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Canon law aspects of children's rights⁵⁸⁴

ABSTRACT: The canonical system of the Catholic Church considers the human being as a person who, according to the revelation, is created in the image and likeness of God and therefore deserves equal human dignity (regardless of age, gender; biological-, physical-, spiritual-, social conditions). This explains the fact that canon law sources already before a separate “children’s rights system” (i.e., 20th century) protected children’s rights from the time of the Early Church. Naturally, there is the painful phenomenon of sexual abuse of minors, which has been the most highlighted issue in the Church’s relationship with children in the last decades. It might seem that the protection of the rights of minors (i.e., children) is limited to the prevention and sanctioning of this gravest delict and the special care of the victims. However, the protection of children’s rights within the Church is much broader. Therefore, the right of parents to educate their children freely following their faith is also an essential right according the Church’s documents, since 1929.

KEYWORDS: children’s rights, gravest delicts, protection of rights of minors, protection of victims, educational rights of parents, religious freedom, integrated education.

1. Introduction

The protection of “children’s rights”⁵⁸⁵ as a legal category can be considered a recent development compared to the long history of the development of

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⁵⁸⁴ This paper has been written in the *Wilmington Community of the St. Michael's Abbey of the Norbertine Fathers* (Los Angeles, CA). It is a version of my presentation which was given at the conference on *Children's rights in theory and practice* (Budapest, Hungary – December 16th 2022).

individual state legal systems. Scholarly literature considers children's rights as third-generation human rights.⁵⁸⁶ Despite the adoption of the Geneva Declaration by the League of Nations in 1924, children's rights appeared as an explicit and specific form from the legal developments after the Second World War in 1946.⁵⁸⁷ We see this in the more precise definitions of fundamental rights by the United Nations and the parallel gradual incorporation of these fundamental rights into the constitutions of countries around the world.⁵⁸⁸ Keeping this in mind, when we consider children's rights under canon law, two important aspects should be noted. The first is that the canonical system of the Catholic Church considers the human being – regardless of age and gender, biological, physical, spiritual, social, etc., conditions – as a person who, according to the revelation, is created in the image and likeness of God and therefore deserves equal human dignity. This explains the fact that canon law sources – although not in a separate “children's rights system” before the 20th century– protected children's rights even from the time of the Early Church. The second aspect is the painful phenomenon of sexual abuse of minors, which has been the most highlighted issue in the Church's relationship with children in the last decades. It might seem that the protection of the rights of minors (i.e., children) is limited to the prevention and sanctioning of this gravest delict and the special care of the victims. However, the protection of children's rights within the Church is much broader. In this overview, I would briefly discuss these two aspects. At this juncture, it is appropriate to refer to Pope Pius XI (1922-1939) who already emphasized in 1929 the right of parents to educate their children freely following their faith; this is also recognized by the state:

(...) We see the supreme importance of education, not merely for each individual, but for families (...) Moreover, every Christian child or youth has a strict right to instruction in harmony with the teaching of the Church, the pillar and ground of truth. And whoever disturbs the pupil's faith in any way, does him grave wrong, since he abuses the trust that children place in their teachers, and takes unfair advantage of their inexperience

⁵⁸⁵ Lux, 2018.

⁵⁸⁶ Halmai and Tóth, 2008, p. 88.

⁵⁸⁷ UNICEF, no date.

⁵⁸⁸ In detail, cf. Sedletzki, 2012, pp. 13-24.

and of their natural craving for unrestrained liberty, at once illusory and false (...).⁵⁸⁹

2. Children's rights in canon law history

2.1. *The protection of children against violence under criminal law*

One of the most debated issues today – and one of the main concerns of society, particularly for parents and families – is sexual abuse against minors. This serious problem is connected to all areas that relate to minors. Religious communities, particularly the Catholic Church, have introduced increasingly significant child protection policies regarding the conditions and standards for dealing with minors. The seriousness of the issue means that even a single incident cannot be tolerated within any kind or composition of the community. For this reason, over the last two decades, particularly in the second half of that period, the principle of zero tolerance for sexual abuse against children has been repeatedly expressed by the authorities of the Catholic Church. While the emphasis on the principle and its practical implementation is of crucial importance, it should not be forgotten that this is not a 21st-century development provision that responds to the legitimate expectations of society. If we consider canon law sources on this issue, it is clear that sexual abuse against children has been considered by canon law from the very beginning, and the most serious canonical sanctions have been established for offenders.⁵⁹⁰ This is based on the biblical principles⁵⁹¹ mentioned in the introduction, which, on the one hand, derive from the strict observance of the sixth commandment⁵⁹², and on the other, from the fact that the victim is created in the image and likeness of God.⁵⁹³ We are therefore confronting undoubtedly, on the one hand, the commission of the gravest delicts against children as vulnerable persons; on the other hand, the most severe sanctioning of these acts, which has existed from the very beginning, within the canonical legislation. The tension between these two statements is caused by the consistent existence or irresponsible attitude of those who are competent to act in accordance

⁵⁸⁹ Pius XI, Litt. Enc. *Divini illius magistri* (31 dec. 1929): *Acta Apostolicae Sedis* 22 (1930) 49-86, Art. 57.

⁵⁹⁰ In detail, cf. Szuromi, 2016a, especially pp. 388-394.

⁵⁹¹ Cf. *Sacred Scriptures in the Life of the Church*, in *The Holy Bible. Revised Standard Version. Catholic Edition*, Oxford (UK) – New York 2008, xxiii-xxv.

⁵⁹² Ex 20:1-18; Dt 5:1-21.

⁵⁹³ Gen 1:26.

with the law. These gravest delicts cause lasting personal damage in children's lives, forcing the ecclesiastical legislator to issue the strongest preventive and sanctioning decisions, and at the same time to give support to the victims. This moral responsibility has motivated those canonical sources that, already from the middle of the 2nd century (i.e., Didache), strongly condemned the mentioned acts as contrary to the Christian way of life and the teaching of the Church. The cited early canonical sources took place in the later composed collections of canon law, which were finally incorporated in the *Decretum Gratiani*⁵⁹⁴, compiled around 1140⁵⁹⁵, and in the subsequent papal legislation, of which the *Liber Extra* (1234)⁵⁹⁶ is one of the most important collections of the High Middle Ages.⁵⁹⁷ These two canon law works, together with four other canonical collections, constituted the *Corpus iuris canonici*, which was the current law of the Church's disciplinary system until 1917. With the promulgation of the first *Codex iuris canonici*, the same corpus of law was unified and codified⁵⁹⁸ (that is CIC [1917] *Cann.* 2357 §§1-2; 2359 §2) and was replaced by the new Code of Canon Law (promulgated on January 25, 1983). This latter Code was revised several times, including the amendment on May 21, 2021, concerning canonical penal law⁵⁹⁹, particularly concerning the sanctions for child abuse (that is, CIC *Can.* 1398).

2.2. Children's right to know the truth – an integrated education based on their skills

It is necessary to emphasize that knowing and transmitting the truth have always been considered a duty and right in the disciplinary arms of the Church. The “right to know and to teach the truth” was and still is the responsibility of the family, particularly, of parents. Nevertheless, the community (municipal, religious, ecclesiastical) has always assisted in fulfilling this responsibility in an institutionalized form from the Early

⁵⁹⁴ C. 3 q. 4 c. 4 (Friedberg, Aemilius (ed.), *Corpus iuris canonici*, I-II. Lipsiae, 1879-1881. [repr. Graz 1955; hereinafter, Friedberg I-II.] I. 512); C. 3 q. 5 c. 9 (Friedberg I. 516); C. 6 q. 1 c. 17 (Friedberg I. 558); D. 1 de poenit. c. 15 (Friedberg I. 1161).

⁵⁹⁵ Landau, 2008, pp. 22-54.

⁵⁹⁶ X 3.1.13 (Friedberg II. 452); X 5.16.5 (Friedberg II. 806-807); X 5.31.4 (Friedberg II. 836); X 5.31.9 (Friedberg II. 837); X 5.34.15 (Friedberg II. 875-877).

⁵⁹⁷ Bertram, 2012, pp. 916-923.

⁵⁹⁸ Cf. Sedano, 2015.

⁵⁹⁹ Franciscus, Const. Ap. *Pascite gregem Dei* (23 mai. 2021): *Communicationes* 53 (2021) 9-12.

Middle Ages. The structured form of public education in Europe began with Catholic schools, which dominated this area until the 16th century when this system was transformed into Christian education in Europe.⁶⁰⁰ Therefore, it is not accidental that the right to “know the truth” – which guaranteed that the children would be educated according to families’ beliefs, in other words, to know the truth that their parents had chosen – has become an important part of the Church’s teaching and discipline. The authors of the earliest canonical sources on this subject are Origen (†253) [*Against Celsius*, I, 11]⁶⁰¹, St. Cyprian (†258) [*On Mortality*]⁶⁰², St. Chrysostom (†407) [especially his Homily LXXXII and his Homilies to the Gospel of Matthew]⁶⁰³, and St. Ambrose (†397) [*On Abraham*, I, 3]⁶⁰⁴. Naturally, the catechetical formation within the family, but already in the parish community from the 6th century, then in the cathedral and parish schools from the end of the 8th century, was supplemented by other elements of knowledge related to the individual abilities and social situation of each child, which helped them in their daily lives. These early sources, supplemented by Medieval canonical decisions, were included in the same important collections, and after the codification, their principles were incorporated into the *Codex iuris canonici* (1917), which were already listed in the previous point on violations against children.

Turning to the recognition of children’s rights in the 20th century, which was incorporated into a system of separate duties and rights, the establishment of this institutional form is also clearly visible within the legislation and directives of the Catholic Church. In chronological order, after the papal encyclical letter of 1929, already quoted in the introduction, the Second Vatican Council’s declaration on Christian education – *Gravissimum Educationis* should be mentioned⁶⁰⁵, which on October 28, 1965, among other things, stated that ‘Parents who have the primary and inalienable right and duty to educate their children must enjoy true liberty in their choice of schools.’⁶⁰⁶ The detailed directive of the Congregation for Catholic Education on April 7th, 1988, which comprehensively explained the

⁶⁰⁰ In detail, cf. Szuromi, 2021.

⁶⁰¹ Cf. Willis, 2002, p. 8.

⁶⁰² Ibid.

⁶⁰³ Ibid. pp. 8-9.

⁶⁰⁴ Ibid. p. 9.

⁶⁰⁵ Conc. Vaticanum II (1962–1965), Sessio VII: *Declaratio de educatione christiana* (Oct. 28, 1965): Conciliorum oecumenicorum decretal, Bologna ³1973, 959-968.

⁶⁰⁶ Ibid. Art. 1.

training and education of the whole person – independently of their religious convictions – as manifested in Catholic education, should also be considered of fundamental importance.⁶⁰⁷ This document explained that ‘The religious freedom and the personal conscience of individual students and their families must be respected, and this freedom is explicitly recognized by the Church.’ The same Congregation, preparing for the third millennium, elaborated and published on December 28th, 1997 a complete educational framework, taking into consideration the individual circumstances, abilities, religious, and cultural traditions of children.⁶⁰⁸ This document emphasized that ‘Those initiatives which are ignoring the principle of religious freedom of the citizens to educate their children according to their own traditional belief can destroy many unchangeable values.’ Finally, after a long preparatory process, on April 7, 2014, the Catholic Church presented its long-term educational plan for children’s rights, their protection, the unique role of the family, and changes in society in the 21st century.⁶⁰⁹ In it, the legislator pointed out that ‘Psychological, social, cultural, religious diversity of the children should not be hidden, denied, but considered as an opportunity and gift. Those who are most in difficulty, poorest, most fragile, most in need, should be at the focus of the school’s attention.’ This list clearly shows the legislative concern about guaranteeing and protecting children’s rights, which has been increasingly defined in the 20th and 21st centuries.⁶¹⁰

3. Hierarchical structure of the protection of children’s rights in canon law

As has been discussed, various instruments on the protection of children’s rights were inspired by the teaching of the Church, from different epochs, which aimed to protect children who are considered vulnerable human persons, to fulfill their objectives considering the challenges of the contemporary era, and to respect children’s specific characteristics as well as their religious, family, and cultural traditions. Since the Church is a

⁶⁰⁷ C. pro Institutione Catholica, Lineamenta, *Dimensione religiosa dell’educazione nella scuola cattolica* (7 apr. 1988): *Introduzione*, Art. 6.

⁶⁰⁸ C. pro Institutione Catholica, *The Catholic school on the threshold of the third millennium* (Dec. 28th 1997), *Introduction*, Art. 1.

⁶⁰⁹ C. pro Institutione Catholica, *Instrumentum laboris, Educare oggi e domani. Una passione che si rinnova* (7 apr. 2014), III, 1.

⁶¹⁰ In detail, cf. Szuromi, 2016b.

hierarchical community, it is obvious that the protection of children's rights is also based on the norms of different hierarchical levels. So far, we have only touched on the highest level. Undoubtedly, the most important guarantees and frameworks are conciliar decisions, the canons of the current Code of Canon Law (especially concerning penal sanctions), and other papal and dicasterial norms.⁶¹¹ However, beyond these, the general prescriptions of national bishops' conferences and the activity of institutions they have set up at the national level play an important role.⁶¹² Likewise, each diocese operates its own offices and professional organizations to guarantee and protect children's rights, prevent abuse, and provide care for those who have suffered abuse.⁶¹³ Nevertheless, perhaps even more important than anything else, within the hierarchical system is the system of rules and policies of those institutions that deal directly with children.

Regarding the latter, it is useful to review the regulations on the protection of children's rights in parochial schools, which are the oldest institutional forms of the Catholic Church's childcare. For this overview, I use the policies of St. Peter and St. Paul Catholic Elementary School (Wilmington, CA, USA)⁶¹⁴ as guides.⁶¹⁵ The updated rules for the 2022/2023 school year cover twenty-two main themes, of which I focus on ten issues. The first, setting out the school's spirituality, is the so-called "Mission Statement", which highlights:

The mission of Saints Peter and Paul Catholic School is rooted in upholding the dignity, worth, and call to holiness of each member of the school community (...). Each student is formed using the cardinal virtues of prudence, justice, fortitude, and temperance (...). We intend to develop our students physically,

⁶¹¹ D. pro Doctrina Fidei, *Vademecum su alcuni punti di procedura nel trattamento dei casi di abuso sessuale di minori commessi da chierici* (5 iun. 2022). Available at: https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_it.html (Accessed: 29 January 2023).

⁶¹² Hungarian Catholic Bishops' Conference, *Charter for the Protection of Children and Young People*, Budapest 2011.

⁶¹³ In 2019, every diocese of Hungary erected a new office, i.e., *Services for Protection of Children and Youths*.

⁶¹⁴ St. Peter and St. Paul Catholic Elementary School, 706 Bay View Avenue Wilmington, CA 90744.

⁶¹⁵ *Statutes of Saint Peter and Saint Paul Catholic Elementary School, 2022/2023*, Wilmington, CA. 2022.

mentally, and spiritually; and invite their families to partake in the experience of learning, living, and worshipping in an authentic Catholic school environment.⁶¹⁶

The wording is especially noteworthy because it not only includes the aforementioned directives of the Church but also a list of all the values mentioned among children's rights in international declarations (e.g., UNICEF).⁶¹⁷ The Statutes explicitly mention parents as primary educators according to the school's conviction. This follows what is described in the *Dimensione religiosa dell'educazione nella scuola cattolica* (1988) and *The Catholic school on the threshold of the third millennium* (1997).⁶¹⁸ Parents are involved in their children's religious formation, moral formation, educational instruction, and school programs.⁶¹⁹ The Statutes specifically refer to the importance of the family environment in promoting the education of children (to avoid the problem of "double education"). As a parochial school, the statutes naturally provide a separate section on religious education.⁶²⁰ Noteworthy is the so-called "controversial issues policy", which deals with situations and issues of a religious, moral, socio-political, or scientific nature, wherein different positions are definite but differing opinions among recognized theologians, moralists, and social scientists are considered controversial. In dealing with these issues, great care is taken to consider them in an atmosphere of freedom and mutual respect and to ensure that the issues are dealt with at the maturity and understanding level of the students.⁶²¹ I should mention the non-discrimination and non-Catholic policies (non-Catholics cannot participate in the full sacramental life of the Catholic Church. The purpose of this policy is to show the appropriate reverence for sacraments by not partaking in them without believing in them) and the acceptance of a variety of family backgrounds.⁶²² The school provides regular discipline reports, cumulative pupil records, and health records to parents, guardians, and church and state authorities that supervise the school. Access to these records is subject to

⁶¹⁶ Statutes, 5.

⁶¹⁷ Cf. UNICEF, no date.

⁶¹⁸ Statutes, 7.

⁶¹⁹ Statutes, 7-9.

⁶²⁰ Statutes, 9-10.

⁶²¹ Statutes, 10.

⁶²² Statutes, 10-11.

strict rules for the protection of personal data.⁶²³ There is a separate chapter in the statutes that deal with specific student health crises, including child abuse.⁶²⁴

4. Conclusion

This brief overview demonstrates that the protection of children's rights is not limited to the prevention and sanctioning of the gravest delicts. Different children's rights have been interpreted by Canon law based on the Holy Scriptures and the Great Mission Commandment of Jesus Christ, in accordance with divine law. This has generated various specific canonical rules and institutional frameworks in different epochs and at different hierarchical levels of the Church. Ensuring the observance of the law also requires the protection of children's rights through penal law. This system was further reinforced in the 20th and 21st centuries which led to the establishment of the *Pontifical Commission for the Protection of Minors* on March 22nd, 2014⁶²⁵ and the establishment of similar organizations at the diocesan level. In parallel with this disciplinary development, the Catholic Church's directives for the integrated education of children have been elaborated in detail, taking into consideration the individual circumstances, abilities, and religious and cultural traditions of children.

⁶²³ Statutes, pp. 18-19.

⁶²⁴ Statutes, pp. 19-20.

⁶²⁵ Homepage. Available at: <https://www.bostoncatholic.org/news/march-22-2014-holy-father-francis-institutes-the-pontifical-commission-for-the-protection-of-minor> (Accessed: 31 August 2023).

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