishness. It is noteworthy that in many instances where a romantic partner is found to be physically assaulting, abusing, or exploiting their child, the biological parents often turn a blind eye to the situation”⁸³³.

Unlike the issue of physical violence, mental violence against children in Vietnam is often challenging to identify and lacks specific statistical data because it cannot be measured or observed as clearly as physical behaviours. Therefore, to examine and ascertain whether children in Vietnam experience mental violence from family members, a survey was conducted involving students in Can Tho city. In the Ninh Kieu district, the results indicate that as many as 60.5% of the surveyed students

⁸²⁹ Ibid.

⁸³⁰ NGUYỄN, The case of a 3-year-old boy being given drugs.

⁸³¹ Ibid.

⁸³² MAI - VŪ, 3-month-old infant subjected to abuse. See also: PHẠM, Life of torment for a 10-year-old boy.

⁸³³ Ibid.

expressed experiencing stress and fear due to verbal abuse and harsh criticism from grandparents and parents. Additionally, 31.4% of these students faced insults and humiliation within their families. Meanwhile, a group of students, accounting for 8.2%, encountered other forms of mental violence (Chart 14).

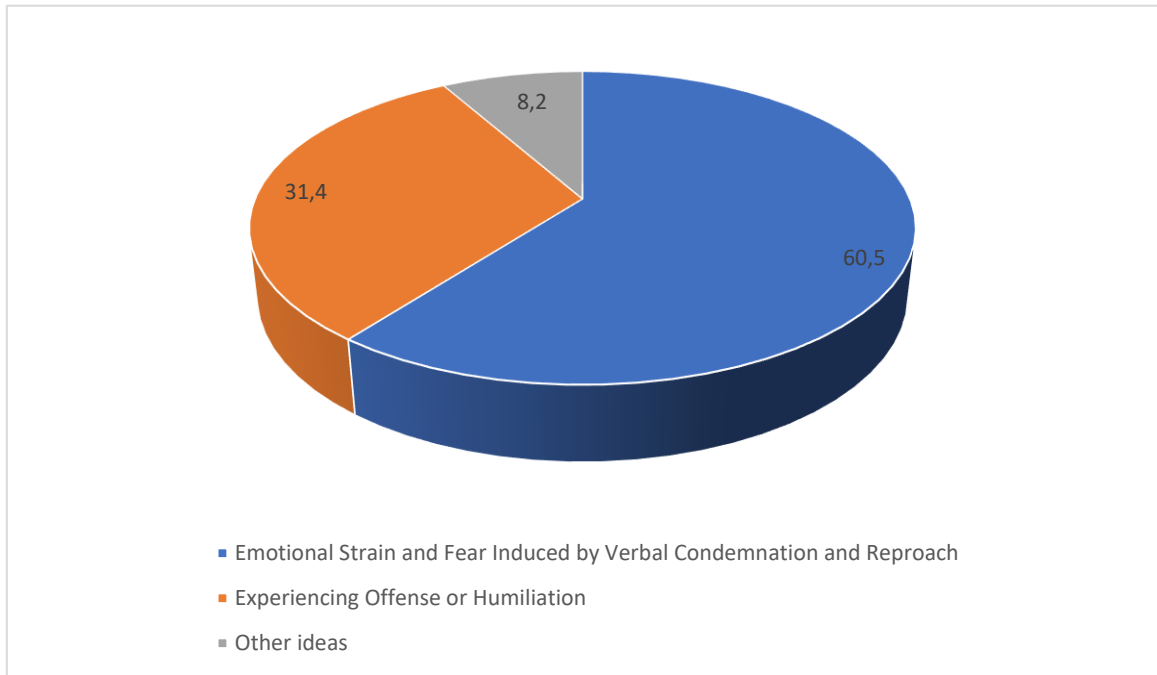


Chart 14: Children's encounters with mental violence in Ninh Kieu district. Source: *Huynh Thi Truc Giang's* survey

In the Phong Dien district, the results reveal the following: a remarkable 65.47% of the surveyed students reported feeling stressed and fearful due to verbal abuse and harsh criticism from grandparents and parents. Students who faced insults and humiliation within their families accounted for 18.24%. The final group, representing 16.29%, includes other cases listed by students, such as being threatened or intimidated, having their parents manipulate their emotions, and being coerced into studying according to their parents' wishes (Chart 15).

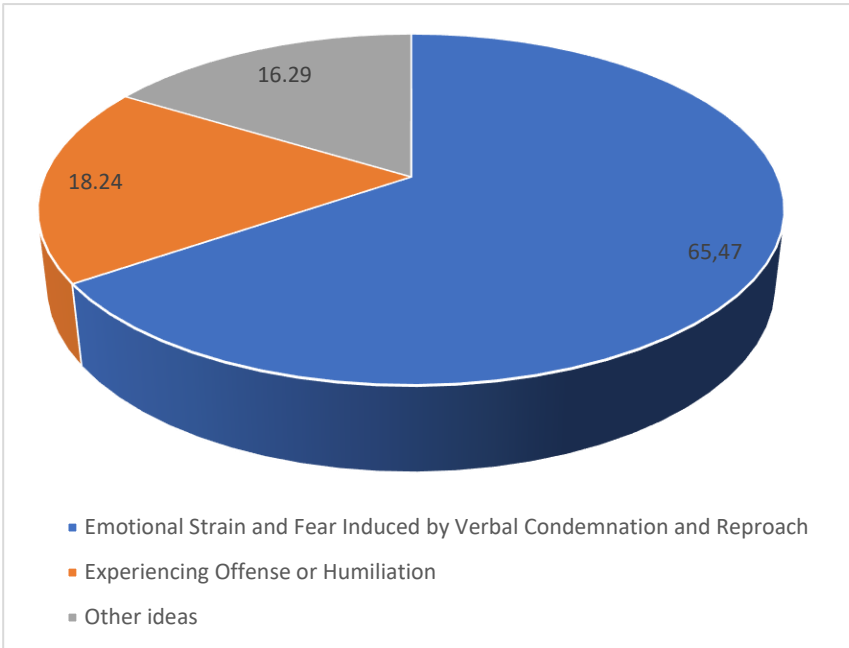


Chart 15: Children’s encounters with mental violence in Phong Dien district.

Source: *Huynh Thi Truc Giang’s* survey.

Through the collected data on mental violence within families in Ninh Kieu district and Phong Dien district, a somewhat detailed perspective on this situation in two different locations has been provided. While both locations reflect a high prevalence of stress and fear due to verbal abuse and harsh criticism from families, the difference in rates between the two locations regarding instances of children being humiliated or offended is significant. In Ninh Kieu district, the rate is nearly double that of Phong Dien district. However, concerning students experiencing other forms of psychological violence, Ninh Kieu district has a rate of 8.2%, whereas Phong Dien district has a rate of 16.29%. These forms of violence include threats, intimidation, isolation from friends, family relationship rifts, and coercion to study according to the parents' wishes. This may indicate that students in Phong Dien are confronting a more diverse range of forms of psychological violence compared to students in Ninh Kieu.

While not explicitly mentioned by students in Ninh Kieu district, reality reveals instances of emotional estrangement among family members, such as mothers alienating children from fathers or vice versa, especially during parental conflicts or divorce. An illustrative case is the one in Quang Ngai, Vietnam, where a father compelled his child to write a journal expressing hatred towards the mother⁸³⁴. This incident was discovered because the father not only engaged in psychological violence by creating emotional rifts between the child and the mother but also physically abused his 9-year-old son.

Enforcing a child's education according to the parents' wishes is also a form of psychological violence, yet many parents in Vietnam may not recognise this. According to the provisions in the law on domestic violence prevention, the act of “hindering family members from participating in lawful activities” constitutes an act of violence⁸³⁵. Therefore, these cases are prevalent in Vietnam, where parents, particularly at the elementary and middle school levels, pressure their children to study

⁸³⁴ TỐNG, Father forces child to write a diary expressing hatred towards mother.

⁸³⁵ Article 1 of the Domestic Violence Prevention and Control Law.

excessively, leading to overwhelming academic stress. In many instances, this pressure has driven students to commit suicide. A heartbreaking incident involves a 12-year-old student jumping from the 22nd floor of an apartment building in Hanoi, causing a significant public outcry⁸³⁶. As the students reach high school, parents may further impose their choices for university majors⁸³⁷, causing frustration and suppression among the children.

Due to the influence of Confucianism, the deeply ingrained ideology of male superiority and female subordination has permeated the consciousness of the Vietnamese people across generations. This has resulted in a situation where Vietnamese parents rarely perceive their actions as inflicting psychological violence upon their children. The manifestation of this issue lies in the unjust treatment among siblings, where, at a young age, the only response from the affected children is sadness and tears. A shared experience by a woman who had been unfairly treated by her parents in comparison to her younger brother on a social media forum resonated with many readers who had encountered similar situations⁸³⁸. However, as these individuals grow older, if these negative emotions are not alleviated, young people may harbour resentment towards their parents, leading to negative thoughts and behaviours towards them.

Similar to the situation of physical violence, the issue of child sexual violence is prevalent in Vietnam. However, the contextual background will be presented following the survey results, outlining the awareness of the student group in Vietnam regarding this issue. In the Ninh Kieu district, when queried about behaviours perceived by the students as legally prohibited, the results indicated a significant differentiation. Analysing the frequency of the most selected responses, all six behaviours mentioned above, which are considered legally prohibited, collectively constituted 23.6% of the responses. The percentage of students choosing at least one behaviour classified as legally prohibited was 16.5% (Chart 16).

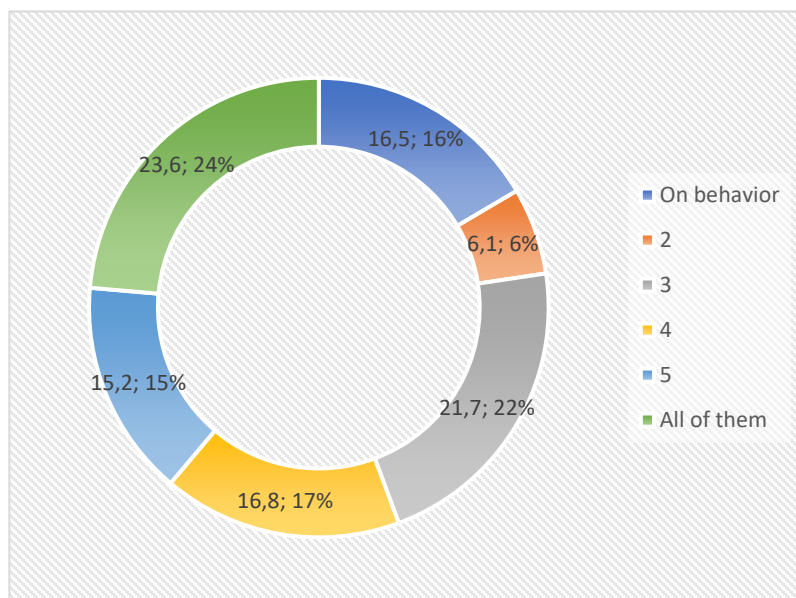


Chart 16: The number of behaviours that students in Ninh Kieu district perceive as legal violations based on the above question.

Source: *Huynh Thi Truc Giang's* survey.

⁸³⁶ LÊ, Student suicides due to academic pressure.

⁸³⁷ VŨ, Pressuring children to choose a major.

⁸³⁸ HÀ, Wishing to sever ties with parents due to unfair treatment.

Based on the data concerning the awareness of students in Ninh Kieu district regarding sexual abuse, the following observations can be made: Although the proportion of students recognising and perceiving various sexual abuse behaviours in Ninh Kieu district is relatively positive, there are still some noteworthy points. Overall, more than half of the students selected all six behaviours listed as prohibited by law, indicating consistency in recognising the severity of sexual abuse. However, the percentage of students choosing only one of the prohibited behaviours is 16.5%, which may be a notable point. It could be inferred that some students may not fully comprehend the seriousness of each specific behaviour. This suggests the need for enhanced education and discussions on specific situations to help students better understand the consequences of each act of sexual abuse. In summary, while the general awareness of students in Ninh Kieu district regarding sexual abuse seems positive, there is still room for improving a detailed understanding of each specific behaviour. Further efforts to educate about this issue are necessary to ensure that all students recognise the importance of preventing and addressing sexual abuse.

In the Phong Dien district, when queried about behaviours perceived by the students as legally prohibited, the results are indicated via Table 06. This is a multiple-choice question, allowing students to select multiple answers. Therefore, the quantity of responses most frequently chosen is that all six listed behaviours are legally prohibited, constituting 31.7%. The lowest proportion is observed when only one behaviour considered legally prohibited is chosen, accounting for 7.8% (Chart 17).

Overall, the data indicates that students in the Phong Dien district have a relatively high level of awareness regarding various sexual abuse behaviours, and they recognise that these behaviours are legally prohibited. However, there are still some students who may not recognise all of these behaviours.

Table 06: Perception of students in Phong Điền district regarding sexual violence.
Source: *Huynh Thi Truc Giang's* survey.

Which of the following behaviours are legally prohibited?	Percent
Utilising seductive language in conversations with children	18.9%
Sending or sharing sensitive messages, images, or sexually related videos without the consent of others.	18.3%
Utilising eye contact, gestures, or expressions to make others feel uncomfortable or disrespected.	11.8%
Touching another person without consent	15.4%
Using insulting comments or disrespectful comparisons	14.6%
Threaten if you do not comply with the request	20.8%
Other ideas	0.1%
Total	100.0%

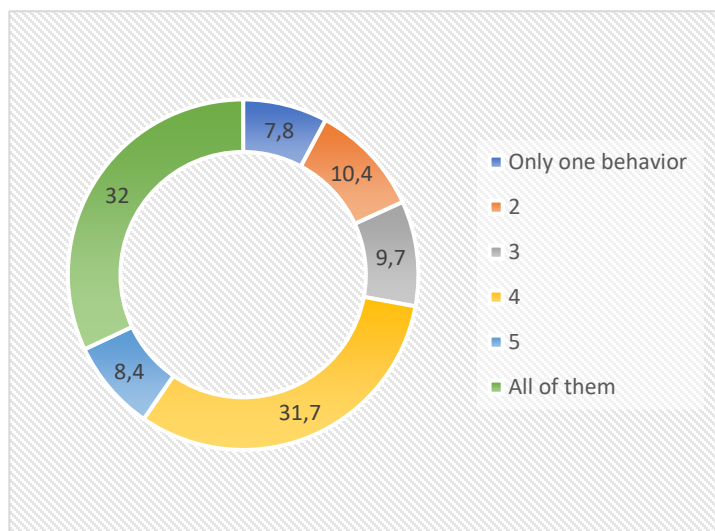


Chart 17: The number of behaviours that students in Phong Dien district perceive as legal violations based on the above question.
Source: *Huynh Thi Truc Giang's* survey.

In general, the data reveals that students in the Phong Dien district exhibit a relatively high level of awareness regarding various sexual abuse behaviours, acknowledging that these behaviours are considered legally prohibited. However, there are still some students who may not recognise all of these behaviours.

Concerning the actuality of child sexual abuse, according to the legal regulations in Vietnam, the act of sexually abusing children involves the use of force, threats of force, coercion, abduction, or enticing children to participate in sexual activities. This may encompass behaviours such as rape or sexual assault involving children.

Concerning the offence of child sexual abuse, in the year 2020, according to statistics from the website publishing verdicts of the Supreme People's Court of Vietnam, there were two legal judgements related to child molestation that became legally effective. Specifically, these judgements are case No. 106/2020 of the People's Court of Nghi Son town, Thanh Hoa province⁸³⁹. In 2021, there is case No. 79/2021 dated April 22, 2021⁸⁴⁰, from the People's Court of Long Thanh district, Dong Nai province, and in 2022, there are two judgements, namely case No. 31/2022 of the People's Court of Chau Thanh district, Kien Giang province⁸⁴¹.

Regarding the act of raping children, there have been five legally effective judgements from 2020 to 2022, which include: case No. 216/2020 of the People's Court of Ho Chi Minh city⁸⁴², case No. 06/2021 dated March 23, 2021, of the people's court of Binh Phuoc province⁸⁴³, case No. 285/2021 dated May 12, 2021, of the people's court of Ho Chi Minh city, case No. 18/2022 dated

⁸³⁹ People's court of Nghi Son town, Judgment No. 107/2020/HS-ST.

⁸⁴⁰ People's court of Long Thanh district, Judgment No. 79/2021/HS-ST.

⁸⁴¹ People's court of Chau Thanh district, Judgment No. 31/2022/HS-ST.

⁸⁴² People's supreme court in Ho Chi Minh city, Judgment No. 216/2020/HS-ST.

⁸⁴³ People's court of Binh Phuoc province, Judgment No. 06/2021/HS-ST.

January 20, 2022, of the People's Court of Dong Nai province⁸⁴⁴, and case No. 15/2022 dated January 20, 2022, of the People's Court of Binh Thuan province⁸⁴⁵.

The above information pertains solely to cases that have been prosecuted and legally validated; however, there are still numerous instances that have been detected, reported, and are currently undergoing investigation. Specifically, according to the report from the Department of Child Protection from June 2019 to June 2021 nationwide, more than 4,009 children have been subjected to abuse, with over 3,600 of them being female. Notably, the trend of child abuse cases has shown an increase in the subsequent year compared to the preceding one. To elaborate, the number of children abused from June 2019 to June 2020 was over 1,700 cases, while from June 2020 to June 2021, it reached over 2,200 cases, indicating an increase of more than 430 cases. The predominant forms of child sexual abuse documented during this period include rape, sexual assault, intercourse, molestation, and pornography. Authorities have identified over 1,000 cases of rape, more than 1,500 cases of sexual intercourse with children, and over 550 cases of molestation⁸⁴⁶. Thus, the report from the Department of Child Protection covering the period from June 2019 to June 2021 provides a disturbing insight into the state of child sexual abuse in Vietnam. These figures not only underscore the imperative for action on the part of law enforcement agencies but also pose a challenge to society at large in enhancing education and prevention efforts, as well as providing support for victims and pursuing legal accountability.

6.3. SOME SUGGESTIONS FOR PROTECTING THE CHILDREN'S RIGHTS IN VIETNAMESE LAW

6.3.1. Suggestions for Listening to the Opinions of Children

From the perspective of legislative enactment, as analysed in Section 3.3.2 of Chapter 3, the author demonstrated that these provisions entirely omit the aspect of listening to the opinions of children. This highlights the inconsistency of Vietnamese law with International law and the laws of other countries worldwide, such as those in Europe and Hungary. Therefore, a crucial step to take is promptly supplementing provisions regarding consulting the opinions of children in healthcare activities in Section 3, Article 15 of the Healthcare Law, as follows: "In the case of a patient who is a minor: a) If there is a legal representative as defined in Points c and d, Section 2, Article 8 of this law, follow the decision of the legal representative; b) If there is no legal representative as defined in Points c and d, Section 2, Article 8 of this law, follow the decision of the person responsible for professional matters or the designated leader of the healthcare facility; c) The opinions and wishes of the minor must be taken into account in both cases". In the provision regarding child custody in Article 91 of the Marriage and Family Law 2014, it may also be deemed incongruent with the spirit of Article 12 of the CRC when stipulating that parents have the right to claim a child even in the case of the child's

⁸⁴⁴ People's court of Dong Nai province, Judgment No. 18/2022/HS-ST.

⁸⁴⁵ People's court of Binh Thuan province, Judgment No. 15/2022/HS-ST.

⁸⁴⁶ MAI, In the span of 2 years, more than 4,000 children have been subjected to abuse.

death, which is presented in section 3.3.2 of the dissertation. This provision maximises the rights of parents to determine someone as their child but fails to acknowledge the aspect of listening to the opinions of children, even in the regulations pertaining to the procedures for exercising this right in the Residence Law 2014. Therefore, amending the provision in Section 1, Article 91 of the Marriage and Family Law 2014 is necessary. -

To ensure the effective implementation of listening to the opinions of children, most recommendations and research-based guidelines uniformly emphasise that a crucial step for any child interview is the development of a positive relationship between the interviewer and the child⁸⁴⁷. When interviewers take the time to understand the child, it can enhance the accuracy of the child's responses and reduce the likelihood of suggestive influence⁸⁴⁸. How questions are posed during the process of soliciting opinions is crucial, as, similar to adults, various factors influence children's memory of events or their ability to recall events. The limited cognitive abilities and language skills of children, especially in the early to middle childhood years, may make them more susceptible to suggestions and increase the likelihood of misunderstandings. Therefore, one of the most influential factors affecting children's ability to provide information is the process of questioning and interviewing⁸⁴⁹. The recommended question types to be used in these cases are open-ended questions. This is because consistent research has demonstrated that employing open-ended, non-leading questions in interviews generates the most detailed, accurate, and reliable information from children about situations or events⁸⁵⁰. Open-ended questions are those that encourage detailed elaboration without specifying the particular information sought⁸⁵¹. Prompts such as “tell me everything that happened from beginning to end” allow children to respond by freely recalling, which is more likely to yield accurate information⁸⁵². Other studies also indicate that although children's initial responses may be brief, gentle persistence with open-ended, non-leading questions can lead to expansive or contextually complex narratives, even in young children⁸⁵³.

Additionally, there is a need to enhance the capacity for children to express their opinions on issues impacting their lives by creating opportunities for their engagement in various interactive activities. This involves exposing children to diverse sources of information, providing them with learning opportunities, and accumulating knowledge and experience. These activities may encompass play, communication with others, physical sports and exercises, and various other daily life activities. As children engage with multiple sources of interaction and communicate with others, they can acquire knowledge, grasp social skills, and develop logical thinking, creativity, and problem-solving abilities. Through rich interactive experiences, children can broaden their horizons, enhance skills, and simultaneously deepen their understanding and knowledge of all aspects of life. Consequently,

⁸⁴⁷ CROSSMAN - POWELL - PRINCIPE - CECI, Child testimony in custody cases 25.

⁸⁴⁸ HERSHKOWITZ - ORBACH - LAMB - STERNBERG - HOROWITZ, Dynamics of forensic interviews with suspected abuse victims 755.

⁸⁴⁹ GOULD - MARTINDALE, The art and science of child custody evaluations 481.

⁸⁵⁰ LAMB - STERNBERG - ORBACH - ESPLIN - STEWART - MITCHELL, Age differences in young children's responses 929.

⁸⁵¹ MILNE - POWELL, Investigative interviewing 210.

⁸⁵² LA ROOY - MALLOY - LAMB, The development of memory in childhood 52.

⁸⁵³ POWELL - SNOW, Guide to questioning children 60.

children can effectively exercise their rights. Indeed, “the more varied the interactions in which children engage, the greater their understanding and knowledge”⁸⁵⁴.

Enhancing the capacities of parents and authoritative figures during the process of consulting the opinions of children is imperative. These entities directly interact with children in the course of listening and deliberating on the children's perspectives. Therefore, they need to have a clearer awareness of their roles in fostering the capability of children to participate in decisions. Specifically, those directly eliciting the opinions of children must establish a secure, affectionate, and trustworthy exchange environment for children. Simultaneously, the act of listening to the opinions of children should be conducted genuinely. Research has indicated that virtually all children can express what is important to them, with even infants accomplishing this non-verbally⁸⁵⁵. Consequently, the expression of viewpoints by children at any age is not merely the child's capacity to provide information but is instead the competence of adults in eliciting (or observing) such information within the context of a reliable, supportive, and harmonious relationship. In summary, with positive and appropriate support from families, communities, and authoritative bodies, the capacities of children can be developed, leading to an increased “ability to become active partners in children's decision-making”⁸⁵⁶.

6.3.2. Suggestions for Protecting the Right to Birth Registration

As analysed in the preceding chapters, the right to birth registration for children, as defined in Article 7 of the CRC, encompasses a range of integrated rights. Therefore, to ensure coherence and fluency in the analytical process, this section will also present proposed solutions in alignment with the sequence of children's rights previously elucidated in the foregoing chapters.

In the context of the right to birth registration, as expounded in Chapter 6, despite the current relative simplicity and ease of implementation of regulations pertaining to birth registration for children in Vietnam, there remain several nuanced details that warrant expeditious supplementation. This is essential to ensure the uniform application of the law and to mitigate unintended errors concerning the personal information of children. Specifically, the regulations regarding authorised relatives responsible for registering the birth of children, as stipulated in Article 15 of the citizenship law, require supplementation through guidance in the form of a Ministerial Circular from the Ministry of Justice. This circular should distinctly define the recognised entities deemed to be authorised relatives of children, thereby facilitating the proper execution of birth registration procedures at the competent authority. Such clarification aims to prevent ambiguity and confusion for citizenship officials during the exercise of rights on behalf of children.

From the author's standpoint, the entities authorised to register the birth of children should ideally be limited to the parents, grandparents, uncles, aunts, and cousins of the child. This limitation is justified by the close and familiar relationships these individuals share with both the child and the child's parents. Consequently, the information provided by them during the birth registration process can be ensured to be reliable, secure, and transparent. Furthermore, restricting the individuals with

⁸⁵⁴ SMITH - TAYLOR - TAPP, *Rethinking children's involvement* 211.

⁸⁵⁵ ALDERSON, *Young children's rights* 621.

⁸⁵⁶ SMITH - TAYLOR - TAPP, *Rethinking children's involvement* 214.

the right to birth registration within the family circle helps minimise the risk of disclosing the child's personal information, thereby safeguarding the privacy rights of both the child and the family.

In the execution and application of legal provisions, although positively assessed by competent authorities and urban residents, the perspective of people living in mountainous, remote, and rural areas on the birth registration procedures in Vietnam is markedly different, which is presented in Section 6.2.1 of the thesis. To address these issues, there needs to be collaboration between relevant authorities and social organisations, as well as individuals. Coordinated implementation of the following solutions is essential. There should be an initiative to provide community counselling and education. Relevant authorities, such as the People's Committee, can plan and organise detailed programmes, collaborating with universities that offer legal specialisation. The objective is to mobilise high-quality human resources from students to participate in community counselling and education activities. To optimise effectiveness, mobilising sponsorship from local business organisations should also be promoted. These organisations not only provide financial resources but also contribute expertise and experience in implementing counselling and education activities. This helps expand and sustain the community counselling and education model across a broader region, creating a positive impact on the community. Through this process, it not only increases awareness of the birth registration procedure but also establishes a supportive environment, helping to broaden the scope of those receiving assistance. This translates into creating a robust and sustainable social infrastructure that promotes the rights and responsibilities of the community regarding birth registration.

The competent authorities should establish mobile birth registration points in hard-to-reach areas to partially alleviate transportation challenges for residents. To ensure the effective implementation of this endeavour, it is crucial to first announce and widely disseminate information through various mass media channels approximately one to two weeks in advance. Subsequently, the content of the information dissemination can be constructed in a question-and-answer format, focusing on common issues encountered by the public, such as document deficiencies, registration fees, and processing times. In this manner, the dissemination of information not only facilitates community understanding but also creates favourable conditions for individuals facing difficulties during the birth registration process, simultaneously fostering active community participation.

Regarding the right to a name, to establish clear and detailed legal criteria for determining what constitutes “excessively long or difficult to use”, as stipulated in Circular No. 04/2020/TT-BTP regarding the naming of children, it is essential to integrate factors such as name length, the number of words used, complexity in pronunciation, and applicability in daily life. Concurrently, emphasis may be placed on preserving the ethnic identity and cultural customs of Vietnam while ensuring flexibility so as not to unduly restrict parental choices. The elaboration of these criteria is also conducive to creating a flexible legal framework that can be adjusted over time and is responsive to societal changes. Furthermore, the criteria development process should encourage community participation and involve legal experts to ensure transparency and consensus in the procedure. This approach will contribute to shaping a regulatory system for child naming that both parents and the community can comprehend and accept, safeguarding the rights and preserving the diverse cultural values of Vietnamese society.

In the execution and application of the law, there is a need to enhance community awareness and education through campaigns and educational programmes aimed at providing information to

parents regarding potential challenges associated with excessively long or difficult-to-use names. Promoting an understanding of societal significance and encouraging parents to consider names that are both meaningful and practical should be emphasised. For instance, these objectives could be achieved through organised discussions featuring cultural, social, and legal experts as guest speakers, elucidating the crucial role of names in society and how they can impact a child's daily life. Such training sessions could equip parents with detailed information on factors to consider when naming their children, ranging from meaning to usability and prevalence. Most importantly, the author contends that these campaigns and educational programmes should respect cultural diversity and employ gentle educational approaches, encouraging parents to not only contemplate the significance of names but also seek harmony between societal meaning and practicality in their children's daily lives. This approach would foster understanding and acceptance within the community, creating a conducive environment for the positive and harmonious exercise of the right to a name.

On the other hand, competent authorities should regularly undergo specialised training, encompassing psychological and emotional understanding of the individuals they encounter in their work as well as skills in handling situations for the registration officers of residence. By regularly participating in specialised training courses and workshops, registration officers will be equipped with the latest information regarding legal regulations related to birth registration, the protection of children's rights, and policy changes that may impact their workflow. Furthermore, mastering the psychology and emotions of those registering for residency is crucial for creating a supportive and humane work environment. Training sessions can provide effective communication techniques, helping registration officers gain a deeper understanding of the challenges and concerns that registrants may face. This can assist them in advising and guiding registrants through the registration process in a gentle and empathetic manner, creating a positive and comfortable experience for all parties involved. In addition, providing situation-handling skills will assist registration officers in working effectively in a diverse and sometimes complex environment. This involves promptly and accurately identifying and resolving issues while maintaining a professional and respectful demeanour towards individuals, regardless of their circumstances. These measures will contribute to enhancing the quality of residency registration services while simultaneously elevating the reputation and credibility of the registration agency within the community.

Regarding the right to nationality, to address the situation of statelessness for children with one parent being a Vietnamese citizen and the other a foreign national, which is presented in Section 6.2.3 of the thesis, the law on the nationality of Vietnam requires additional provisions to determine Vietnamese nationality for the child when the parents cannot reach an agreement. This is particularly relevant in cases where either parent, who is a foreign national, passes away, or in situations where the child is born and subsequently taken abroad by a foreign parent without returning to agree on nationality at the time of birth. For instance, consider the case of *Ha*, a Vietnamese citizen, and *Robert*, a French citizen, who marry and have a child in Vietnam. According to the current regulations, determining Vietnamese nationality for the child requires a mutual agreement from both parents. However, in the event of *Ha* and *Robert's* separation and *Robert* returning to France, cutting off all communication with *Ha* or the child, the process of discussing and reaching an agreement on the

child's nationality becomes extremely challenging. Therefore, applying the proposed solution to this scenario would result in the nationality of *Ha* and *Robert's* child being determined as Vietnamese.

To address the situation of children being stateless due to both parents lacking nationality and being born in Vietnam, which is presented in Section 6.2.3 of the dissertation, the law on the nationality of Vietnam should be supplemented with the provision: "If both parents are stateless or if the mother is stateless and the father's identity is unknown, the child shall have Vietnamese nationality if registered at birth in Vietnam". This regulation ensures adherence to the principle of creating optimal conditions for all children born within the territory of Vietnam to possess nationality. It safeguards the right to nationality for individuals in general and specifically for children born within the territory of Vietnam, following the provisions of domestic legal documents and international conventions of which Vietnam is a member. For example, consider the case of *Huy* and *Sophie*, an unmarried couple without nationality residing in Vietnam. Sophie becomes pregnant, and they decide to have the child in Vietnam. However, under the current regulations, because both individuals lack nationality and do not have permanent residence, the child cannot be determined to have Vietnamese nationality. If the supplementary provision is applied to this scenario, it suffices for the child to be registered at birth in Vietnam to obtain Vietnamese nationality. This new regulation aims to ensure the right to nationality for children born within the territory of Vietnam while concurrently adhering to the provisions of domestic law and international conventions to which Vietnam is committed. This reflects the policy of creating optimal conditions to guarantee nationality for children and compliance with international principles regarding children's rights.

In the context of the right to know the origin of children, the Hungarian legal system has a provision that could potentially help resolve disputes related to the parent-child relationship, a challenge currently faced by the legal system in Vietnam, which is presented in Section 6.2.3 of the dissertation. Specifically, Section 4:99(3) of the Hungarian Civil Code stipulates that "if a woman remarries after the termination of a previous marriage, the subsequent husband shall be considered the father of a child born within the subsequent marriage, even if there are not three hundred days between the termination of the previous marriage and the birth of the child. If this assumption is rejected, then the former husband shall be considered the father of the child". This provision establishes a clear rule regarding the parent-child relationship when a woman remarries after the termination of a prior marriage. Accordingly, the subsequent husband is deemed the father of the child born within the subsequent marriage, unless there is compelling evidence to refute this. This regulation provides stability and clarity, minimising potential disputes. This is a valuable lesson from the legal system of your country, Hungary, which lawmakers in Vietnam should consider incorporating in the near future to address persistent challenges in legal proceedings. By integrating similar provisions into the legislation of Vietnam, we can leverage the knowledge and advancements of Hungary to promote modernisation and efficiency in managing and addressing legal issues related to the rights of children and family relationships. This endeavour is not only a solid step towards coherence in the legal system but also a manifestation of the commitment to protect and promote the rights of the younger community in society.

6.3.3. Suggestions for Protecting the Right to Education

Regarding discipline in educational institutions, to mitigate and gradually eradicate the prevalence of severe disciplinary measures, both physically and mentally, imposed upon students within educational institutions, the Ministry of Education should organise training programmes for officials and teachers within these establishments. The training should encompass legal regulations pertaining to the prohibition of harsh disciplinary practices affecting students' physical and mental well-being. Through such initiatives, officials and teachers can gain a comprehensive understanding and implement disciplinary measures accurately and in accordance with legal provisions. Furthermore, training in handling and resolving communication situations with students constitutes a crucial aspect of the training process. These courses may focus on communication skills such as active listening, understanding the psychological nuances of students, and fostering a positive communication environment. According to Mtsweni, “a healthy, open conversation about inappropriate behaviour is more likely to lead to long-term behavioural changes that could lead a child to become a functional and disciplined adult”⁸⁵⁷. In summary, these activities can aid teachers in developing flexible, consistent, and effective interaction abilities with all student demographics, including those with special needs.

Regarding the phenomenon of school dropout, there is a need to enhance education regarding the consequences of dropping out through various mass media channels targeting students, families, and the community. Key communication mediums such as television, radio, and online platforms can be employed to convey this message effectively. Concerning educational content, it is imperative to design it in a manner that authentically reflects the challenges students may encounter when contemplating dropping out. This may involve presenting real-life scenarios and narratives of both success and failure experienced by individuals who have faced similar decisions. Additionally, the content should provide information about the available educational and career options for students, emphasising that education is not merely a personal responsibility but also a societal demand.

The government also needs to establish financial support policies for students facing special circumstances. Accordingly, competent authorities should sequentially implement steps as follows: Firstly, it is crucial to clearly define the criteria and conditions for identifying students within this special group, encompassing the level of financial hardship, family issues, or personal factors influencing their ability to continue their education. Subsequently, the provision of scholarships, tuition fee waivers, or direct financial assistance for students facing specific difficulties should be executed. It is essential to establish transparent and clear regulations to ensure fairness and transparency in the process of reviewing and allocating financial resources.

Furthermore, it is imperative to establish mechanisms for collaboration with organisations and communities to supplement financial resources from various sources. This may encompass collaboration with businesses, social organisations, and non-profit entities to ensure that there are sufficient resources to support all students in need. In summary, the synergy between government

⁸⁵⁷ MTSWENI, The role of educators.

policies and community support can create a comprehensive supportive environment to minimise the phenomenon of dropout and facilitate the holistic development of students.

Regarding the participation of a student in educational issues, institutions need to enhance support and provide training for staff and teachers on the significance of student opinion consultation and methods for creating conditions conducive to active participation. Teachers play a crucial role in constructing a positive educational environment and encouraging students to engage in sharing their opinions. Specifically, schools can organise specialised workshops for teachers on consultation skills and how to foster an environment for students' active participation. The content may encompass methods to encourage students to share their opinions, sincere listening techniques, and the creation of a comfortable atmosphere for students to freely express their perspectives. Furthermore, schools can establish opportunities for teachers to practice these skills through practical activities, such as participating in extracurricular activities with students or engaging in themed discussion sessions. This comprehensive approach not only reinforces student engagement but also contributes to the cultivation of a positive educational milieu. It ensures that teachers possess the necessary skills to create favourable conditions for the active involvement of students in expressing their opinions.

Educating students about their rights and responsibilities in the learning process is a crucial step in optimising their engagement. This is because when students have a clear awareness of their roles, it contributes significantly to increasing their participation capabilities. To achieve this the curriculum should first incorporate sessions or discussions on the rights and responsibilities of students. These sessions not only assist students in understanding their entitlements but also foster an awareness of personal responsibility during the learning process. Additionally, the school can devise practical activities, such as group discussions, hypothetical scenarios, or debating competitions, to enable students to apply their knowledge of rights and responsibilities to real-world situations. These activities not only provide opportunities for students to practice decision-making and problem-solving skills but also enhance their understanding of the vital importance of active participation in the learning process.

6.3.4. Suggestions for Protecting the Right to Privacy

The state should engage in disseminating information to parents and children regarding the impact of sharing children's personal information on social media. This is critically important as it cultivates understanding and awareness of the associated risks. Dissemination efforts may take the form of seminars or screenings of documentary films depicting real-life cases, elucidating the unforeseen consequences of oversharing aspects of children's private lives. Furthermore, the government should consider establishing training programmes for teachers and education professionals to deepen their understanding of the challenges associated with online safety and how to assist children in mitigating risks. Simultaneously, there is a need to promote research and innovation in the field of online safety education to continually update knowledge and teaching methodologies following emerging trends.

On the other hand, instructing parents and children on the utilisation of privacy settings on social media platforms constitutes a pivotal measure. This approach can assist parents and children in effectively controlling and managing the personal information of children, thereby mitigating the risks

associated with the potential oversharing of this information. The state must delegate responsibilities to relevant authorities, such as the Ministry of Information and Communications or Local Departments of Information and Communications, to design instructional materials on configuring privacy settings for parents and children. To achieve effectiveness, the entities involved should initially conduct a meticulous analysis of popular social media platforms, with a particular focus on those frequently used by children. Subsequently, it is crucial to develop straightforward and comprehensible step-by-step guides, elucidating the process of accessing and utilising privacy settings on each platform. Moreover, to enhance effectiveness, detailed instructional videos can be created and widely disseminated within the community through the organisation's official websites, social media pages, or even shared via email. This ensures that a maximum number of individuals have the opportunity to access and learn from this valuable content.

Vietnam has administrative and criminal sanctions in place to address violations of the privacy rights of children. However, empirical evidence indicates that instances of violations persist, necessitating more expansive and effective solutions. Therefore, it is imperative to establish and strengthen the infrastructure, technology, and organisation to monitor and control the collection, processing, and storage of personal information about children. Specifically, the government needs to establish a flexible and user-friendly reporting mechanism, encouraging the community to promptly report privacy violations. For instance, constructing an easily accessible online interface for reporting violations to the relevant authorities, providing detailed instructions, and using straightforward language to enhance user accessibility. Through this online reporting mechanism, authorised agencies can swiftly identify which social media accounts or emails have disseminated or shared children's personal information or engaged in other privacy infringements. Subsequently, the competent authorities will expeditiously process the reports, identify the violators, and implement preventative measures, including the suspension of accounts and the removal of inappropriate content. For this measure to be effectively implemented, the Vietnamese government can foster close collaboration with service providers, including companies offering mobile applications and social media platforms. Through this collaboration, when violations occur, there is the potential to swiftly identify detailed information about the accounts and activities of the violating users. Furthermore, the close collaboration between the government and social media platforms also serves to monitor and prevent illegal content sharing. This collaboration entails the integration of modern technologies such as artificial intelligence and data analysis. These technologies aid in tracking and analysing vast amounts of information on social media, facilitating the rapid identification of violative content.

6.3.5. Suggestions for Protecting the Right to be Protected from Violence

Through analysing the legal regulations and practices in Vietnam regarding the protection of children from violence, it can be concluded that Vietnamese law is relatively consistent with international laws on this matter. However, the prevalence of violence against children within families persists, stemming from the awareness of relevant entities, monitoring mechanisms, the early detection of violent behaviours and recovery, and integration after experiencing violence.

To partially address this situation, it is imperative to raise awareness among parents, children, and relevant entities about non-violent values as well as the negative effects of violence on children. It may encompass the creation of educational materials, videos, and interactive events to enhance understanding and awareness of children's rights within society. In terms of educational content, emphasis may be placed on “changing social norms that condone violence”⁸⁵⁸. Research has shown that children are more likely to experience corporal punishment by their carer if they live in a context where social norms support domestic violence and corporal punishment⁸⁵⁹. Simultaneously, to ensure the practicality and effectiveness of the programme, it is crucial to delegate specific tasks to local management authorities. The Department of Labour, Invalids and Social Affairs can take a leading role in implementing the programme. These agencies are not only responsible for putting the programme into practice but also for conducting inspections, monitoring, and reporting on the results. Only through such close and comprehensive collaboration can we achieve a community where individuals understand and respect the rights of children, thereby minimising instances of violence within families and society.

Additionally, the establishment of a monitoring and reporting system for information related to violence against children is an undeniable necessity. Although Vietnam's hotline 111 has played a crucial role in collecting information on cases of violence, enhancing the effectiveness of this effort requires expanding and improving the capacity to handle situations, particularly in intervening with instances of misconduct. To meet this requirement, the author contends that the Ministry of Labour, Invalids, and Social Affairs needs to enhance collaboration with relevant authorities such as the Police Ministry, the Ministry of Health, and social organisations to share information and provide specialised counselling support. Simultaneously, establishing robust linkage procedures is crucial to ensuring comprehensive and seamless support when intervention is required. This means that immediately upon receiving information about instances of violence in a specific locality, there should be a mechanism to link this information to the local rapid response unit, such as the quick-response police, to intervene and address the situation promptly, thereby avoiding unfortunate consequences.

Establishing support facilities to aid children in recovery and integration after experiencing violence is not only a necessary task but also a significant investment in the community's future. Indeed, “providing remedies to child victims of violence through appropriate services and legal action is essential for any fully functioning national child protection system. Not only do these remedies enable child victims to overcome the trauma of violence, but they also reduce the risk of re-victimisation”⁸⁶⁰. Therefore, as early as 2006, in the UN Secretary-General study on violence against children⁸⁶¹, the proposition “provide recovery and social reintegration services” emerged as the sixth recommendation to assist in mitigating violence against children on a global scale.

The stability and recovery of children after negative experiences require a comprehensive care system and, particularly, unanimous support from the entire social community. Therefore, it is essential to develop psychological and mental support programmes for children affected by violence. These

⁸⁵⁸ JAMIESON - MATHEWS - RÖHRS, Stopping family violence 8.

⁸⁵⁹ RÖHRS, Shifting attitudes and behaviour 12.

⁸⁶⁰ UNICEF, Toward a world free from violence 130.

⁸⁶¹ PINHEIRO, Report of the independent expert 26.

programmes should create a safe and nurturing environment where children can share emotions, learn stress management, and rebuild self-confidence. Psychological support should also be extended to the families of the children to create a robust support system. Concurrently, building a community support network to help children integrate is a vital part of the recovery process. The community needs to actively participate in creating conditions for children who have experienced violence to engage in social, educational, and cultural activities on an equal footing. These endeavours not only aid children in their recovery but also establish a foundation for positive integration and development in the future. This represents a meaningful investment, contributing to the construction of a society characterised by values of safety, respect, and equal opportunities for all children.

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APPENDIX

Appendix A: The Questionnaire

THE RIGHT TO EDUCATION

1. Have you ever been asked for your opinion on improving the school, such as enhancing the school's infrastructure, teaching programs, or textbooks, for example?

A. I have never been asked.

1.1. What are the reasons? *(multiple options can be chosen)*

- a. My school does not have a mechanism for collecting opinions.
- b. I am not a class committee member.
- c. Other opinions:

B. I have been asked before.

1.2. How many times have you been asked?

- a. Once
- b. Twice
- c. More than twice
- d. Many times

2. In your opinion, is it necessary to be asked about your academic-related content as mentioned above?

A. I think it is not necessary

2.1. What are the reasons? *(multiple options can be chosen)*

- a. I am indifferent to these matters.
- b. I believe they fall under the purview of responsible adults such as my parents and teachers.
- c. do not consider myself knowledgeable enough to offer valuable insights in enhancing the school environment.
- d. Other opinions:

B. I believe it is necessary.

2.2. What are the reasons? *(multiple options can be chosen)*

- a. I am someone who is engaged in those matters on a daily basis.
- b. This demonstrates the school's concern for my needs.
- c. Other opinions:

3. If there is a meeting regarding school improvement, would you like to participate?

A. I would not participate.

3.1. What are the reasons? *(multiple options can be chosen)*

- a. I dislike speaking in front of a crowd.
- b. These activities consume time.
- c. They impose considerable pressure on me.
- d. I lack the knowledge and experience necessary to make decisions for school improvement.
- e. Other opinions:

B. I would participate.

3.3. What are the reasons? *(multiple options can be chosen)*

- a. This is an opportunity for me to share my thoughts on school improvement.
- b. This is a chance for me to meet and interact with many new friends, learning new knowledge.
- c. I am interested in these matters.
- d. I want to develop my communication skills
- e. Other opinions:

4. If you have a creative idea on how teachers can make their lessons more interesting, would you share it?

A. I would not share.

4.1. What are the reasons? *(Multiple options can be chosen)*

- a. It would be disrespectful to the teachers.
- b. I am afraid the teachers would feel sad and angry with me.
- c. I am afraid the teachers would scold me.
- d. Other opinions:

B. I would share.

4.2. What are the reasons? *(Multiple options can be chosen)*

- a. I want to contribute ideas to enhance the effectiveness of learning.
- b. I believe students have the right to express their opinions to teachers.
- c. Other opinions:"

5. Have you heard any statements or comments from teachers or school staff that could potentially harm the mental well-being of students?

A. I have.

5.1. The person who received the comments is:

- a. Myself.
- b. My friends.

5.2. How many times you have heard is:

- a. Once.
- b. Twice.
- c. More than twice.
- d. Many times.

B. I have never heard.

6. Have you witnessed any behaviour from teachers or school staff that could potentially harm the health of students?

A. I have witnessed.

6.1. The person affected by the behaviour is:

a. Myself.

b. My friends.

6.2. Those behaviours are:

a. Physical hitting.

b. Hitting with a cane.

c. Other behaviours.

B. I have never seen.

THE RIGHT TO PRIVACY

1. If someone views your personal belongings such as your phone, computer, or diary without your consent, is that considered an invasion of your privacy?

A. Yes.

B. No.

C. Depending on the purpose of viewing.

D. Other opinions.

2. What do you think about sharing personal photos or videos online?

A. I think it's a good way to share special moments with friends and family.

B. I think it's a good way to connect with friends and family, but I also understand the need to control what I share to avoid revealing personal information.

C. Other opinions:

3. What do you think when parents or grandparents share your pictures or videos on social media?

A. I feel happy that my parents and grandparents want to share joyful moments of mine. B. I don't like when my personal images are posted online without my consent.

C. I understand that parents and grandparents want to share beautiful moments of mine with everyone. However, I think they should ask for my opinion before posting pictures or videos online.

D. Other opinions.

4. In your opinion, which of the following behaviours is prohibited by law when engaging in online activities on platforms: (Multiple answers can be chosen)

A. Writing disrespectful or offensive comments about others' images or videos.

B. Sending inappropriate content, such as sexually explicit images or videos or harassment, to others.

C. Threatening or pressuring others to share personal information or private images they do not want to share.

D. Coercing others to participate in conversations or sending inappropriate images or videos they do not wish to engage with.

E. Other opinions.

5. When engaging in online activities, which of the following actions do you think is appropriate: *(Multiple answers can be chosen)*

A. Do not share passwords or personal information via email or unclear text messages.

B. Avoid sharing information such as images, addresses, phone numbers, or school names, especially in chats of unclear origin.

C. Refrain from clicking on links or attachments from unclear sources to avoid falling victim to online scams.

D. Other opinions.

THE RIGHT TO BE PROTECTED FROM VIOLENCE

1. In your opinion, which of the following behaviours is considered domestic violence: A. Physical actions such as hitting, punching, pushing down, or causing injury to others.

B. Behavioural aspects involving threats, mockery, insults, or actions that diminish the self-esteem of others.

C. Other opinions.

2. In your opinion, which of the following ways helps protect oneself from domestic violence: *(Multiple answers can be chosen)*

A. I will talk to teachers or trusted relatives about my situation and seek assistance.

B. I will try to find a safe place such as a friend's room, with relatives, or anywhere I feel safe to escape to.

C. I will immediately flee when family members exhibit violent behaviour towards me.

D. I will raise my voice to seek help from individuals outside the family.

E. Other opinions.

3. In your opinion, which of the following behaviours is legally prohibited: *(Multiple answers can be chosen)*

A. Using offensive, provocative, or disrespectful language when discussing sexual matters with others.

B. Sending or sharing inappropriate, sensitive, or non-consensual messages, images, or videos.

C. Using eye contact, gestures, or expressions to make others feel uncomfortable or disrespected.

D. Touching others inappropriately or without their consent, causing discomfort.

E. Using offensive comments or disrespectful comparisons regarding the appearance, physique, or demeanor of others.

F. Threatening to disclose personal information or sensitive images of others if they do not engage in sexual activities as desired by the perpetrator.

G. Other opinions.

4. In your opinion, which of the following behaviours constitutes school violence: *(Multiple answers can be chosen)*

A. Using offensive language or derogatory terms to harm others.

B. Engaging in actions such as hitting, punching, kicking, or other behaviours to harm the health of others.

C. Creating a sense of insecurity, fear, or tension by frequently cursing, engaging in annoying behaviour, or spreading malicious rumors about others.

D. Excluding, isolating, or preventing others from participating in activities, friend groups, or interactions.

E. Damaging the property of others.

F. Other opinions.

5. If you or your friends encounter the situations mentioned above, what actions do you think you will take? (*Multiple answers can be chosen*)

A. I will cease communication or contact with them.

B. I will seek the advice of adults to understand how to address the situation appropriately and safely.

C. I will collectively report the incident with friends to teachers or family so that they can intervene.

D. Other opinions.

END

(Sincerely thank you for participating in the survey.)

Appendix B1: Letter of introduction (Vietnamese version)

BỘ GIÁO DỤC VÀ ĐÀO TẠO CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM
TRƯỜNG ĐẠI HỌC CẦN THƠ Độc lập – Tự do – Hạnh phúc

Số: ¹²⁸ /GGT- K.L...

GIẤY GIỚI THIỆU

Kính gửi: Các trường THCS trên địa bàn Q. Ninh Kiều, TP Cần Thơ
Các trường THCS trên địa bàn H. Phong Điền, TP Cần Thơ

TRƯỜNG ĐẠI HỌC CẦN THƠ giới thiệu:

Bà: Huỳnh Thị Trúc Giang

Là Giảng viên Khoa Luật Trường Đại học Cần Thơ

Đến liên hệ về việc trao đổi với các em học sinh đang học từ lớp 6 đến lớp 9 tại các trường THCS trên địa bàn quận Ninh Kiều và huyện Phong Điền thành phố Cần Thơ về một số nội dung có liên quan đến luận án tiến sĩ của bà Giang đang thực hiện

Kính mong được Quý cơ quan giúp đỡ.

*Giấy này có giá trị đến
hết ngày 16.1.2023*

Cần Thơ, ngày 14 tháng 1 năm 2023

HIỆU TRƯỞNG

TL. HIỆU TRƯỞNG TRƯỜNG ĐẠI HỌC CẦN THƠ
TRƯỜNG KHOA LUẬT



Appendix B2: Letter of introduction (English version)

CAN THO UNIVERSITY FACULTY OF LAW	SOCIALIST REPUBLIC OF VIETNAM <u>Independence - Freedom - Happiness</u>
Số: /GGT- , ngày tháng năm 20...

LETTER OF INTRODUCTION

The Faculty of Law at Can Tho University is pleased to introduce:

Ms. Huynh Thi Truc Giang As a Lecturer in the Faculty of Law at Can Tho University

Sent to: Secondary schools in the districts of Ninh Kieu and Phong Dien, Can Tho City .

Regarding: Engaging in discussions with students from grades 6 to 9 in secondary schools within the Ninh Kieu district and Phong Dien district, Can Tho City, on topics related to Ms. Giang's ongoing doctoral dissertation.

We kindly request the esteemed authorities to facilitate Ms. Huynh Thi Truc Giang in completing her academic tasks.

Sincerely.

<i>Place of receipt:</i>	HEAD OF THE DEPARTMENT (Signature, Seal) Full Name
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Appendix C1: Approval Letter of Doan Thi Diem secondary school

THƯ XIN Ý KIẾN CHẤP THUẬN
(V/v khảo sát ý kiến của học sinh)

Kính gửi: Ban giám hiệu Trường THCS Đoàn Thị Điểm

Tôi tên Huỳnh Thị Trúc Giang, là giảng viên tại Khoa Luật, trường Đại học Cần Thơ, hiện đang là nghiên cứu sinh tại Khoa Luật, Đại học Pécs, Hungary.

Nay tôi viết thư này để xin Ban giám hiệu nhà trường chấp thuận cho tôi được tiến hành cuộc khảo sát ý kiến của học sinh tại trường.

Tôi cam kết rằng các học sinh sẽ được thông báo kỹ lưỡng về mục tiêu và lý do của cuộc khảo sát. Tôi cũng xin đảm bảo rằng tất cả ý kiến được các em học sinh của trường cung cấp chỉ được sử dụng cho mục đích nghiên cứu khoa học.

Tôi xin chân thành cảm ơn sự hỗ trợ của Ban giám hiệu nhà trường trong việc thực hiện đề tài nghiên cứu của mình.

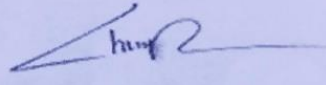
Trân trọng kính chào.

Ý kiến của Ban giám hiệu

Hungary, ngày 16 tháng 10 năm 2023



Trương Vĩnh Khoa



Huỳnh Thị Trúc Giang

Appendix C2: Approval Letter of Tan Thoi secondary school

THƯ XIN Ý KIẾN CHẤP THUẬN
(V/v khảo sát ý kiến của học sinh)

Kính gửi: Ban giám hiệu Trường THCS Tân Thới

Tôi tên Huỳnh Thị Trúc Giang, là giảng viên tại Khoa Luật, trường Đại học Cần Thơ, hiện đang là nghiên cứu sinh tại Khoa Luật, Đại học Pécs, Hungary.

Nay tôi viết thư này để xin Ban giám hiệu nhà trường chấp thuận cho tôi được tiến hành cuộc khảo sát ý kiến của học sinh tại trường.

Tôi cam kết rằng các học sinh sẽ được thông báo kỹ lưỡng về mục tiêu và lý do của cuộc khảo sát. Tôi cũng xin đảm bảo rằng tất cả ý kiến được các em học sinh của trường cung cấp chỉ được sử dụng cho mục đích nghiên cứu khoa học.

Tôi xin chân thành cảm ơn sự hỗ trợ của Ban giám hiệu nhà trường trong việc thực hiện đề tài nghiên cứu của mình.

Trân trọng kính chào.

Ý kiến của Ban giám hiệu

Hungary, ngày 29 tháng 9 năm 2023

Chuẩn theo đơn của
Cô Huỳnh Thị Trúc Giang



Lê Văn Chiến

Huỳnh Thị Trúc Giang

Appendix D: Birth Certificate

GIẤY CHỨNG SINH

Họ và tên mẹ/Người nuôi dưỡng:

Nơi đăng ký thường trú:

Số giấy CMND/Hộ chiếu:

Dân tộc: Kinh

Đã sinh con vào lúc: 12 giờ 25 phút, ngày 16 tháng 01 năm 2016

Tại: BX. Đa Khoa Khu vực Củ Chi

Số lần sinh: 01 Số con hiện sống: 01

Số con trong lần sinh này: 01

Giới tính của con: Nữ Cân nặng: 2900g

Hiện trạng sức khỏe của con: khỏe

Dự định đặt tên con là: Vũ Trúc Ngân

Appendix E: Child's Birth Certificate

CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc

Số: 129

GIẤY KHAI SINH
(BẢN SAO)

Họ, chữ đệm, tên: L.
Ngày, tháng, năm sinh: 23/6/2020 ghi bằng chữ: Ngày hai mươi ba, tháng sáu, năm hai nghìn không trăm hai mươi

Giới tính: Nam Dân tộc: Kinh Quốc tịch: Việt Nam
Nơi sinh: Bệnh viện Đa khoa huyện Diễn Châu, tỉnh Nghệ An
Quê quán: Thị trấn Diễn Châu, huyện Diễn Châu, tỉnh Nghệ An
Số định danh cá nhân: [redacted]

Họ, chữ đệm, tên người mẹ: N
Năm sinh: 17/10/1986 Dân tộc: Kinh Quốc tịch: Việt Nam
Nơi cư trú: Khối 1 thị trấn Diễn Châu, huyện Diễn Châu, tỉnh Nghệ An

Họ, chữ đệm, tên người cha: L.
Năm sinh: 30/10/1985 Dân tộc: Kinh Quốc tịch: Việt Nam
Nơi cư trú: Khối 1 thị trấn Diễn Châu, huyện Diễn Châu, tỉnh Nghệ An

Họ, chữ đệm, tên người đi khai sinh
Giấy tờ tùy thân: Giấy CMND số [redacted] tỉnh Nghệ An cấp ngày 15/7/2013

Nơi đăng ký khai sinh: Ủy ban nhân dân Thị trấn Diễn Châu, huyện Diễn Châu, tỉnh Nghệ An
Ngày, tháng, năm đăng ký: 31/7/2020

NGƯỜI KÝ GIẤY KHAI SINH
(Đã ký)
Nguyễn Ngọc Sơn
Sao từ Sổ đăng ký khai sinh
Diễn Châu, ngày 31 tháng 7 năm 2020

NGƯỜI KÝ
(Ký, ghi rõ họ, tên, chức vụ và đóng dấu)
PHÓ CHỦ TỊCH ỦY BAN NHÂN DÂN
Nguyễn Ngọc Sơn

TỈNH NGHỆ AN
HUYỆN DIỄN CHÂU
UBND THỊ TRẤN DIỄN CHÂU
Số: 511/GKS-BS

Bao Nghệ An
baonghean.vn