

THE YOUNG AND
THE RIGHTLESS?
THE PROTECTION
OF YOUTH RIGHTS
IN EUROPE

by MOURAD MAHIDI

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FOREWORD

These are the last words I write as President of European Youth Forum. The work that I have carried out, among other priorities has been dedicated to deepening and widening the discussion on youth rights in Europe. I worked with my colleagues to introduce the topic to as wide a public as possible for reflection. Mourad's thesis is the deepest and richest reflection I have read on along this path.

The European Youth Forum cherishes the values of human rights and brings together young people from all member states of the Council of Europe to work towards the autonomy of young Europeans. We have done this by paying special attention to the rights of young people, their possibilities to participate and the inclusiveness of young people in their environments.

It is now time to use the reflections and experiences from within our organisations, together with young and old, to start to focus on the future – a rights based future. It is paramount to focus on the future. The world is far from being as equal, just and fair as it should be. The world young people are facing today is a world with many uncertainties.

Human rights are too often violated and gender equality remains a distant dream for many. The unequal distribution of wealth is a global challenge that has to be dealt with and this too often affects those who are younger than the majority of the population.

While the challenges that lie ahead are many, young people from all over Europe are more committed than ever to continue the efforts to create a better world. We strongly believe that youth organisations in different regions and on different levels are key actors to develop and improve the living conditions of young people and societies everywhere. This should be fostered and strengthened by ensuring that the rights of young people are protected and promoted and that opportunities for participation for young people are increased. Thank you Murad for your contribution.

Tine Radinja, 2009–2010
European Youth Forum President

ABSTRACT

Young persons, being in the transition from childhood to adulthood, face a specific set of challenges. These specific challenges are the objects of youth rights. While two regional treaties dedicated to these youth rights have been concluded by the African Union and the Organisation of Iberoamerican Youth, this is not the case in Europe. In the absence of such a dedicated instrument, youth rights are only covered by the general European human rights system and the Convention on the Rights of the Child. Therefore, this thesis asks if youth rights are sufficiently protected and promoted in Europe or if a dedicated instrument is necessary? It shows that, while the legal category of youth/young person exists, a comprehensive definition is still missing. Both existing regional youth rights treaties are compared and, while they offer original approaches to youth rights, they both lack supervision mechanisms to ensure that they are duly implemented. The analysis of the challenges young persons face in Europe shows that youth encounters different problems than children and older adults. But it also reveals that more research on these challenges is needed in order to provide a clear picture of their full extent. Some of them can be remedied using the existing European human rights system (notably the European Convention on Human Rights and the European Social Charter), but major gaps in the protection and especially in the promotion of youth rights remain. Given the lack of existing research, it is not possible to conclude irrevocably if a European Convention on Youth Rights is really needed, but the tendency shows that this might easily be the case.

PREFACE

This thesis was written towards the European Master's Degree in Human Rights and Democratisation, during the second semester of the Academic Year 2009/2010, which I had the pleasure to spend at Åbo Akademi in Åbo/Turku (Finland).

The thesis is the result of my personal involvement in youth organisations on the local level in Vienna (Austria), in the Austrian National Youth Council and in the European Youth Forum. This involvement showed me the many challenges young persons face all across Europe, but also the enthusiasm, creativity and expertise with which youth organisations on all levels try to improve the situation and to contribute to the democratic development of our societies. During one of these meetings I heard for the first time of the concept of a rights-based approach to youth and of the idea of a possible European Convention on Youth Rights. This idea caught my attention and whenever we would discuss this issue I would wonder if such a Convention was really necessary. While clearly answering this question obviously goes beyond the scope of a short thesis, I decided to pick this subject up and enquire into the protection of youth rights in Europe.

This thesis would not have been realised without the support of many people, not all of whom I can mention here. First of all, I want to thank Markku Suksi for so many things. For being so open-minded to supervise my thesis, while also being so realistic to guide me to a viable concept, for all the time and patience he had, for making our stay at Åbo Akademi challenging and interesting and for showing us beautiful Finland in many different ways. I also want to thank Viljam Engström for his valuable remarks, Harriet Nyback for being the best information specialist I can imagine and Benita Asikainen for making me feel at home at Åbo

Akademi. Then there are my fellow Masterini, Suzanne Byrne and Malin Pahlmblad. I want to thank them for everything. For their critical comments, for their moral support, for the good times we had, and for being there when I needed them. I also owe great gratitude to Klavdija Cernilogar and to Marco Perolini from the European Youth Forum, for all their help and support (and for being among those who introduced me to this subject in the first place).

Last, but not least, I want to thank my family for always generously supporting me in new endeavours, without their support these studies would not have been possible.

And then there is Bojana. No words could ever express all the love and gratitude I feel. Thank you for everything!

Mourad Mahidi
July 2010

ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
AYC	African Youth Charter
CETS	Council of Europe Treaty Series
CoE	Council of Europe
CFREU	Charter of Fundamental Rights of the European Union
CRC	United Nations Convention on the Rights of the Child
CRPD	United Nations Convention on the Rights of Persons with Disabilities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ECSR	European Committee of Social Rights
ESC	European Social Charter
ESC (revised)	European Social Charter (revised)
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRY	Iberoamerican Convention on the Rights of Youth
ILO	International Labour Organization
INGYO	International Non-Governmental Youth Organisation
NGO	Non-Governmental Organisation
NYC	National Youth Council
OIJ	Organización Iberoamericana de Juventud (Organisation of Iberoamerican Youth)
PACE	Parliamentary Assembly of the Council of Europe
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNTS	United Nations Treaty Series
WPAY	World Programme of Action for Youth to the Year 2000 and Beyond
YFJ	European Youth Forum



1 – Introduction

1 When talking about youth rights, one easily encounters a semantic problem with respect to the exact meaning of youth. Without wanting to preempt Chapter 2 (covering different aspects of this question), "youth" and "young person" are used as synonyms in the present thesis, meaning individuals being in the transition from childhood to adulthood. The notion of "young people" is also used by some authors, but – due to the ambiguous meaning of 'people' in international law – it is avoided here in order to avert misunderstandings.

2 "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection." (Universal Declaration of Human Rights (UDHR), Adopted on 10 December 1948, Art. 23(3)).

3 See European Policy Centre, 2010.

4 In 2008 the youth unemployment rate (i.e. the unemployment rate of persons younger than 25 years of age) was 15,5% of the civilian labour force of the 27 EU member states, compared to 7,0% unemployment rate for the total civilian labour force. Eurostat, 2009, pp. 106, 110.

5 See Chapter 4, for a detailed analysis of these challenges.

6 On 7 July 2009, 16 members of the Parliamentary Assembly of the Council of Europe (PACE) presented a Motion for a recommendation to initiate a declaration in which "[t]he Assembly recommends that the Committee of Ministers of the Council of Europe and the governments of member states initiate a process of drafting, ratifying and implementing of a Convention on Youth Rights" (Parliamentary Assembly of the Council of Europe, 7 July 2009). It is undeniable that this is a very early stage. Yet, as statistically the PACE is at the origin of the biggest number of treaties in the Council of Europe (CoE), such a recommendation would be a possible first step that might lead to a decision of the Committee of Ministers to initiate the drafting process. See Polakiewicz, 1999, pp. 19 ff.

7 African Youth Charter; Entered into force on 8 August 2009.

8 As the OIJ is a rather unsung organisation, this footnote gives a short presentation of its structure and work. The OIJ is an international governmental organisation created by the Iberoamerican Conference of Ministers of Youth with the aim to promote dialogue, consultation and cooperation amongst the Iberoamerican states in the field of youth. Its 21 member states are Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Spain, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, the Dominican Republic, Uruguay and Venezuela, thus comprising most of Latin-America, as well as the Iberian Peninsula in Europe. The highest decision making body is the Iberoamerican Conference of Ministers responsible for Youth (held every second year) which decides upon the general policies and strategies, while the board (which consists of a president, a vice-president and representatives of the five sub-regions: the Andes, the Caribbean and Mexico, central America, the Southern Cone and the Iberian Peninsula) leads the day to day activities of the organisation. The general secretariat of the organisation is based in Madrid (Spain). The organisation was formally created in Sevilla in 1992 at the sixth Iberoamerican Conference of Ministers of Youth, though it would take until 1996 for the organisation to be established as an autonomous international organisation with legal personality. Besides numerous projects and studies in the field of youth, probably the most important achievement of the OIJ is the Iberoamerican Convention on the Rights of Youth. (More information in Spanish on <http://www.oij.org/>)

9 Iberoamerican Convention on the Rights of Youth; Entered into force on 1 March 2008.

10 "The Court must also recall that the Convention is a living instrument which [...] must be interpreted in the light of present-day conditions." European Court of Human Rights, *Tyrer v. The United Kingdom*, 25 April 1978, Paragraph 32.

1 — INTRODUCTION

1.1 — Towards an Improved Protection and Promotion of Youth Rights in Europe

When talking about young persons,¹ many things cross one's mind, but youth rights usually are not amongst them. While youth rights received only very little academic attention so far, there are plenty of reasons why their protection and promotion is relevant. For instance, one might ask why it is possible that, although there is a general right to receive an adequate remuneration for one's work,² still a large number of young persons in Europe are undergoing unpaid internships, whereby they essentially provide their workforce for free and often receive little to no education? Or can the European Parliament, where the average age of its Members is 54,8 years,³ be truly representative of young persons? And more fundamentally, how can it be explained that while young persons are paying taxes and are allowed to vote for the parliament, yet their political representatives are on average twice as old as they are and are – probably even more importantly – light-years away from their everyday reality? And how come the youth unemployment rate in the 27 member states of the European Union (EU) is twice as high⁴ as the total unemployment rate? These are just some of the challenges young persons face in their daily lives in Europe.⁵

The above glimpse shows that the transition from childhood to adulthood is not without difficulties for young persons and thus the present thesis scrutinises the protection and promotion of youth rights in Europe. Young persons in Europe and other parts of the world are in a specific situation when compared to both children and older adults. Are they sufficiently protected by the existing human rights system or would it be appropriate to create new, dedicated instruments? The

present work should be understood as being part of a debate that developed in recent years, surrounding the question if the creation of such a European youth rights treaty is necessary.⁶

This question on how to best protect youth rights is not limited to Europe and currently two international treaties are dedicated to their protection. Probably the more important one is the African Youth Charter (AYC), which was adopted by the member states of the African Union (AU) on 2 July 2006.⁷ The second such treaty was adopted in October 2005 by the Organisation of Iberoamerican Youth (Organización Iberoamericana de Juventud, OIJ)⁸ as the Iberoamerican Convention on the Rights of Youth (ICRY).⁹ Hence, in other regions the necessity for a legally binding protection system for youth rights has been recognised by a number of states, including the European states Portugal and Spain. The question which arises is if such a specific protection system would also help young persons in Europe. Are the rights of young persons sufficiently protected by the existing human rights instruments in Europe or is the current 'status quo' failing to protect and promote those youth rights efficiently, thus making a specific instrument necessary?

The European human rights system is comparatively robust and extensive, yet this does not mean that there is no more room for improvements. As the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is seen as a living instrument,¹⁰ the European human rights system as a whole should also not be perceived as a static system, but rather as a dynamic one. This does not only require the ability to adapt to new developments in society, but also that gaps in the current system should be systematically identified and closed. However, this argument also means that youth rights could potentially be protected by the European Court of Human Rights (ECtHR) through its

¹¹ While both the term 'majority' and 'maturity' are often used to refer to the age at which a person is legally considered an adult, both the Oxford Dictionary of Current English (3rd ed., 2001) and the online version of the Macmillan English Dictionary (<http://www.macmillandictionary.com/dictionary/british/majority>, consulted on 28 June 2010) indicate that majority is the correct term. The Oxford Dictionary defines 'majority' as "the age when a person becomes an adult in law, usually 18 or 21" (p. 545). Thus, the present work will use majority in the legal sense of becoming an adult, whereas maturity will be used in the developmental sense of becoming a mature person.

legal interpretation of the ECHR in the light of present-day conditions. Hence an analysis of the case law of the ECtHR tries to identify if at present this case law could be an alternative to the creation of a specific instrument. Can the European human rights system adequately address the challenges young persons face in Europe or are there major gaps in the protection and promotion of youth rights? Such gaps can be traced to both legal and policy problems. On the one hand legal problems refer to those aspects concerning the rights of young persons that are already protected by existing norms, yet these norms do not effectively secure the protection and promotion of these rights de facto. On the other hand policy problems can be found in those cases, where no legal norms exist and there are outright gaps in the de jure protection of youth rights. How can these gaps be closed in order to ensure the full protection and promotion of youth rights in Europe? This thesis will thus attempt to analyse if and where such gaps exist in the European human rights system. In order to be able to do this, it is necessary to identify the biggest challenges to youth rights in Europe and to see whether these are addressed by the existing instruments.

One of the main difficulties when working with youth rights is the definition of youth. Does the legal category of 'youth'/ 'young person' exist? If so, how is it defined? Furthermore, the distinction between children and young persons has to be kept in mind. Notably, some of the arguments for the creation of specific protection mechanisms for children do not simply cease to exist when the individual reaches the age of majority.¹¹ When reaching this age, young persons do not fall under the protection granted to minors any more, even if they still would need it in certain fields. Hence it is also pertinent to look into overlaps between children's rights and youth rights. At the same time it is also important to recognise that young persons are a group distinct from children,

facing different challenges and thus requiring different approaches to the protection and promotion of their rights.

What this thesis is not trying to do is to draft such a possible convention or to come up with a precise roadmap on how to achieve it as it seems too early to address these questions. The aim is to enquire into the *raison d'être* of a specific treaty protecting youth rights, to identify if and why such a treaty would be needed and what fields it should cover. While it focuses on the substantive aspects, it does not attempt to propose the precise form or content. It also does not venture out very far into the procedural aspects of how the creation of international treaties works. Even though it is not always easy, the present work also tries to stay out of the political dimension as far as possible. It should be clear that the final decision whether to draft such a treaty or not will be a political one. It will not only depend on rational arguments, but to a large extent on political opportunities and thus it would be interesting to try to analyse how such political decisions are taken (i.e. who are the relevant actors, what motivates their decisions, etc.) and how they could be influenced. Yet this thesis is not the place for such an analysis. The present work focuses on the substance of the protection and promotion of youth rights, while factoring out the political dimension as much as possible.

1.2 — Method, Materials and Structure

This thesis is mostly a normative analysis of the European human rights system with regards to youth rights. It analyses the existing legal instruments and how they can contribute to the protection and promotion of youth rights, but also in which areas they fail to do so. As mentioned earlier, it tries not only to establish legal problems, but also to show shortcomings in the wider field of policies. This is only

possible if these legal instruments are read and understood in conjunction with reports and studies on the challenges young persons face in Europe. Thus, the present thesis is not a purely legal work, but it adopts a multi-disciplinary approach, mostly influenced by political, social and legal sciences. This also helps to identify the essence of youth rights. The thesis also undertakes horizontal comparisons on the international, the regional and the national levels. It analyses and compares the chosen approaches to the protection and promotion of youth rights in different regional systems. It also looks into global and in some fields also into national standards and approaches to youth rights and the definitions used on those different levels.

The sources comprise reports and studies by intergovernmental organisations, research institutions and non-governmental organisations (NGOs). The texts of different international treaties also serve as important sources in order to identify how they cover youth rights. Where possible, these treaties are also interpreted with the help of case law and in the light of comments by the respective treaty bodies.

After the present introduction, the second chapter proceeds to clarify the concept of youth/young persons. The aim thereby is not to create a ready-for-use legal definition, but to shed some light on the most important features distinguishing it from other groups. By using different concepts of age, it offers new perspectives on this question. Then it presents some existing definitions of youth from the international, European and national levels. A short excursus offers some insights into how other legal categories based on age have been created in international law and what could be learnt from them for the present subject. Overall, this chapter shows that youth and young persons indeed form a legal category, although a comprehensive definition is missing.

While no youth rights treaties exist on the global and European levels, the third chapter takes a comparative perspective and looks into existing international youth rights treaties in other regions. Looking beyond the obvious shows how challenges to youth rights are tackled by the African Youth Charter and the Iberoamerican Convention on the Rights of Youth. This comparative approach presents which lessons can be learned from them, while also keeping in mind limitations due to the specific contexts they act in. It gives two concrete examples how, in different regions, youth rights are protected and promoted, without trying to assess the impact these instruments have on the ground.

The fourth chapter looks into common challenges young persons face in Europe in the 21st century. It covers both 'traditional' challenges, that are relatively well established (this however does not mean that there is much research on them), but also uncharted challenges that still need to be fully recognised. It shows that these rights do not only concern the protection of young persons, but to a large extent require the active promotion of their rights.

After having identified these challenges, the last substantive chapter looks into the question, of how youth rights are currently protected in Europe. Thus the existing European human rights system will be confronted with these key issues in order to identify where and how youth rights are already successfully protected and where there are gaps in the system. The focus lies on European instruments as well as instruments applicable throughout Europe (such as the CRC for instance which has been ratified by all European states). This section is of central importance as it shows if the existing gaps are significant enough to justify a specific treaty on youth rights in Europe or if youth rights are already covered by existing instruments.

Finally, the conclusion sums up the findings of the previous chapters and addresses the research questions, although conclusive answers are not always possible. The gaps that have been identified are contrasted with the existing human rights instruments in Europe and the existing youth rights treaties in other parts of the world in order to see if and how a European Convention on Youth Rights could potentially improve the protection and promotion of youth rights in Europe.



2 — Whose Rights?

Youth A Legal Category

Without Definition



12 Chronological age refers to the age of a person in terms of years since he/she was born. It is the absolute age of the person and does not depend on any other factors except the date of birth.

13 Aapola, 2002, p. 296. Sinikka Aapola refers to Peter Laslett, who identified five dimensions of age: chronological, biological, social, personal and subjective. See *Ibid.*, p. 297.

14 See Center for Gender Sanity, 2010.

15 Clark-Kazak, 2009, pp. 1309 f.

16 Aapola, 2002, p. 305.

17 Clark-Kazak, 2009, p. 1310.

18 Aapola, 2002, p. 297.

2 — WHOSE RIGHTS? YOUTH A LEGAL CATEGORY WITHOUT DEFINITION

2.1 — The Meaning of Youth/Young Persons: Chronological vs. Social Age

While most people will agree that youth is the phase of transition from childhood to adulthood, the concrete meaning of this is very controversial. This can be explained at least partly by the fact that all human beings develop at different speeds and thus reach full maturity at different ages. Yet, when it comes to laws, there is a need for concrete definitions in order to be able to fulfil the basic requirements of legality and efficiency. Thus legal categories are created and usually defined according to the chronological age of the individuals.¹² Yet, “[t]he chronological definition of age is not as self-evident as it seems – there are multiple other dimensions of age”.¹³ Especially the concept of social age is helpful for a better understanding of the differences between children and young persons. The aim is not to show that youth can not or should not be defined in terms of chronological age, but rather to offer new perspectives on the question what ages should count as 'young'.

The basic idea of social age stems from the difference between biological facts and social construction. Thereby chronological age is supposed to relate to the biological development of a person, ignoring the social roles attributed to age. This distinction can be compared to the difference between 'sex' and 'gender'. While sex refers to the biological attribute of being male, female or neither/both, gender refers to the socially constructed roles attributed to the sexes and the relationships between them.¹⁴ This difference has been recognised in many spheres and thus influenced the way in which policies referring

to them are drafted. With respect to age, this difference between the chronological and social age has not yet been widely recognised. This is rather surprising, as the age at which certain biological and psychological processes occur varies widely and it would seem that chronological age seems somewhat arbitrary. It appears that, when talking about age, most people rather refer to an idea of social age, which reflects the social constructions surrounding chronological age.¹⁵ Social age can be said to refer to “[...] life-phases of an individual and to the social position of an individual or a group within the society, and it includes even social roles connected with age”.¹⁶

An example would be the attendance of primary or secondary schools. When talking with pupils, many people make a difference whether they still attend primary or already secondary schools. This is usually directly linked to chronological age. But biologically speaking, a girl in the last year of primary school might easily be more developed (both physically and mentally) than a boy in the first year of secondary school, to give just one example. Thus, what people seem to be referring to is the social construction of age. Thereby chronological age is linked to the development of the child, which is a social construct that only partly reflects the biological 'facts' it is based upon. Thereby, chronological age is used as “[...] a proxy for biological development in the absence of individual biological assessments”.¹⁷ Hence, even chronological and biological definitions of age occur in a certain social context and are not really strict. It can thus be argued that these chronological definitions of age are also social constructs.¹⁸ What is problematic is that these definitions, since they occur at a specific moment, usually reflect the social understandings of this precise moment. When they are then used as legal definitions, they

19 Clark-Kazak, 2009, pp. 1313 ff.

20 In Ibid., p. 1314.

21 Aapola, 2002, p. 312.

22 Ibid., p. 301.

24 Clark-Kazak, 2009, p. 1316.

25 Convention on the Rights of the Child (CRC): Adopted on 20 November 1989; Entered into force on 2 September 1990.

remain unchanged for long periods of times, even if the society underwent relatively big transformations, such as the continuous increase of the average life expectancy. In order to be able to accommodate such social developments, legal definitions of age should be conceived broadly as to allow legal instruments to adapt to them. Too narrow a definition of age only reflects the understanding of the moment in time it was drafted in and hence will make its utilisation in a changed society very ineffective.

Alternatively, legal definitions of age could also refer to concepts that are not only built upon the chronological dimension. Such definitions could notably incorporate social age as an alternative or extension of chronological age. What social age can contribute to the field is the understanding that chronological age insufficiently reflects the social realities and differences of age. A social age analysis can add an extra dimension to the understanding of age, relating to the different experiences of young persons.

Such a social age analysis, according to Rose Clark-Kazak, starts with basic demographic information, such as chronological age groups and biological development indicators (e.g. infant mortality, life expectancy, etc.), in order to understand the relative presence of different age groups. Then, the various social meanings of biological development and chronological age have to be ascertained. Also an analysis of the generational division of labour plays an important role in understanding the division of power structures in the society. This should be linked with an analysis of intra- and inter-generational relationships.¹⁹ This permits to understand the reality young persons live in, as it directly relates to their experiences. A good example for the social definition of youth can be found in a quote of a mother living in a refugee camp in Uganda: “[Y]outh starts at puberty and goes until you’re married. If you’re not married you’re not considered an adult

and can’t sit with the men when they discuss [sic]”.²⁰ Hence, in this example, the definition of youth depends on the one hand on puberty, a biological characteristic, and on the other hand on marriage, a social act. This definition does not at all depend on chronological age. While the specificities will always differ from society to society, this example still shows the relevance of social age to fully understand the meaning of youth.

What can be learnt from this concept of social age for the discussion of youth rights? The main argument here is that, as social realities of young people vary widely, a narrow chronological definition of youth risks to exclude a large part of this group. It can indeed be said that the different concepts of age can have real effects on the rights of young persons.²¹ The concept of chronological age assumes that the age of a person measured in years since his/her birth gives a clear indication of differences and similarities between individuals. “For young people it means that almost every year their rights and responsibilities increase.”²² However, since it is a pragmatic solution, it has to be clear that such chronological definitions will always be more or less arbitrary, as the example of children’s rights shows (e.g. juveniles lose all protection from children’s rights when they turn 18).²³ On the other hand, the concept of social age shows that the meaning of youth is socially constructed. This does not mean that in legal terms there is no need for certain chronological limits; “[s]ocial age analysis [...] provides important contextualised meanings of [...] youth to supplement legal definitions based on chronological age.”²⁴

The consequence from this is that the definition of a young person should be constructed in a broad way, not a narrow one. As will be briefly discussed below, the Convention on the Rights of the Child (CRC)²⁵ applies a wide definition of children. In a

26 Clark-Kazak, 2009, p. 1309.

27 See Angel, 1995, pp. 157 ff.

28 Ubi, 2010, p. 3.

29 International Covenant on Economic, Social and Cultural Rights; Entered into force on 3 January 1976. Emphasis added.

30 The International Bill of Rights, at the very least, covers the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

31 Clark-Kazak, 2009, p. 1308.

32 "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." CRC, Art. 1.

33 Clark-Kazak, 2009, p. 1308.

34 World Programme of Action for Youth to the Year 2000 and Beyond; Adopted on 14 December 1995. See Chapter 3.3 for more information on the WPAY.

35 Detrick, 1992, pp. 115 ff.

similar way, it seems that the experiences of young persons are so diverse that only a wide definition can ensure an effective protection of youth rights. A narrow definition might still offer protection to some young persons, but it will inevitably lose effectiveness as many young persons will be excluded from its reach. Hence it should always be linked to a careful social age analysis to allow for exceptions if needed. Such a social age analysis could also be used to render a more precise and broad redefinition of youth, for instance in cases of doubt about possible misuses.

While it is important to keep these points in mind when talking about age, "[...] it is unlikely that [...] governments will relinquish the administrative efficiency that chronological definitions imply".²⁶ The next section thus looks into the chronological definitions that governments and international organisations currently use. In the absence of explicit definitions, other sources are used to outline possible understandings of the meaning of youth and to show that in some legal texts the category of youth/young person already exists.

2.2 — Different Definitions of Youth/Young Persons in International and National Law: The Lack of Clear Definition

2.2.1 — The Global Level

In the United Nations (UN) system a few different references to young persons and youth can be found. Youth became the focus of attention in the UN for the first time in 1965, when the General Assembly adopted Resolution 2037 on the Promotion Among Youth of the Ideals of Peace, Mutual Respect and Understanding Between Peoples.²⁷ This resolution noted the potential contribution of youth to peaceful development.²⁸ Very prominently, Article 10(3)

of the International Covenant on Economic, Social and Cultural Rights (ICESCR) reads "[c]hildren and young persons should be protected from economic and social exploitation".²⁹ From this formulation it can be assumed that children and young persons are to be understood as two non-identical groups. Thus the International Bill of Rights³⁰ recognises that young persons constitute a group that differs from children in at least some points. Yet, "[i]n international law, no definition of a 'young person' exists".³¹ While the category of children is clearly defined through the CRC, as all individuals below 18 years of age,³² the category of young persons remains without a legally binding definition. However, what does exist are some non-binding working definitions. Most notably, the UN held an International Youth Year in 1985, for which youth was defined as individuals between the ages of 15 and 24.³³ This definition was indirectly reconfirmed by the UN General Assembly through the UN World Programme of Action for Youth to the Year 2000 and Beyond (WPAY) which, when talking about the world youth population, notes that youth is "[...] defined by the United Nations as the age cohort 15-24 [...]".³⁴

It is interesting to note that this definition existed already during the time of the drafting of the CRC, which was adopted by the UN General Assembly on 20 November 1989. During the drafting of the CRC, the definition of child age was not uncontroversial and many states took the position that the age 18 was too high. During the negotiations, this led to the inclusion of the qualification "[...] unless under the law applicable to the child, majority is attained earlier".³⁵ The fact that, even if surrounded by a controversy and given the existence of the separate category of youth, still a range of age was adopted that included an overlap, may be interpreted as an attempt to offer the widest possible range of protection, also partly including young persons. This could

36 Macmillan Dictionary, Definition of 'Juvenile', at <http://www.macmillandictionary.com/dictionary/british/juvenile> (consulted on 21 May 2010).

37 The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); Adopted on 29 November 1985. Para. 2.2(a).

38 United Nations Rules for the Protection of Juveniles Deprived of their Liberty; Adopted on 14 December 1990. Para. 11(a).

39 Council of Europe Publishing, 2010, p. 2.

40 Council of Europe Publishing, 2010, p. 2.

be seen as an attempt to offer a certain degree of protection to young persons, in the absence of a specific Convention on youth rights. Furthermore, as has been shown above, such a relatively broad definition can also be seen as positive from the point of view of alternative concepts of age. It also seems relevant to note that the definition of what a child precisely is was only done through the CRC, while the term child was already widely used before the existence of an actual definition, as is shown below. Thus, it is not unusual that a term is first used in a general way and only later on specified through a definition.

The term 'juvenile', usually used for "[...]young people who have committed a crime or who are accused of committing a crime",³⁶ is also often used. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) define a juvenile as "[...] a child or a young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult".³⁷ Thus, in a negative context (as this definition only applies to juvenile offenders), it is very clear that the category of young persons exists and differs from a child, as is shown by the formulation "a child or a young person". Subsequently, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty specified that for the purposes of the Rules, "[a] juvenile is every person under the age of 18".³⁸ Thus, while the Beijing Rules clearly differentiated between children and young persons, the Rules for the Protection of Juveniles Deprived of their Liberty, while not directly referring to children or young persons, uses a definition that confines the term juveniles to the same age-group as children in the sense of the CRC. While the argument can be made that the Beijing Rules showed that children and young persons do not form an identical group, it remains unclear why the term juvenile

subsequently was narrowed down. This can either indicate that in the context of juvenile offenders the initial definition covering children and young persons was considered too broad at a later point and thus the definition was narrowed down to exclude young persons over 18 years of age, or it can be understood in the sense that the two definitions are covering the same group and thus that children and young persons, while being distinct groups, both only go up to the age of 18 and hence young persons would form a sub-category of children. This has never been clarified and it remains unclear which interpretation is more accurate.

2.2.2 — The European Level

On the European level, both the CoE and the EU are running activities directly affecting and concerning youth. It should thus be asked, what definition of youth these organisations are basing their activities on, thereby also answering the question of relevant definitions of youth in Europe.

In 1970, the CoE youth sector was set up with the aim to disseminate the core values of the organisation amongst young persons.³⁹ Today, the sector runs many different programmes and projects, however, there seems to be no explicit definition of the meaning of youth. In absence of such an explicit definition, it seems that ad hoc definitions are used by the different projects when needed. For instance, for the 'All Different – All Equal' campaign for diversity, human rights and participation, the very broad target group of "[y]oung people aged 12-30 years [...]" was adopted.⁴⁰ However, as this was only a one year project amongst others, this definition cannot be seen as having much impact outside of the project. The revised European Social Charter (ESC (revised))⁴¹ declares, in a way comparable to Article 10(3) of the ICESCR, that it is a policy aim to ensure that "[c]hildren and young persons

41 European Social Charter (revised) (ESC (revised)); Adopted on 3 May 1996; Entered into force on 1 July 1999.

42 Ibid., Part I(7).

43 Ibid., Part I(17).

44 Ibid., Art. 7 (on the right of children and young persons to protection), Art. 9 (on the right to vocational guidance), Art. 17 (on the right of children and young persons to social, legal and economic protection). Furthermore, in Art. 10 (on the right to vocational training), the ESC (revised) also refers to “young boys and girls” and to “young workers”, again without specifying its meaning. Also the official Explanatory Report on the ESC (revised) offers no explanations. See European Social Charter Explanatory Report.

45 ECHR, Art. 6(1) on the Right to a Fair Trial refers to the “interests of juveniles”; The European Convention on the Promotion of a Transnational Long-term Voluntary Service for Young People offers no explanation what is meant by ‘young people’ (Adopted on 11 May 2000).

46 Treaty on European Union; Adopted in Maastricht on 7 February 1992; Entered into Force on 1 November 1992.

47 Art. 126 of the Treaty establishing the European Community (which was a part of the Treaty on European Union) gave the European Union limited competencies in the field of youth. (In 1997, the Treaty of Amsterdam (published in the Official Journal C 340 on 10 November 1997) changed the numbering to Art. 149 of the Treaty establishing the European Community, without changing the content.)

48 Decision No 1031/2000/EC of the European Parliament and of the Council of 13 April 2000 establishing the ‘Youth’ Community Action Programme; Art. 4(1).

49 Decision No 1719/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing the ‘Youth in Action’ programme for the period 2007 to 2013; Art. 6(2).

50 The chosen countries and laws are intended to present some examples and are not presenting an exhaustive overview. As all selected countries included references to youth, young persons or juveniles in some laws, it can be assumed that these categories exist in most, if not all, European states.

51 Youth Act (72/2006), Part 1, Section 2, Para. 1(1). Original emphasis.

52 Criminal Code of Finland (39/1889, amendments up to 940/2008 included), Chapter 20, Section 8a(1), 743/2006. Unofficial translation.

53 For example: Criminal Code of Finland, Chapter 20, Section 9a(4) on aggravated pandering: “the object is a child younger than 18 years of age”.

54 Primary Health Care Act (66/1972), Chapter 3, Section 14(4). Unofficial translation.

55 Child Welfare Act (417/2007; amendments up to 1390/2007 included), Chapter 1, Section 6. Unofficial translation.

56 Act on the Public Employment Service (2002/1295), Chapter 1, Section 7(4). Emphasis in original. Unofficial translation.

have the right to a special protection against the physical and moral hazards to which they are exposed”⁴² and that “[c]hildren and young persons have the right to appropriate social, legal and economic protection”.⁴³ Furthermore, the ESC (revised) refers several times to children and young persons without offering any kind of explanation or definition of the meaning of children or young persons.⁴⁴ The fact that Article 9 on the right to vocational training also refers to “young persons, including schoolchildren” clearly indicates that in its normal use, children and young persons are not considered identical and also that young persons do not merely form a sub-group of children. While also other treaties of the CoE refer to young people and juveniles, none of them offers any kind of definition what those terms specifically mean.⁴⁵ Hence it can be said that there is no definition of youth in the CoE, not even a recurring working definition.

Since the adoption of the Treaty of Maastricht on European Union,⁴⁶ the EU also gained certain competencies in the field of youth.⁴⁶ However, there seems to be no explicit definition of the meaning of youth in the framework of the European Community or Union. One of the direct outcomes of this competence in the field of youth was the programme ‘YOUTH’, a programme for mobility and non-formal education. In the frame of this programme, “young people” were understood to be between 15 and 25 years of age, even though the limits could be slightly altered if necessary for a specific project.⁴⁷ In 2006, the YOUTH programme was replaced by the ‘Youth in Action’ programme, which is in principle aimed at “[...] young people aged between 15 to 28, although certain actions are open to young people aged as young as 13 or up to the age of 30”.⁴⁸ While there is no explicit definition of youth in the EU, those two main programmes of the EU in the field of youth show what age-group is covered. Thus the understanding of

youth was expanded from the initial 15 to 25 years of age to the current 15 to 28 years of age, with a certain flexibility

2.2.3 — Examples from the National Level

On the national level many different definitions of the meaning of youth exist. The following pages offer some examples of such legal definitions by some European countries, however they do not claim to be exhaustive or even representative.⁴⁹

In Finnish law, the category of young persons can be found in several places. In its dedicated legislation on youth, the Youth Act, “young people means those under 29 years of age”.⁵⁰ Very prominently, the Finnish penal code in Chapter 20 on ‘Sex Offences’ speaks of a young person as “[...] a person younger than 18 years of age [...]”.⁵¹ In other places, the Finnish penal code also speaks of children younger than 18 years of age, thus there seems to be a difference between children and young persons, even if they cover the same age group.⁵² In a different context, the Finnish Primary Health Care Act speaks of “children and young people”, without further specifying the difference between the two groups.⁵³ A possible example for this difference can be found in the Child Welfare Act, where it is stated that “[i]n this Act, anyone under 18 years of age is considered to be a child and anyone 18-20 years of age a young person”.⁵⁴ Another very clear definition for the meaning of a young person is given by the Act on the Public Employment Service. In Section 7 on Definitions it specifies that “a young person means an unemployed jobseeker aged under 25”.⁵⁵ Yet another definition is used in the Finnish Nationality Act, where a young person is defined as “[a] person who has reached the age of 18 but not 23 years [...]”.⁵⁶ Hence, in Finland alone, there are at least five distinct

57 Nationality Act (359/2003; amendments up to 974/2007 included), Chapter 4, Section 28(1). Unofficial translation.

58 Jugendwohlfahrtsgesetz, Entered into force on 1 July 1999. Own translation.

59 Bundesgesetz über Gesundheits- und Krankenpflegeberufe, Entered into Force on 1 September 1997, Para. 18. Own translation.

60 Bundesgesetz über die Vertretung der Anliegen der Jugend, Entered into force on 1 January 2000, Para. 2(1). "Als Jugendliche im Sinne dieses Bundesgesetzes gelten alle jungen Menschen bis zur Vollendung ihres 30. Lebensjahres". Own translation.

61 Bundesgesetz vom 9. September 1955 über die Allgemeine Sozialversicherung, Entered into Force on 9 September 1955, Para. 123(4)(3). Own translation. It should be noted that this paragraph refers to the participation in European mobility programmes for youth and thus is not very representative.

62 Ibid., Para. 132a(2). Own translation.

63 Federal Law on Juvenile Courts, Entered into Force on 20 October 1988. Own translation.

64 Achtes Buch Sozialgesetzbuch - Kinder und Jugendhilfe, Entered into Force on 26 June 1990, Chapter 1, Para. 7(1). Own translation.

65 Children and Young Persons Act 2008, Section 7(6) further defines that "children" means persons under the age of 18". Hence this can be understood as differentiating between children and young persons.

definitions of young persons covering very different age groups.

In Austria, the situation is slightly more complicated due to the federal structure of the state. Overall, Austrian laws refer in many places to young persons, juveniles and youth, though often without offering a definition of those terms. For example the Federal Law on Youth Welfare Services (Jugendwohlfahrtsgesetz) goes entirely without defining the meaning of youth.⁵⁷ In a way comparable with the Finnish Primary Health Care Act, the Federal Law on Health Care and Nursing Professions (Bundesgesetz über Gesundheits- und Krankenpflegeberufe) also speaks about children and young persons without specifying the difference between the two.⁵⁸ The Federal Law on the Representation of the Interests of Youth (Bundesgesetz über die Vertretung der Anliegen der Jugend) defines young persons as all persons before completion of their 30th year of life.⁵⁹ The Federal Law on Social Insurance (Bundesgesetz vom⁶⁰. September 1955 über die Allgemeine Sozialversicherung) refers to young persons ('junge Menschen') as being persons before completion of their 27th year of life.⁶¹ The same law also refers to juveniles ('Jugendliche') as being between 15 (or younger if they finished compulsory schooling earlier) and 18 years of age.⁶² A comparable definition can be found in the Federal Law on Juvenile Courts (Jugendgerichtsgesetz), which differentiates between minors (younger than 14 years of age) and juveniles (between 14 and 18 years of age).⁶³ In Austria, the federal legislation thus often refers to youth, but uses even less clear definitions than is the case in Finland.

A very interesting example of a precise definition can be found in the German Eighth Book of the Social Security Code on Child and Youth Welfare (Achstes Buch Sozialgesetzbuch - Kinder und Jugendhilfe). In the frame of this law a child ('Kind') is younger than 14 years

of age (unless specified otherwise), a juvenile ('Jugendlicher') is between 14 and 18 years of age, a young adult ('junger Volljähriger') is between 18 and 27 years of age and a young person ('junger Mensch') is every person younger than 27 years of age.⁶⁴ On the other hand an example for an unclear definition can be found in the United Kingdom, where the Children and Young Persons Act 2008 differentiates between children and young people in the title, however no definition of this differentiations can be found in its text. Part 2, Section 7(4) reads: "The Secretary of State may take such action as the Secretary of State considers appropriate to promote the well-being of [...] persons under the age of 25 [...]", which may be understood as giving a certain definition of the meaning of children and young persons.⁶⁵

As mentioned above, these examples are taken rather randomly and are by far not exhaustive. However, what they show is that the legal category of young persons already exists – in many different forms – in national legislation. Sometimes the laws offer very precise definitions, sometimes they offer no definition at all. Yet in every of the four countries mentioned above there was a legal category of young persons distinct from the category of children.

Overall, the terms youth and young persons thus are used relatively often on the global, European and national level. They are used in very different ways, whereby clear definitions are quite rare and only apply to the context they were created in. In none of the analysed cases a comprehensive definition could be found. However, in the absence of comprehensive definitions there seems to be a relatively clear trend that young persons form a category on their own, separate and different from the category of children.

66 While initially the UN mostly used the term 'the Elderly' and (less frequently) 'the Aged', since the early 1990s the term 'Older Persons' is mostly used. However, no official definition of any of these terms was found.

67 Only Somalia and the United States of America have not ratified the CRC. See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mdsg_no=IV-11&chapter=4&lang=en (consulted on 31 May 2010).

68 Cantwell, 1992, p. 19.

69 Ibid., p. 20.

70 Ibid.

71 Ibid., p. 29.

72 See CESCR General Comment 6 on the economic, social and cultural rights of older persons; Adopted by the Committee on Economic, Social and Cultural Rights on 8 December 1995; Para. 1 f.

73 United Nations Principles for Older Persons; Adopted by the General Assembly as Annex to Resolution 46/91 (Implementation of the International Plan of Action on Ageing and related activities) on 16 December 1991; A/RES/46/91.

74 Weissbrodt, 2009, p. 50 f.

2.3 — Excursus: The Creation of New Categories of Persons Based on Age

The creation of categories of persons based on age is nothing new in the international system, as the existence of the category of children and also the less well known category of older persons⁶⁶ shows. This section presents a brief overview of the creation of these two categories in order to outline their development and lessons that could be learned for the field of youth rights.

Probably the most important category of persons based on age is the category of children. The CRC is a human rights instrument with practically universal acceptance.⁶⁷ However, the creation of this treaty did not happen over night, but rather was the result of a very long process. The rights of the child were first mentioned in an internationally recognised text in the year 1924 in a resolution by the League of Nations. In 1948, the United Nations General Assembly adopted a seven-point declaration on the rights of the child, which was followed in 1959 by the Declaration of the Rights of the Child. Then, in 1978, the official drafting process of the CRC was initiated and it would take another 21 years until the CRC was signed.⁶⁸ As the early declarations did not offer precise definitions of the rights of the child, in the 1970s they were referred to as “a concept in search of a definition”.⁶⁹ One important factor in the development of children's rights was the transition after 1948 from human rights treaties focusing on acts (such as the prohibition of genocide or slavery) to an increased inclusion of measures for specific groups (such as refugees, women, etc.).⁷⁰ While not everybody agreed or still agrees that a specific convention for children was needed, the convention definitely has “[...]enhanced the position of children on the agenda of the world's concerns[...].” and it has proven its usefulness “[...]as a set of guidelines

and directives for action, and as a tool for promoting knowledge and understanding of children's issues”.⁷¹

On the other end of the age scale, older persons also exist as a category of persons, although this category is not as well protected as the one of children. One of the most important reasons for the development and strengthening of this category is the current trend of population ageing in most societies.⁷² The development began in 1982, when the International Plan of Action on Ageing was adopted by the World Assembly on Ageing. This was followed in 1991 by the adoption of the United Nations Principles for Older Persons by the General Assembly, which consist of 18 principles in five areas: independence, participation, care, self-fulfilment and dignity.⁷³ Then, in 1995 followed the CESCR General Comment No.6 on the economic, social and cultural rights of older persons. These developments lead to the declaration of 1999 as the International Year of Older Persons.⁷⁴ While no legally binding treaty specifically aiming at older persons was concluded, these developments still show that this category of persons is clearly recognised in the international system.

These two examples show that categories of persons based on age have been recognised by the international community in the past. While the category of children is strongly entrenched in international law through a widely ratified treaty, also the category of older persons seems to be widely recognised, although not in a legally-binding form. Both groups are also based on age and thus their developments could serve as examples how youth could gain greater recognition in international law. As mentioned earlier, 1985 was the International Youth Year, which can be understood as a first step towards greater recognition of the category of young persons. Thus, while youth today does not seem to be an

accepted category of persons in international relations, the creation and development of the categories of children and older persons shows that this might change in the future.

2.4 — Consequences for the Protection and Promotion of Youth Rights: The Need for Comprehensive Definitions

What this chapter has showed so far is that most international organisations are already active in the field of youth and most national governments already refer to youth and young persons in their legislation. It has also showed that legal categories based on age can be – and indeed have been – created in international and national law. One of the most important lessons that can be learnt from this is that what is missing at the moment is a clear and comprehensive definition of the meaning of youth. Currently, the different definitions used by the main actors vary quite widely, which might be one of the reasons why no international definitions have been agreed upon.

When taking into account the concept of social age, it should be clear that such a definition would have to be both wide and flexible in order to be able to accommodate the different situations young persons are living in. While it seems unlikely that a definition can go without using chronological age limits, this does not prevent the use of social age in the development of these limits. It also does not prevent the use of the concept of social age when working with borderline cases. Taking into account the development of the legal category of children, it thus seems that a definition of young persons that is sufficiently broad could on the one hand guarantee the inclusion of as many young persons as possible, while also ensuring that an instrument on youth rights would be a living instrument, able to

adapt to changes in society. Having said that, such a wide and flexible definition would also encompass the different national definitions, while also creating the possibility to adapt the definition to local contexts, for instance through social age analysis.

What follows is that –as was the case for children's rights in the 1970s– the category as such is not missing. Many examples for the existence of this category have been found. However, what is still missing is a comprehensive definition. While the existing definitions and working definitions vary widely, it has been shown that it would be feasible to develop such a comprehensive definition. Furthermore, the absence of such a definition does not prevent the fostering of youth rights, as the example of older persons shows. And while at the moment no efforts to further define youth rights on the international level are apparent, this does not have to prevent the European level and/or national states from proceeding with comprehensive definitions adapted to their respective contexts. The reason that this has not happened so far indicates that at the moment there is no political will to do so. The problem is not that it would not be possible to do so or that youth does not form a special category, but there seem to be other reasons, most likely political in nature, that prevent states from agreeing upon a comprehensive definition of youth. While investigating what these obstacles are to such an agreement is highly interesting for future research, it would be purely speculative to try and address them here. What can be learned from it is that either there are arguments against such definitions (although none were found during the research for the present thesis) or their need has been overlooked so far. Which of the two is more accurate remains open.



3 — Looking Beyond The Obvious:
Learning From Other Regions

75 African Union, 2010. As the AYC is a young document, signatures and ratifications are developing quite dynamically. In the first months of the year 2010 alone (up until the end of May), 3 states have signed the AYC (the Comoros, Lesotho and Sao Tome & Principe) and 2 states (Angola and Ivory Coast) have deposited their instruments of ratification.

76 Panday, 2010. Dr. Saadhna Panday is a research specialist in the Child, Youth, Family and Social Development research programme of the Human Sciences Research Council, South Africa's statutory research agency. He also played an important role in the drafting of the AYC.

77 AYC, Preamble.

78 Ibid., Definitions. Original emphasis. While the AYC defines 'minors', it only uses the term twice in Art. 18 on law enforcement. On the other hand, the AYC often refers to young persons, however without further specifying if this term is used differently than young people.

79 The list of prohibited grounds of discrimination is quite extensive, covering "[...] race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status" (AYC, Art. 2(1)). The general discrimination prohibition only covers the grounds of "[...] status, activities, expressed opinions or beliefs" (AYC, Art. 2(2)). Furthermore, Art. 24 also specifically protects mentally and physically challenged youth.

80 The following articles contain explicit references to the equality of young women and men: Art. 8 (protection of the family), Art. 11 (youth participation), Art. 12 (national youth policy), Art. 13 (education and skills development), Art. 15 (sustainable livelihoods and youth employment), Art. 20 (youth and culture), Art. 22 (leisure, recreation, sportive and cultural activities). Furthermore, Art. 23 is entirely devoted to girls and young women.

81 AYC, Art. 2(3).

82 These contain: the freedom of movement (Art. 3), of expression (Art. 4), of association and of thought (Art. 5), of conscience and religion (Art. 6), the protection of private life (Art. 7), of family (Art. 8), property rights (Art. 9) and law enforcement (Art. 18; covering the prohibition of torture and due process).

83 Both paragraphs of Art. 4 on the freedom of expression are "subject to the restrictions as are prescribed by laws" and Art. 5(1) specifies that "[e]very young person shall have the right to free association and freedom of peaceful assembly in conformity with the law". See also African Charter on Human and Peoples' Rights; Entered into force on 21 October 1986; Art. 6, 11, 12(2).

3 — LOOKING BEYOND THE OBVIOUS: LEARNING FROM OTHER REGIONS

3.1 — The African Youth Charter

The AYC was adopted by the Assembly of the African Union in Banjul, the Gambia on 2 July 2006. It entered into force on 8 August 2009, after the 15th member state of the AU ratified the Charter. Out of the 53 member states of the AU, currently 37 are signatories of the AYC, while 21 have deposited their instruments of ratification.⁷⁵ The importance of the AYC (and probably also one of the main reasons why it was created) stems from the fact that youth makes up the largest and fastest growing part of the African population. Thus it is – for now – in a very different situation than Europe, where the population is ageing. Saadhna Panday describes the challenges young persons face in Africa as the following:

"[I]t is estimated that 130 million young people are illiterate; youth unemployment is three times higher than that among adults; and 162 million young people in sub-Saharan Africa live on less than US\$2 a day. Millions of young people find themselves without education and training[...]. They are also easily drawn into conflict and violence."⁷⁶

These circumstances form the context in which the AYC was drafted and adopted.

The Preamble, amongst the usual diplomatic formulations of international treaties, refers to the UN World Programme of Action for Youth to the Year 2000 and Beyond. It also notes that "[...] Africa's greatest resource is its youthful population and that through their active and full participation, Africans can surmount the difficulties that lie ahead", thus noting the great importance ascribed to youth. It also mentions

some of the problems young persons face in Africa, such as for instance the HIV/AIDS pandemic and most of the problems mentioned above. It stresses the need for cross-sectoral policies to effectively solve these problems.⁷⁷

The Preamble is followed by the definitions of the terms used by the Charter. It defines 'minors' as being between 15 and 17 years of age, whereas "youth or young people shall refer to every person between the ages of 15 and 35 years".⁷⁸ When comparing this with the definitions found earlier in Chapter 2 it becomes apparent that, while the definition of minors is quite narrow, the overall definition of youth is a very broad one, covering a long period of time.

The substantive part of the AYC then covers the rights and duties of these young persons. Article 1 contains the obligation by the states parties to undertake legislative and other measures to give effect to the provisions of the Charter, thus emphasising its legally binding nature. The second Article contains a prohibition of discrimination both for the enjoyment of the rights contained in the AYC, but also of a general nature, although in a more narrow sense.⁷⁹ Another important focus is the equality of young women and men, which can be found several times throughout the AYC.⁸⁰ It also guarantees young persons from marginalised or indigenous groups the enjoyment of their own culture, religion and language in community with other members of their groups.⁸¹ Thus, it not only creates individual rights, but also collective rights for young persons from marginalised and indigenous groups.

The AYC contains several articles covering universal civil and political rights adapted to youth.⁸² With respect to freedom of expression and freedom of association the AYC contains strong clawback clauses comparable to the ones in the African Charter on Human and Peoples' Rights (ACHPR).⁸³ However, it seems probable that the reflections of the African

84 See Odinkalu, 2001, pp. 105 f.

85 These contain: the right to education (Art. 13), poverty eradication and socio-economic integration of youth (Art. 14), sustainable livelihoods and youth employment (Art. 15), health (Art. 16), sustainable development and protection of the environment (Art. 19) and youth and culture (Art. 20).

86 Ibid., Art. 14.

87 Ibid., Art. 16.

88 Ibid., Art. 13. Similarly, Art. 25 altogether aims at the elimination of harmful social and cultural practices, although in a rather general and unspecific way.

89 Ibid., Art. 10.

90 Ibid., Art. 10(1).

91 Ibid., Art. 10(3)(b), 10(3)(d).

92 Ibid., Art. 17(1)(d).

93 Ibid., Art. 21.

94 See ACHPR, Part I, Chapter II.

Commission on Human and Peoples' Rights on the clawback clauses in the ACHPR are also applicable to the clawback clauses in the AYC, i.e. that national laws cannot be used to defeat the manifest purpose and character of the Charter.⁸⁴

The AYC also contains many economic, social and cultural rights.⁸⁵ These are often very specific for the African context and thus not always relevant for other regions. For instance, with respect to poverty eradication and socio-economic integration of youth, the Charter specifies that young persons have the right to be free from hunger, which – while being somewhat obvious – is very pressing in some African countries.⁸⁶ In the field of health, the HIV/AIDS pandemic plays a very important role due to the great impact it has on African societies.⁸⁷ With respect to education it also includes contentious subjects, such as female genital mutilation or “[...]culturally appropriate, age specific sexuality and responsible parenthood education”.⁸⁸

However, the Charter also contains more innovative approaches, such as the right to development.⁸⁹ While the clause “[e]very young person shall have the right to social, economic, political and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind”⁹⁰ may sound positive, it is formulated in such a general manner that the exact meaning remains unclear. Hence it seems unrealistic that it may be of much use on the ground. On the other hand, this article also offers very precise clauses, such as the duty to develop youth media and the provision of education and training on the rights of young persons.⁹¹ One of the most interesting articles is Article 11 on youth participation. It contains a list of duties for the governments, such as the participation of youth in parliament or the creation of peer-to-peer programmes for marginalised youth. This article offers

quite precise clauses on how to increase the participation of young people in politics and – if applied carefully – could have very positive effects. The AYC also aims to shelter young persons from the negative effects of war and conflict. While this is a commendable step, it has to be noted that the clauses are not very far reaching. The states parties shall merely “[c]ondemn armed conflict and prevent the participation, involvement, recruitment and sexual slavery of young people in armed conflict”,⁹² without creating the possibility of conscientious objection for young persons or a categoric ban of the use of minors in armed conflicts. Given the widespread use of child soldiers in some African countries, this is very disappointing. It is also noteworthy, that the AYC dedicates an article to the youth in the diaspora, aiming for instance to establish an equivalence of degrees and to encourage young persons to return to Africa.⁹³

Like the ACHPR, the AYC does not only contain rights, but also duties of young persons.⁹⁴ Article 26 on the responsibilities of youth notes that every young person has duties towards his or her family, the society, the state and even the international community. Amongst others, they also have the duty to have respect for their parents and elders, the duty to defend democracy and the duty to promote, preserve and respect African traditions. They are written in a very general way and their practical application seems unlikely. This is not to say that these duties are meaningless, however they seem irrelevant for the present thesis, as they are hardly useful outside of the African context.

Overall, the AYC contains several articles that offer only few truly new rights and often merely specify universal human rights, such as concerning the freedom of expression. Yet, other articles, such as for instance Article 11 on youth participation, are quite original and show the true potential of youth rights. A certain

95 The ICRY has currently (as of 30 March 2010) been ratified by the Dominican Republic, Ecuador, Costa Rica, Honduras, Spain, Uruguay and Bolivia, while Cuba, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Nicaragua, Portugal and Venezuela have signed and are in the process of ratification. See Child Rights Information Network, 2010 and <http://www.laconvencion.org/> (consulted on 30 March 2010).

96 ICRY, Preamble.

97 *Ibid.*, Art. 1.

98 *Ibid.*, Art. 8.

99 *Ibid.*, Art. 4.

100 *Ibid.*, Art. 5. It lists the following grounds: "race, colour, national origin, belonging to a national, ethnic or cultural minority, sex, sexual orientation, language, religion, opinion, social condition, physical abilities, disabilities, living place, economic resources or any other condition or personal or social circumstance".

101 Respectively: *Ibid.*, Art. 6, 7.

102 These contain: the right to life (Art. 9), to personal integrity (Art. 10), to protection against sexual abuse (Art. 11), to justice (Art. 13), to identity and personality (Art. 14), to honour, intimacy and personal image (Art. 15), to liberty and security of the person (Art. 16), to freedom of thought, conscience and religion (Art. 17), and of expression, assembly and association (Art. 18).

103 These are the Dominican Republic (which has abolished the death penalty for all crimes, so this is not that big a step), Cuba, Guatemala and Peru. While the latter three have not yet ratified the Convention, their bona fide 'obligation' is also significant. All the other signatories of the ICRY are either bound by the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty and/or the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. See Amnesty International, 2010.

104 ICRY, Art. 12(2).

105 Respectively: *Ibid.*, Art. 19, 20.

number of rights, especially in the economic, social and cultural fields, are very specific for the African context, thus making it hard to apply them in other regions. It is remarkable that the AYC covers such a broad spectrum of rights as civil and political rights, economic, social and cultural rights and, to a smaller degree, even collective rights. Furthermore, it also covers innovative approaches that are hard to categorise. Thus it can be said to be a very broad instrument, while obviously a number of clauses would not be applicable or acceptable in other regions.

3.2 — The Iberoamerican Convention on the Rights of Youth

The ICRY was signed in October 2005 by the member states of the OIJ in Badajoz, Spain. It entered into force on 1 March 2008, after Costa Rica became the fifth state who ratified the Convention, following Ecuador, the Dominican Republic, Honduras and Spain.⁹⁵ While the OIJ is a less important organisation than the AU, the ICRY remains very interesting for the subject, especially due to the fact that two of its signatories, Portugal and Spain, are European states. More importantly, as Spain already has ratified it, its content is legally binding on European soil.

In the Preamble, as in the AYC, the Convention also refers to the WPAY as a source of inspiration. It also explains that the underlying reason for a specific convention on youth rights is that young persons "form a social sector of singular characteristics" and notes that they encounter challenges in the fields of education, employment, health, environment, social and political participation, access to information, family, housing, sport, leisure and culture. For these reasons, the ICRY was created to specify the scope and contents of the international human rights

instruments.⁹⁶ The age bracket that is covered by the Convention is considerably more restrictive than in the AYC, covering only youth and young persons between 15 and 24 years of age.⁹⁷

In the substantive part, the Convention starts with general provisions and rights, such as the obligation to adopt legal measures to ensure the enjoyment of the rights set forth therein.⁹⁸ The rather unusual right to peace postulates that young persons have a right to a life without violence. While this is a quite flowery phrase, it also entails the more concrete right to the creation of a culture of peace through education.⁹⁹ In contrast to the AYC, it only contains an anti-discrimination provision concerning the enjoyment of the rights of the Convention and not a general prohibition of discrimination. However, the list of explicitly prohibited grounds of discrimination is even longer than in its African counterpart.¹⁰⁰ It also contains the right to gender equality and notes the importance of family.¹⁰¹

The second chapter contains civil and political rights, which – as in the AYC – often are merely adapting universal rights to the field of youth.¹⁰² Article 9 on the right to life bans the use of the death sentence for delinquents covered by the Convention. This is quite significant, as it is the first limitation on capital punishment by international law four of its signatories accept.¹⁰³ Linked to the right to peace mentioned above is the right to conscientious objection, which also includes the aim that states parties "advance in the progressive elimination of the obligatory military service", a quite strong formulation.¹⁰⁴ Furthermore, the same article also prohibits the involvement of young persons below the age of 18 in any military hostilities. The Convention ensures that young persons have rights inside the family (for instance the right to a hearing for minor young people in case of a divorce), but also the right to found a family.¹⁰⁵

106 Ibid., Art. 21(4).
Emphasis added.

107 These contain: the right to education (Art. 22), to culture (Art. 24), to health (Art. 25), to work (Art. 26), to working conditions (Art. 27, including the right to equal opportunities), to social protection (Art. 28), to vocational training (Art. 29), to a healthy environment (Art. 31), to leisure and recreation (Art. 32) and to sport (Art. 33).

108 Ibid., Art. 23.

109 Ibid., Art. 25(3).

110 Ibid., Art. 30(2).

111 Ibid., Art. 32(2).

112 Ibid., Art. 34(1).

113 Ibid., Art. 36.

114 See WPAY,
Section IV, Paras 18 ff.

This also means that states shall ensure the compatibility of family life and work. While the ICRY also contains the right to political participation of youth, this is considerably more limited than in the AYC. For instance, it only aims at promoting “the participation of youth in the formulation of policies and laws concerning youth”.¹⁰⁶ What completely lacks is a cross-sectoral approach, or the idea of mainstreaming youth in 'general' politics.

Thereafter follow the economic, social and cultural rights.¹⁰⁷ Beside the general right to education, it is particularly noteworthy that the ICRY also includes the freedom to sexual education in a very progressive manner. Thus, states shall ensure that sexual education shall be taught on all levels, also aiming at the full acceptance of their sexual identities.¹⁰⁸ Accordingly, young persons also have the right to confidentiality concerning their sexual and reproductive health, which aims at strengthening their autonomy.¹⁰⁹ The underlying theme of strengthening the autonomy of youth can also be found in several more places, such as for instance the duty to ease their access to decent housing.¹¹⁰ It is also remarkable that the ICRY explicitly creates many positive obligations for the states, such as for instance to implement programmes which promote youth exchanges between the different countries.¹¹¹ It also designates youth as being priority subjects within the right to development.¹¹²

In the last Chapter containing the mechanisms for promotion, the Convention also places on the states, upon request of the Secretary-General of the OIJ and in fields he or she deems appropriate, the duty to report on their national youth policies concerning its effective implementation. These reports will then be submitted to the Committee of Youth Ministers, although no mechanisms in the case of non-compliance are specified.¹¹³

Like the AYC, the ICRY also contains many

universal rights that have been adapted to youth. It also contains both civil and political rights and economic, social and cultural rights, but overall its scope is less broad, which can also be seen in the narrow definition of youth. However, it is written in a more precise language and also includes a limited reporting mechanism, which will probably prove advantageous when it comes to implementing it on the national level.

3.3 — Learning From Others : Good Practices for Europe ?

When comparing the AYC and the ICRY, there are many similar provisions. This can probably be at least partly explained by the fact that both were inspired by the WPAY. While the WPAY is a declaration by the UN General Assembly and hence not legally binding on member states, it still seemed to have a certain impact. Notably, the WPAY identified ten priority areas that needed enhanced attention: education, employment, hunger and poverty, health, environment, drug abuse, juvenile delinquency, leisure-time activities, girls and young women and the full and effective participation of youth in the life of society and in decision-making.¹¹⁴ For most of it, these ten priority areas can be found in both treaties. It thus seems that these fields can be identified as being of the highest priority on the global level (and probably also in most regions of the world). Furthermore, the WPAY stresses the importance of the regional level, by noting that:

“Regional intergovernmental meetings of ministers responsible for youth, in cooperation with the concerned United Nations regional commissions, regional intergovernmental organizations and regional non-governmental youth organizations, can make particular contributions to the formulation,

115 Ibid., Para. 118.

116 The importance of such mechanisms can be seen in the above mentioned case of the clawback clauses in the ACHPR. Without the clearing interpretation of the African Commission on Human and Peoples' Rights, the states might have arbitrarily used these clauses to undermine the functioning of the ACHPR, thus there would have been a great risk of rendering the concerned articles void. The same holds for the AYC, but in the absence of a treaty body, one can merely hope that the member states will remember and apply the interpretation of the African Commission on Human and Peoples' Rights.

117 For lack of space, the interesting question what effects they have on the ground will have to be answered elsewhere.

implementation, coordination and evaluation of action at the regional level, including periodic monitoring of regional youth programmes.”¹¹⁵

It can thus be said, that regional organisations and mechanisms can play an important role in strengthening youth rights.

The two examples presented above show one potential way to protect and promote youth rights, namely through international treaties. Concerning their content it can be said that such treaties seem to be a mixture of adopting existing universal human rights and introducing new and at times innovative rights. One important question this work cannot answer is the question of the efficiency and efficacy of these two legal instruments. However, it can be said that the impact an international treaty has usually depends directly on the power of their supervision and monitoring mechanisms.¹¹⁶ While the object of this analysis was not to assess the impact these instruments have on the ground, it is still important to note the importance of such mechanisms to ensure the implementation of such treaties.¹¹⁷ And in this respect, both the AYC and the ICYR do not present a very good image.

Both lack real international monitoring mechanisms, thus their efficacy fully depends on the respective legal systems and the willingness (or ability) of the governments to implement them effectively. While the ICYR contains, although in a weak formulation, at least some duty for the states to report on their youth policies, the AYC contains no supervision or monitoring mechanism at all. Given that many of the states of both systems do not have the strongest track record in the rule of law, it remains to be seen, whether such a treaty, without other supervision mechanisms, can have a strong effect in all of the signatory states. However, this is not to doubt that it will have a positive effect in at least some of these states, which in itself probably suffices

to legitimise such a treaty. Furthermore, it is not unusual that such supervision mechanisms are created at a later moment.

While this clearly shows the limits of these treaties, they still prove that youth rights can be – and indeed are – protected through international law. While the precise content of such a treaty, as shown above, will always be tailor-made to the respective system to a certain extent, there are also many similarities between the two regional treaties. One of the most important points in common is that, while the protection of youth rights plays an important role, the promotion of these rights seems to be the main improvement compared to existing human rights treaties. Hence, it can be said that this comparative study of the AYC and ICYR revealed no reasons why such a youth rights treaty would not be at least one of the options to increase the protection and promotion of youth rights in Europe. However, the question of how youth rights could best be protected in Europe largely depends on the challenges young persons face and how the existing instruments can be used to protect and promote these youth rights.



4 — Neither Child — Nor Adult:
Challenges Young Persons
Face In Europe



118 The European Youth Forum is an international non-profit association under Belgian law. It was established by National Youth Councils (NYCs) and International Non-Governmental Youth Organisations (INGYO) in Europe. Currently it has 99 member organisations from all over Europe. It is the main partner of both the EU and the CoE in the field of youth, working to represent the interests of young persons from all over Europe and also cooperating with them on concrete projects. (The abbreviation YFJ stands for Youth Forum Jeunesse, in order to accommodate both English and French, which are the official languages of the organisation.) For more information see <http://www.youthforum.org/>.

119 Some (random) examples showing the differences across Europe: Austria: active voting age: 16 years of age (Bundes-Verfassungsgesetz (Federal Constitutional Law), Entered into force on 1 January 1930, Art. 26(1)), passive voting age: for the national council: 18 years (Ibid., Art. 26(4)), for presidential elections: 35 years (Ibid., Art. 60(3)); Estonia: active voting age: 18 years (Constitution of the Republic of Estonia, Entered into Force in 1938, Para. 57), passive voting age: for the parliament: 21 years (Ibid., Para. 60), for presidential elections: 40 years (Ibid., Para. 79); France: active voting age: 18 years (Code électoral (Electoral Code), Entered into force on 7 August 2009, Art. L2), passive voting right: for the chamber of deputies: 18 years (Ibid., Art. L44), for the senate: 30 years (Ibid., Art. L0296); Germany: active voting age: 18 years (Grundgesetz der Bundesrepublik Deutschland (German Basic Constitutional Law), Entered into force on 8 May 1949, Art. 38(2)), passive voting age: for the parliament: 18 years (Ibid.), for presidential elections: 40 years (Ibid., Art. 54(1)); Italy: active voting age: for the chamber of deputies: 18 years (Constitution of the Italian Republic, Entered into force on 22 December 1947, Art. 48), for the senate: 25 years (Ibid., Art. 58), passive voting age: for the chamber of deputies: 25 years (Ibid., Art. 56), for the senate: 40 years (Ibid., Art. 58), for presidential elections: 50 years (Ibid., Art. 84).

120 The question may be asked, why a young person is deemed mature enough to be subjected to capital punishment (where applicable) or other severe forms of punishment, yet not mature enough to stand for election.

4 — NEITHER - NOR ADULT: CHALLENGES YOUNG PERSONS FACE IN EUROPE

4.1 — Introduction

As noted earlier, the WPAY presents ten priority areas that influenced both the AYC and the ICRY significantly and that give a good overview of relevant issues. Another comprehensive source on challenges to youth rights in Europe is the “Report on the State of Youth Rights in Europe” published by the European Youth Forum (YFJ)¹¹⁸ in March 2010. This report is based on an extensive consultation of the member organisations of the YFJ and highlights the most important challenges young persons experience in Europe. These two sources are the main – although not exclusive – sources of inspiration for the selection of the fields that are covered on the following pages. The section on traditional challenges refers to fields that are covered by both the WPAY and the YFJ Report and that could also be called ‘mainstream’ challenges. The second section on uncharted challenges covers different other fields that are either in only one or none of the two previous sources and that could also be said to be more ‘original’ in nature. However, this distinction should not be understood as a prioritisation.

While this Chapter attempts to present an overview of the most pressing challenges young persons face in Europe, it would be presumptuous to assume that all relevant challenges could be covered in the given space. It does not claim to give an extensive list of all relevant challenges young persons face, as this would go beyond the scope of this work. The aim is to allow an informed decision how youth rights can be protected and promoted best.

4.2 — Traditional Challenges

4.2.1 — Full and Effective Participation of Youth

When talking about political participation of youth, it is necessary to differentiate between de jure and de facto obstacles. While the de jure obstacles are of a quite limited number and can be clearly discerned, the situation with the de facto obstacles is far more complicated and rarely allows clear conclusions.

The main de jure obstacle to the full participation of young persons is the voting right. In most, if not all, European states, young persons are allowed to vote at age 18 (or younger) and they also reach legal majority at that age. However, the situation is different when it comes to the right to stand for election. In many European states young persons are still – at least for certain elections – not eligible when they turn 18.¹¹⁹ It seems inconsistent that the young persons are legally fully liable, yet they may not stand for elections. Such higher age-thresholds on the voting rights constitute a significant obstacle for young persons to participate in politics, as they can only play the role of voters and not of actors, at least in the cases identified above. The argument that young persons are not mature or experienced enough to stand for election misses the point, as age in itself does not seem to ‘guarantee’ those two characteristics. In any case the decision whether a person fulfils them should be taken by the voters and not on the basis of an arbitrary age limit.¹²⁰ In any case, where such an argumentation is used, this in itself should logically mean that young persons deserve specific protection, as legally they are not yet adults with full civil and political rights.

However, it seems that the de facto obstacles are much higher than the de jure ones. While the latter ones can account for

121 In the British House of Commons, the average age of members of parliaments between 1992 and 2010 was between 48,8 and 50,6 years on election day. After the 2005 elections, 3 members of parliament (out of 646) fell into the age group of 18-29, while 14 were older than 70 years. See Cracknell, 2010. In Switzerland, the average age for the first chamber of parliament currently is 51 years and for the second chamber 55 years. See The Federal Assembly - The Swiss Parliament, 2010. In Germany, the parliament elected in 2005 had an average age of 49,3 years. See Lantermann, 2010. The average age of the members of the European Parliament is 54,8 years of age. See European Policy Centre, 2010.

122 See Coughlan, 2010.

123 Gaiser et al., 2008, p. 195.

124 Youth Act (72/2006), Part 3, Section 8.

125 European Youth Forum, 2010, p. 22.

126 Gynther, 2006, p.138; European Youth Forum, 2010, pp. 10, 27.

127 European Youth Forum, 2008, p. 4.

128 For instance, the British Equality Act 2010 (entered into force on 8 April 2010) prohibits discrimination on the grounds of age in the fields of employment, housing, access to services and public functions. However, discrimination on the grounds of age remains permissible in certain fields of education. Remarkably, the Equality Act also specifically protects against multiple discrimination. See British Equality Act 2010, Part 6 (Education), Chapter 1 (Schools); Part 2 (Equality: Key Concepts), Chapter 2 (Prohibited Conduct), Section 14 (Combined discrimination: dual characteristics).

certain limitations, they do not explain why youth is not more present in the political structures. Young persons are still the exception in parliaments, governments, municipal councils, etc., even if there are no formal rules limiting their participation. This could be compared to the situation of female political participation, where de jure equality exists, yet virtually no democratic institution achieves true or even nearly true representation of the female population. While it is not easy to find data on the average and median ages of the members of different parliaments, the available numbers show that young persons are a clear minority.¹²¹ While no studies on the reasons for this were found, it seems likely that this can be explained by fewer young candidates and their lower chances to get elected.

One of the consequences from this is that the democratic institutions rarely work on subjects important for youth. While it is often polemically said that youth is not interested in politics, the question is why youth should be interested in politics, if its voices are not heard?¹²² Hence addressing this representation gap could also encourage more young persons to actively participate in politics.

Besides this direct participation in politics, which is – as was shown above – not that easy for young persons, youth can also participate through the “intermediary system” of large traditional organizations and associations” or via informal groups, thus via civil society.¹²³ Independent NYCs and INGYO play an important role in the formulation and representation of the interests of young persons. Through the YFJ and on their own, these organisations can represent youth both on the European and the national level. However, the question how much influence they have depends entirely on the willingness of the states and institutions to listen and cooperate with them, as formal structures

rarely exist. One positive example can be found in Finland, where the Youth Act states that “[y]oung people must be given opportunities to take part in the handling of matters concerning local and regional youth work and youth policy. Further, young people shall be heard in matters concerning them.”¹²⁴ However, Allianssi, the Finnish NYC notes that “a real co-decision making does not happen as most of the youth councils feel that they are listened to, but not heard”.¹²⁵

4.2.2 — Discrimination Based on Age

Ageism, i.e. discrimination on the grounds of age, can be found in many fields, such as education, employment, housing, freedom of expression or mobility.¹²⁶ For instance, many people would not vote for young candidates in elections based on the prejudice that being young also means being immature, unreliable or inexperienced. Obviously, ageism does not only concern young persons but also older persons, however, the latter usually are better represented in politics than youth. Another problematic aspect is multiple discrimination, i.e. when a person is discriminated for several reasons, as for instance young women or young migrants. According to the YFJ:

“Multiple discrimination affects young people when discrimination on the ground of age combines, intersects or adds to one or more other grounds such as sexual orientation, gender, disability, ethnic origins and also parental, legal and marital status, among others, which are often used to discriminate for example against young job applicants.”¹²⁷

While in Europe discrimination on the grounds of age is prohibited in certain fields either by national or European law, the offered protection remains limited to certain fields and/or countries.¹²⁸ In the EU, Council Directives

129 Proposal for a Council Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation, Published on 2 July 2008, p. 3.

130 European Youth Forum, 2010, p. 11.

131 Fussell, 2002, p. 20. The data for Eastern Europe is very diverse due to the lower age of compulsory education. While at age 17 still 81,6% of young persons were attending secondary schools in Poland, the enrolment rate was 45,4% for Hungary and only 8,4% for Russia.

132 Schofer & Meyer, 2005, p. 908.

133 Fussell, 2002, p. 17. While this source refers to trends in the United States of America, it can reasonably be expected that the tendency in Europe will be comparable.

134 Thomas et al., 2010, p. 18.

135 European Youth Forum, 2010, p. 19.

136 Much of this subsection is based on empirical data of Eurostat, the Statistical Office of the European Communities. It offers reliable data that mostly cover the 27 member states of the European Union. No indications were found that the trends in European non-EU countries would be significantly different from the ones presented below.

137 Fussell, 2002, p. 27.

138 Fussell, 2002, p. 27.

139 See Eurostat, 2009, pp. 106, 110.

prohibit discrimination based on race or ethnic origins in a wide range of fields, covering both employment and non-employment (e.g. housing, education). “However, discrimination based on age, religion and belief, sexual orientation and disability is prohibited only in employment, occupation and vocational training.”¹²⁹

Hence, while young persons often are the victims of ageism, no comprehensive protection against discrimination on the grounds of age exists. This situation is further aggravated by the fact that many young persons are subject to multiple discrimination. One of the consequences of this age-based discrimination is the increased marginalisation, social exclusion and poverty of young persons.¹³⁰

4.2.3 — Discrimination Based on Age

There is a clear trend in Europe for young persons to spend considerably longer time in education than was the case a few decades ago. This can notably be seen in the enrolment rates in secondary education. Already in 1992, in Western and Northern Europe, the enrolment rate in secondary education at age 17 was close to 90% and between 55% and 72% in Southern Europe.¹³¹ Similarly, there is also a clear trend towards higher enrolment rates in tertiary education.¹³² Accordingly, also tertiary education plays a bigger role in the life of young persons. While this is not a problem in itself, it shows that the life cycles of young persons are changing significantly in these ageing societies.

It should also be noted that public and private investments in education are diminishing as a consequence of the ageing of the population. Since an older population has to be supported by a smaller labour force, the consequence is that there are less resources available for investment into the younger generations.¹³³ This problem will further increase the older the

populations in Europe grow.

As young persons spend a larger part of their life in education, its importance for youth rises. Thus equality in its accessibility on all levels plays an important role. While “countries with a higher average years of schooling [are] most likely to achieve a more equitable education than those with a lower average years of schooling”,¹³⁴ access to higher education still remains an issue, especially as a consequence of high tuition fees and selective enrolment procedures.¹³⁵ Thus the issue of equal access for all young persons remains an important issue.

4.2.4 — Employment, Social Protection and Poverty¹³⁶

The financial crisis that shook Europe's economies in the years following 2008 showed another major problem young persons face. It is a known fact that “[y]outh face particular challenges as the newest entrants into the labor market”¹³⁷ as youth unemployment rates are more dependent on the economic cycles than the overall unemployment rates. This is mostly due to the fact that young persons, in times of crises, are less likely to be hired and are usually among the first ones to be fired during economic downturns. However, in the last two decades it is also due to the trend of growing instability of employment – a consequence of the overall trend towards flexible employment – that makes it increasingly harder for young persons to find stable employment.¹³⁸ This can be seen in the youth unemployment rate in the EU, which has constantly been twice as high as the overall unemployment rate.¹³⁹

Furthermore since the beginning of the financial crisis in the year 2008 the youth unemployment rate increased dramatically. On this account Eurostat noted that “[b]etween the first quarter of 2008 and the first quarter

140 Eurostat Newsrelease, 2010b, p. 1.

141 Eurostat Newsrelease, 2010a, p. 2.

142 Ibid., p. 3. EU27 refers to the 27 member states of the EU.

143 In Germany and Austria, this experience lead to the common usage of the term 'Generation Internship' (Generation Praktikum) for the present-day situation of numerous cycles of internships youth has to undergo before finding adequate employment. See Briedis & Minks, 2010, p. 1.

144 San Francisco Chronicle, 2010, p. 1.

145 See Curtis, 2010.

146 Mörchen, 2006, p.6.

147 Briedis and Minks come to a similar conclusion. While their study includes data on how widespread internships are (in Germany, 15% of university graduates in the year 2005 did at least one internship) and also on certain quality criteria (for instance, 34% of the respondents received no remuneration), it is not a comprehensive study. See Briedis & Minks, 2010, pp. 1 ff.

148 European Youth Forum, 2010, p. 88.

149 European Youth Forum, 2010, p. 25.

150 See Ibid.

151 Aassve et al., 2005, p. 1.

152 See Ibid., p. 12.

153 Ibid., p. 2.

of 2009, the youth unemployment rate in the EU27 rose by 3.7 percentage points, while the total unemployment rate increased by 1.5 percentage points".¹⁴⁰ Young persons with low education are concerned the most by this development, as in the second quarter of the year 2009 almost every fifth young person with low education (i.e. up to lower secondary education) was unemployed, compared to 9,1% of young persons with medium education (i.e. upper secondary and post-secondary non-tertiary education) and only 5,9% of young persons with tertiary education.¹⁴¹ Furthermore, "[i]n the EU27 in 2008, nearly four out of every ten employees aged 15 to 24 and two out of ten of those aged 25 to 29 had a temporary contract. This share was less than one in ten for those aged 30 to 54."¹⁴²

A good example for the challenges youth faces on the labour market are internships, which are a common experience for young persons during the transition from education to the labour market.¹⁴³ Thereby, internships can potentially be a very valuable contribution making it possible to gain practical experience, while also offering guidance and counselling. However, "[f]or some employers, the internship has become about taking advantage of free labor rather than a mutually beneficial exchange of work and training for employers and students".¹⁴⁴ While internships per se are not a problem, they are often unregulated or take place in legal grey areas, thus inviting abuse.¹⁴⁵ The negative consequences are often an increased social precariousness and insufficient labour standards, while the positive effects of increased experience or even 'real' employment often fail to appear. Many young persons get stuck in a long cycle of internships before they find adequate employment. This further contributes to the precariousness of youth, hindering their social inclusion and autonomy.¹⁴⁶ While these problems certainly exist (yet, this does not mean that no 'positive'

internships exist), no comprehensive empirical studies on the national or European levels were found during the research for the present work, hence it is not possible to judge the full extent of this problem.¹⁴⁷

These tendencies on the labour market mean that youth faces increased insecurities and social exclusion. Another consequence is that young persons are much more likely to fall below the poverty line. According to the Finnish NYC Allianssi, youth is the group with the highest risk of poverty, with a quarter of the young persons aged 16 to 24 living below the threshold of poverty.¹⁴⁸ According to the European Youth Forum, since "[...] youth employment becomes a more and more complex phenomenon, social protection is called to play an important role in combating social exclusion and achieving youth autonomy."¹⁴⁹ Yet, youth often falls out of such schemes, for instance if first time job seekers do not receive unemployment benefits.¹⁵⁰

One of the main consequences from this combination of precarious employment (and unemployment) and the failure of social protection systems to address their negative consequences is poverty among youth. This precariousness amongst young persons is a relatively recent phenomenon, as – especially during times of an economic boom – youth, due to the combination of high productivity and often no dependents, would not be very vulnerable.¹⁵¹ While it is widely accepted that this is not the case anymore and that young persons are becoming more and more vulnerable, very little research on poverty amongst youth is being conducted.¹⁵² According to Aassve et al., "[t]his lack of research on poverty among young people is particularly striking when viewed against the rather large body of research on poverty among other age groups at high risk – particularly children [...]".¹⁵³ One of the main challenges is that poverty among young persons is a

- 154** Ibid.
- 155** Ibid., pp. 34 ff.
- 156** Ibid., p. 45.
- 157** Bearinger et al., 2007, p. 1220.
- 158** “Youth development strategies promote opportunities for adolescents to build skills and competencies that allow them to function and contribute in the course of their daily lives, within the context of safe and supportive environments.” (Bearinger et al., 2007, p. 1227). Thus youth development strategies can be said to be a part of youth rights in general and will not be covered specifically in this section. See Bearinger et al., 2007, p. 1225.
- 159** Tylee et al., 2007, p. 1566.
- 160** Statement by the Cyprus Youth Council, In: European Youth Forum, 2010, p. 30.
- 161** Bearinger et al., 2007, p. 1226.
- 162** Kleinert, 2007, p. 1057.
- 163** International Covenant on Civil and Political Rights, Entered into force on 23 March 1976. Art. 10(2)(b) states that accused juveniles shall be separated from adults, while Art. 14(4) stresses the desirability of rehabilitation.

very complex issue, as the reasons behind it are very diverse, both with respect to their incomes and their living arrangements.¹⁵⁴

While youth seems to be among the age groups most vulnerable to poverty, this is especially the case for young persons who left their parental home.¹⁵⁵ This clearly shows that young persons who choose to live on their own are much more vulnerable to poverty. This has significant negative effects on their autonomy, including housing, which will be covered in Chapters 4.3.1 and 4.3.2. In any case, even in the absence of an extensive research body, it can be said “[...] that young people in many European countries are at higher-than-average risk of poverty, and that in some countries, young people are more likely than almost any other group to be poor”.¹⁵⁶

4.2.5 — Health

Virtually all international documents covering youth rights refer to important health aspects and, more specifically, to the importance of sexual and reproductive health rights. “Negative outcomes of early pregnancy and sexually transmitted infections [...], including HIV/AIDS, threaten the health of people in the second decade of life more than any other age group.”¹⁵⁷ Hence it is very important that young persons receive special attention by the national health care institutions. Three elements play a particular role in protecting and promoting the health of young people: the access to clinical and health services (of high quality), adequate education programmes and youth development.¹⁵⁸

Concerning the clinical and health services, their accessibility does not only refer to physical accessibility, but also means that young persons should actually attend them. This for instance includes knowledge about the whereabouts, that the principle of confidentiality is respected, or that fears

of stigmatisation are addressed. Such high accessibility is not only important for sexual and reproductive health, but also for other health aspects of the lives of young persons, such as for instance mental disorders.¹⁵⁹

Another fundamental aspect of this is the right to education on these issues. While the school curricula in most European countries include it in certain forms, they often are not adequate and up to date, as an example from Cyprus shows:

“The few studies that address knowledge, attitudes, and perceptions of sexuality education by Cypriot youth overall documents low levels and serious gaps of knowledge around sexuality and sexual and reproductive health, high levels of homophobia, while sexuality education information received is evaluated by students as inadequate, outdated, and irrelevant to their needs.”¹⁶⁰

Hence, sexual education can be an important tool to reduce sexual risk behaviour, to promote sexual health and to enable self-determined decision-making.¹⁶¹

Other important health issues for youth include for instance substance abuse or overweight and obesity. In a general manner, appropriate health care for youth is important not only for its own sake, but also because it is the most efficient way to treat emerging health problems or even prevent their emergence altogether. However, this requires measures specifically targeting young persons.¹⁶²

4.2.6 — Delinquency and Justice

While juvenile delinquents are – at least in theory – well protected by international law, for instance through Articles 10(2)(b) or 14(4) of the International Covenant on Civil and Political Rights (ICCPR)¹⁶³ or through the Standard Minimum Rules for the Administration

164 Nowak, 2005, p. 145.

165 European Youth Forum, 2010, p. 37.

166 One example can be found in the Finnish Young Offender Act (1940/262, adopted on 31 May 1940), which is applicable to young persons older than 15 but younger than 21 years of age. These young offenders can be sentenced to a probation period under supervision, in order to keep them out of prison. (As only an unofficial translation that is not up-to-date could be obtained via E-Mail from the Finnish Ministry of Justice, no further details will be presented. The aim is merely to show that such laws do indeed exist.)

167 Gray, 2005, p. 939. Kurtenbach also emphasises the importance of political participation, as in its absence violence might be the only resource some young persons have. See Kurtenbach, 2009, p. 92.

168 See Nowak, 2005, p. 348.

169 Kurtenbach, 2009, p. 90.

170 European Commission White Paper: A New Impetus for Youth, Published on 21 November 2001, p. 13.

171 United Nations Principles for Older Persons, Principle 1.

172 CESCR General Comment 6, Para. 32. The Committee on Economic, Social and Cultural Rights is the body of independent experts monitoring the states parties' implementation of the ICESCR.

of Juvenile Justice. Even stronger is the prohibition of the imposition of the death penalty for persons below 18 years of age at the time of the crime that can be found in Article 6(5) of the ICCPR, as it does not depend on national definitions of 'juvenile'.¹⁶⁴

While these are important minimum rules, it is also important to address the larger question of how young persons are treated by justice. Thereby, it seems important that the "[d]etention of minors should be established only for the most serious crimes and life imprisonment for young people should be excluded as it is contrary to the principle of reintegration into society".¹⁶⁵ The focus should be placed on reintegration and not on punishment, which might prove more efficient, as young offenders are still in their development from childhood to adulthood. Imprisonment should thus be the last resort and the main focus should be placed on alternative solutions.¹⁶⁶ Furthermore, it is important to take into account the (socio-economic) factors contributing to the choices young offenders take, in order to be able to also address the root of the problem.¹⁶⁷ While Article 14(4) of the ICCPR explicitly stresses the promotion of rehabilitation of juveniles,¹⁶⁸ it seems unclear why this principle should not also be applied to young persons in general, as the underlying reasoning probably is still applicable to 'older' young persons. Another aspect is also that 'repressive' reactions to violence by young people (for instance long periods of imprisonment) are inefficient, as they contribute to a further escalation of violence and impede resocialisation.¹⁶⁹

4.3 — Uncharted Challenges

4.3.1 — Autonomy

While autonomy touches upon almost all the other fields, it should also be considered in

its own right, as it is a fundamental part of 'growing up'. Increased autonomy is one of the main signs of the transition from childhood to adulthood. As mentioned earlier, aspects of autonomy can be found in almost all other fields (e.g. employment, by attaining financial independence), hence this sub-section does not aim at repeating all the different aspects of autonomy. It merely reemphasises its importance for young persons.

The EU White Paper on Youth also notes its importance for young persons:

“For young people, autonomy is an essential demand. It depends on the resources at their disposal, primarily material resources. The question of income is therefore crucial. Young people are affected not only by policies on employment, social protection and labour market integration but also by housing and transport policies. These are all important in enabling young people to become autonomous sooner, and they should be developed in a way that takes into account their point of view and their interests and makes good use of experience specific to youth policies. As young people want to become active in society and feel that policies related to the various aspects of their standard of living impinge directly on them, they object to youth policies being limited to specific areas.”¹⁷⁰

The question of autonomy for a specific group of persons is not a novelty. For older persons, it can be found in the United Nations Principles for Older Persons under the heading of 'independence', which covers access to adequate food, water, shelter, clothing and health care.¹⁷¹ Based on this, the Committee on Economic, Social and Cultural Rights noted in its General Comment 6 (on the economic, social and cultural rights of older persons) that this notion of independence is a part of the

173 Convention on the Rights of Persons with Disabilities. Adopted on 13 December 2006. Entered into force on 3 May 2008. UNTS: I-44910, Art. 3(a).

174 He stresses especially the importance of 'free will' (Autonomie des Willens) as basis of all 'moral laws' (moralische Gesetze; Kant, 1974, p. 144). This is closely linked to Kants understanding of 'Enlightenment', which "is man's emergence from his self-incurred immaturity" (Kant, 1991, p. 54). See also Bramann, 2010.

175 Merino & Garcia, 2006, p. 36.

176 Bogdan & Kofod Olsen, 1999, p. 147.

177 However, it should be noted that during the drafting of the ECHR the right to recognition as person before the law was consciously excluded, as it does not contain autonomously enforceable subjective claims. See Bogdan & Kofod Olsen, 1999, p. 151.

178 European Commission White Paper: A New Impetus for Youth, p. 21.

179 European Youth Forum, 2010, p. 17.

180 Eurostat Newsrelease, 2010a, p. 1. (Covers only the member states of the EU).

181 Merino & Garcia, 2006, p. 37. While the meaning of "conditions are not favourable" is not specified, it seems very likely that this refers – at least partly – to economic difficulties.

182 See UN-HABITAT, 2010b, p. 79.

right to an adequate standard of living covered by Article 11 of the ICESCR.¹⁷² Autonomy is also one of the fundamental aspects of the UN Convention on the Rights of Persons with Disabilities (CRPD). One of the principles upon which the CPRD is built is "[r]espect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons".¹⁷³ Hence the right to autonomy of persons is established at the very least for older persons and persons with disabilities. As autonomy is such an important aspect of the transition from childhood to adulthood, it remains an important challenge to strengthen also the right to autonomy of young persons.

Autonomy is also closely linked to the idea of individual self-determination. According to Immanuel Kant, autonomy and individual self-determination are the signs of maturity and moral responsibility.¹⁷⁴ In line with the philosophical concept of individual self-determination, autonomy is also about emancipation "[...]from emotional, material and logistical dependence on the family to the autonomous management of the relations with family, time, space and resources".¹⁷⁵ Individual self-determination could also be said to be closely related to the right to recognition as a person before the law found in Article 6 of the UDHR and Article 16 of the ICCPR. Thereby, "Article 6 [of the UDHR] is embedded in the concept of a basic right to existence [...]",¹⁷⁶ and the idea of this 'basic right to existence' could also be extended to encompass a right to autonomy.¹⁷⁷ Furthermore it could be said that without the release from tutelage and without the achievement of full individual self-determination, young persons cannot achieve the transition from childhood to adulthood. Thus, it is crucial that the autonomy of youth is promoted, in order to enable young persons to live a self-determined life as mature members of society.

One of the main challenges to the autonomy of youth is that it is a cross-cutting subject, touching upon many different fields.¹⁷⁸ While support by the state is important, the deeper issue is that autonomy means that young persons themselves should be able to develop their own potential, with the aim of becoming less dependent on the state, but also their own family.¹⁷⁹ Yet, only very few studies on this subject exist and most refer to medical ethics, no comprehensive study on the autonomy of young persons in Europe was found during the research for the present work. Given the complex nature of autonomy and its importance for youth, it seems necessary that more research on this is conducted, in order to fully understand how autonomy can be promoted.

4.3.2 — Housing

While also being an important aspect of autonomy, housing, i.e. the ability to become independent by leaving ones parental home, is also an important aspect in itself. The actual average age for doing so varies greatly in Europe, ranging from 23,1 years for young men and 22,0 years for young women in Finland to 31,5 years for young men and 27,7 years for young women in Bulgaria.¹⁸⁰ While this can be ascribed at least partly to cultural differences, it probably also can be explained by different measures of autonomy of youth, for instance through support mechanisms by the state. One major obstacle often is the lack of adequate housing at affordable prices for young persons. For instance in Catalonia, 44% of young persons (aged 19 to 29) still living in their parental household, do not move out because the "conditions are not favourable".¹⁸¹

While the right to adequate housing is recognised by international and (sometimes) national law, for instance in ICESCR, Art. 11(1), nothing seems to indicate that this is

183 See UN-HABITAT, 2010a.

184 Rugg & Burrows, 1999, p. 1. Although their work is more focused on the United Kingdom, this seems to be equally applicable to most other European states.

185 See for instance Aassve et al., 2005, p. 20.

186 Aassve et al., 2005, p. 22.

187 Report of the World Commission on Environment and Development, Adopted on 4 August 1987, p. 24.

188 Wapner & Matthew, 2009, p. 209.

189 UN Department of Economic and Social Affairs - Division for Sustainable Development, 2010, p. Section III (Strengthening the Role of Major Groups), Chapter 25 (Children & Youth in Sustainable Development), Para. 25(2).

190 Ibid., Para. 25(3).

191 Ibid., Para. 25(12).

understood as having a specific meaning for young persons.¹⁸² The United Nations Human Settlements Programme, UN-HABITAT, works with youth amongst its strategic priorities, but it focuses on developing countries, thus facing a different set of challenges than young persons in Europe do.¹⁸³

Julie Rugg and Roger Burrows note that:

“[...] broad housing issues are discussed without understanding that housing is an arena in which young people are particularly vulnerable: they often lack knowledge of their housing options; are frequently in low-paid and erratic work; and may not yet have the skills needed to negotiate positive housing outcomes for themselves. Thus, for example, policies that prioritise the allocation of social housing to families and older single people fail to acknowledge that young people are one of the groups least capable of competing for alternative housing in the private rented sector.”¹⁸⁴

This lack of understanding is also mirrored once more by the lack of studies on the housing situation of young persons and its effects on both their autonomy and their vulnerability. It is further complicated by the relatively large differences across Europe.¹⁸⁵ One indicator for the lack of suitable housing options for young persons are non-standard living arrangements (i.e. living outside the parental household with other adults that are not spouses or partners, for instance in a 'flatshare'). Notably in the South-European countries and Ireland, around a quarter of the young persons who do not live in their parental households anymore live in such non-standard living arrangements.¹⁸⁶ While such non-standard living arrangements are not bad per se, they still indicate that young persons also face significant challenges in the housing sector. However, also this sector

still offers plenty of space for more research on both the situation of youth itself, as well as on the consequences housing has on other aspects of youth rights, such as autonomy and poverty.

4.3.3 — Sustainable Development

In 1987 the Brundtland Commission (UN World Commission on Environment and Development) defined sustainable development as meeting the needs of the present generation, without compromising the ability of future generations to meet their own needs.¹⁸⁷ Looking at the environmental problems today, there seems to be an even greater need for sustainable development. In the field of environmental ethics, the concept of 'displacement' plays an important role. Wapner and Matthew note that “[d]isplacement involves transferring, relocating, or otherwise transporting environmental challenges to those who have little choice but to suffer them.”¹⁸⁸ While it refers mostly to geographical displacement, notably from rich to poor countries, it could also be said that an intergenerational displacement takes place. If environmental challenges are not addressed today, the younger and the future generations will have to pay most of the price for it. Hence, environmental problems are also a matter of youth rights.

This was also recognised by the Agenda 21 adopted by more than 178 governments at the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, from 3 to 14 June 1992. It notes that “[i]t is imperative that youth [...] participate actively in all relevant levels of decision-making processes because it affects their lives today and has implications for their futures”.¹⁸⁹ The aim of sustainable development should also be to provide young persons with “[...] a secure and healthy future, including an environment of quality, improved standards of living and

192 Furthermore, this should be understood broadly, as young persons not only should be seen as passive bearers of such a right to sustainable development, but should also be understood as being powerful actors in its achievement. Once more, this also goes hand in hand with their right to full and effective participation in society.

193 European Youth Forum, 2010, p. 37.

194 Béraud, 2009, pp. 398 ff.

195 During the research for the present work, no studies on this subject were found. Future research could potentially address this question and offer new insights, also making it easier to evaluate if young persons can adequately enjoy their freedom of religion and belief.

196 Council of Europe Directorate General of Human Rights and Legal Affairs, 2010, p. 4. For an overview of the situation of military service and conscientious objection in Europe see <http://www.ebco-beoc.eu/pdf/statistics/200711/Table-of-the-situation-of-military-service-and-conscientious-objection.pdf> (consulted on 8 June 2010).

197 Council of Europe Directorate General of Human Rights and Legal Affairs, 2010, p. 7.

198 By 2008, more than 3500 units of this device called 'Mosquito' have been sold in the United Kingdom and more than 700 in Germany. The device has also been reported to be in use in Belgium, France, the Netherlands, Ireland and Switzerland, although no official data are available. See Spiegel Online, 2010; Parliamentary Assembly of the Council of Europe, 2010, p. 2.

199 Spiegel Online, 2010.

access to education and employment".¹⁹⁰ It also notes that children (but this is probably also applicable to youth) are highly vulnerable to the effects of environmental degradation, both in developing and industrialised countries.¹⁹¹

It seems unrealistic to try to create an individual right to a clean environment, yet sustainable development should be understood as being a part of youth rights, as young persons (like everybody else) are also entitled to an environment worth living in. This is another aspect of youth rights that rather requires promotion than classical protection.¹⁹²

4.3.4 — Freedom of Belief and Conscience

Article 9 of the ECHR states that "[e]veryone has the right to freedom of thought, conscience and religion" and Article 14 of the CRC states that "States Parties shall respect the right of the child to freedom of thought, conscience and religion". Hence – in theory – the freedom of belief should be guaranteed for everybody in Europe, including children and youth. However, it is not always easy for young persons to fully enjoy these rights. Challenges can notably be identified in schools, in the form of mandatory religion classes, discrimination on the grounds of religion, or inadequate worshipping conditions.¹⁹³ This is especially important in countries with large religious minorities, especially among youth, such as for instance France, Germany or the United Kingdom. Another important aspect is that the belief system of many young persons is different from the older generations, which can also create problems if it is not adequately respected.¹⁹⁴ While, different aspects of the freedom of belief have been covered extensively by existing studies, their implications for young persons are rarely touched upon.¹⁹⁵

Concerning the freedom of conscience, many young persons in Europe still face compulsory conscription into military service.

Without going into the question of compulsory conscription, it is clear that the freedom of conscience requires states to offer alternative solutions for conscientious objectors. As noted by the Council of Europe Directorate General of Human Rights and Legal Affairs "[t]he Council of Europe, the United Nations Commission on Human Rights and the European Parliament have stressed that the right to conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion [...]", as recognised by the ICCPR and the ECHR.¹⁹⁶ While progress has been made in the recognition of this right, some European states fail to fully respect it. Besides the formal right to conscientious objection, it is also imperative that the young persons are made aware of this right and that the procedure must follow objective reasons and is not subject to arbitrary decisions. It also requires a legal remedy in the form of an independent appeals mechanism.¹⁹⁷

4.3.5 — The Right to Public Space

Another challenge youth faces in Europe could be referred to as the right to public space. It is a cross-cutting issue with strong links to non-discrimination, to participation (more precisely full participation in society and public life), to marginalisation, to the environment and in a certain way to health; hence the choice to cover it as a separate subject.

In the United Kingdom and also several other European states, some local authorities are using devices emitting high frequency sounds to keep young persons away from certain public places.¹⁹⁸ The principle is that these ultrasound frequencies supposedly can only be heard by persons younger than 25 years of age, for whom this sound is unpleasant, sometimes even painful. It aims at dispersing young persons 'lingering' around certain spaces to prevent them from causing disturbances. An official enquiry in Germany

200 Parliamentary Assembly of the Council of Europe, 2010, p. 3. This report was adopted unanimously by the PACE on 25 June 2010. At the time of the editorial deadline, the official recommendation was not published yet and thus only the report (which was adopted without changes) is cited here. (See http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5761&L=2 (consulted on 06 July 2010)).

201 This problematic is further increased by the fact mentioned earlier that young persons usually lack adequate political representation addressing their specific needs. Hence addressing the problem of political participation would indirectly contribute to address this challenge, as it would give young persons a voice of their own.

could not establish with absolute certainty whether the device could damage the hearing of young persons.¹⁹⁹ Thus, young persons are indiscriminately kept from remaining in these public spaces on the basis that other people (often (older) persons who do not hear these frequencies anymore) may feel disturbed by the presence or behaviour of certain young persons.

While this is a very specific case, it nevertheless is a good example of how the rights of children and young persons are sometimes disregarded in favour of other concerns, such as in this case the worries of some shopkeepers or the disturbance of some other persons. A recommendation by the PACE calling for the ban of such devices noted that “[...] these devices, while inflicting acoustic pain on young people and treating them as if they were unwanted birds or pests, are harmful, highly offensive and may thus result in a degrading treatment prohibited by article 3 of the [ECHR]”.²⁰⁰ It also raises issues under the freedom of assembly, the right to private life and the right to participate in public life. Hence, while the initial problem is a simple disagreement between different generations in the understanding how public space may be used, it is not solved through mediation, but by de facto banning the younger generation from using this space.²⁰¹ It does not appear as though this fulfils the principle of proportionality (or maybe even the principle of reason) in any way and it is exemplary for the standing and the awareness of youth rights in public perception.

4.3.6 — Rights in the Digital Space

Without going into details, it should be noted that youth rights also concern rights in the digital space. As young persons spend more and more time online, especially on social networking sites, the question of the protection

of their rights while doing so becomes increasingly important. This notably concerns the right to privacy and data protection. As this opens up another huge field, the present work will only briefly mention their importance for youth, without going into details. While the internet has brought the world closer together and opened up new ways of communicating, it has also brought with it new risks. As youth is the group of society using the internet the most, the question of privacy rights and data protection also greatly concerns youth rights. The issue at stake here is not so much about negative rights, i.e. the protection against interference from the state, it is much more a question of positive rights in terms of the promotion of measures ensuring that young persons are aware and fully enjoy their right to privacy. However, it is another example of a lack of research, as no studies on the effects of the increasing use of the internet on the rights of young persons were found. Hence, this question has to remain unanswered for now, while keeping it in mind for future research.

4.4 — Conclusion

The above analysis of the situation of youth rights in Europe has shown that, while a certain categorisation is possible, many – if not all – of the challenges identified are interlinked. The issue of full and effective participation for instance, if implemented rigorously, has the potential to address most of the other challenges by giving young persons the possibility to voice their concerns. Hence, it should be clear that these challenges require cross-sectoral approaches. Another aspect is also that, as the range of fields is very broad, the participation of youth should not be limited to fields having ‘youth’ in the name or being directly related to youth. They much more require a comprehensive mainstreaming of issues relevant for young persons across

²⁰² European Youth Forum, 2010, p. 31.

²⁰³ Ibid., p. 33.

all sectors of society, which would also have beneficial effects on the full integration of youth.

Another important aspect is young persons' awareness of their rights. Either self-contained or as part of the broader human rights education, young persons should be made aware of their rights and how to effectively use them. Referring to this, the YFJ noted that:

“[...] a difference among categories of young people can be identified. First, organised youth tends to be better informed in comparison to young people not belonging in any organisational structure. [...] Second, young people in higher education are more aware of their rights than unemployed or people who finished secondary education [...]. Third, inequalities exist also in the field of access to information for the categories of the young population that are disadvantaged or marginalised [...]. In the same context, in countries where ethnic or linguistic minorities exist, information is less accessible for the young members of the minority group.”²⁰²

This shows the importance of increased awareness-raising among youth, especially concerning marginalised and disadvantaged young persons, as well as those belonging to minorities. It also shows that increased support for youth organisations can be a potential remedy to this challenge. Of course, the awareness of rights is only one aspect and still requires effective remedies to ensure their enjoyment.

While it was possible to cover the most pressing challenges youth faces currently in Europe to a certain degree in the present thesis, this was not always easy, as remarkably few studies exist. This goes hand in hand with the overall findings of the European

Youth Forum “[...] that there is a general lack of research in the area of youth rights. More efforts must be made to gather data on the state of the rights of young people in Europe in order to be properly able to address their needs”.²⁰³

This chapter shows that young persons face important challenges during their transition from childhood to adulthood. Yet it is not always easy to evaluate the full extent of these challenges (and their European character), as only few national and even fewer European studies exist. Without daring to give a final answer to this question, it may even be that currently not enough data exist to conclude how best to address these challenges.

However, the absence of such studies does not mean that no knowledge on these issues exists. Far from it, NYCs and INGYOs possess extensive knowledge and experiences in the field of youth rights and thus can be valuable partners when addressing these issues. While the European Commission and the Council of Europe recognised this valuable resource, this cannot be said of all European governments. Accepting young persons and organisations representing them as valuable and legitimate partners should form the fundamental core of youth rights without which their full protection and promotion seems unlikely, if not impossible.



5 — Youth Rights In Europe:
Oblivion Or Protection?



204 As this analysis focuses on the European system, the ICCPR and the ICESCR, which are comparable in their scope, are not covered, even if they differ in a number of points.

205 Charter of Fundamental Rights of the European Union, Adopted on 12 December 2007.

206 See <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=8&DF=&CL=ENG> (consulted on 9 June 2010).

207 Ovey & White, 2006, p. 18.

208 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR Protocol No. 1), Entered into force on 18 May 1954.

209 ECtHR, Case of Hirst v. The United Kingdom (No. 2), 6 October 2005, Para. 62. The Court repeated this finding in the Case of Ždanoka v. Latvia, 16 March 2006, Para. 105.

5 — YOUTH RIGHTS IN EUROPE: OBLIVION OR PROTECTION

5.1 — Introduction

As shown in the previous Chapter, young persons face considerable challenges in Europe. This Chapter presents an overview of how the most relevant human rights instruments in Europe are, or might be, used to protect and promote youth rights. The present thesis can neither cover all important human rights instruments, nor can it claim to offer an exhaustive coverage of the chosen instruments. It should rather be understood as an overview, trying to identify tendencies and gaps. Another limitation of this chapter is that it only covers the challenges identified above. Hence other challenges to youth rights, which have not been covered in the present work, are not included in this analysis of the European human rights system.

The two main instruments that are covered here are the ECHR and the European Social Charter.²⁰⁴ As mentioned above, the category of children and the category young persons overlap to a certain degree and hence a brief section also analyses how the CRC may be used to protect youth rights. Short sections also cover the protection and promotion of youth rights through the Charter of Fundamental Rights of the EU (CFREU)²⁰⁵ and through the International Labour Organisation (ILO).

5.2 — The Limited Scope of the European Convention on Human Rights

The ECHR was adopted on 4 November 1950 and entered into force on 3 September 1953. It covers civil and political rights and has currently been ratified by 47 European

states.²⁰⁶ The rights and freedoms set forth by the ECHR have to be incorporated into national law (the principle of solidarity) and they are subject to control by the ECtHR (the principle of subsidiarity).²⁰⁷ This combination and the fact that the Court is both strong and independent have the effect that the ECHR probably is the strongest international human rights mechanism worldwide. Another important feature, as mentioned earlier, is the fact that the ECHR evolves through the case law of the Court, as well as the addition of Protocols and thus can be seen as a living instrument.

However, one fundamental limitation of the ECHR with respect to youth rights is that it is a traditional instrument on civil and political rights, while many of the challenges young persons face in Europe are either of a different nature or cross-cutting issues. Hence, it can be presumed that the ECHR is a rather limited instrument for protecting and even more so for promoting youth rights.

While Article 3 of the first Protocol²⁰⁸ of the ECHR grants the right to free elections, this does not seem to be applicable to the broader question of the political participation of young persons. On the contrary, the ECtHR even explicitly stated that “[...] the imposition of a minimum age may be envisaged with a view to ensuring the maturity of those participating in the electoral process[...]”.²⁰⁹ Hence, the de jure limitations of political participation of young persons are compatible with the ECHR. When it comes to the de facto obstacles to political participation of young persons, no hints were found during the research that the ECHR could be used to address this challenge. The reason for this is that the ECHR focuses on legal rights, whereas the question of full and effective participation of young persons probably requires policy approaches.

Freedom from discrimination plays an important role in the Convention. Initially, Article 14 only contained a prohibition of

210 Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR Protocol No. 12), Entered into force on 1 April 2005, Art. 1. However, currently Protocol No. 12 has only been ratified by 17 states and hence is binding for less than half of the states parties of the ECHR. See <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=8&DF=09/06/2010&CL=ENG> (consulted on 9 June 2010).

211 In the Case of B.B. v. the United Kingdom (7 July 2004), the applicant claimed to have been discriminated against on the grounds of age, but as the Court already had established discrimination on the grounds of sexual orientation, it did "[...] not consider it necessary also to consider the applicant's complaint of discrimination on the grounds of age" (Para. 26).

212 ECHR Protocol No. 1, Art. 2.

213 Ovey & White, 2006, pp. 378 f.

214 Ibid., pp. 142 f.

215 See Ibid., pp. 284 ff.

216 See Ibid., pp. 300 ff.

217 ECHR, Art. 4(3)(b). Emphasis added.

218 Ovey & White, 2006, p. 314.

discrimination regarding the rights guaranteed by the the ECHR, but subsequently Protocol No. 12 introduced a general prohibition of discrimination.²¹⁰ Neither of the two articles explicitly refer to discrimination on the grounds of age. However, it can be assumed that age falls within the category of 'other status' recognised by both. Yet, currently no precedents on discrimination on the grounds of age exist.²¹¹ As discrimination is a very broad issue, covered by an extensive case law by the ECtHR, it seems that it could, in principle, be used for age-related issues. A potential example could be the use of devices emitting high frequency sounds, which could possibly be seen as discrimination on the grounds of age. However, as such devices have only been used in the last few years and as the legal proceedings at the different levels take long time, it is unlikely that such cases will find their way before the ECtHR any time soon.

While the right to education was introduced into the ECHR by the first Protocol, it still remains mostly a negative right.²¹² It grants a right of access to existing educational institutions, but the state still has a wide margin of appreciation concerning the resources and the organisation of the education system.²¹³ Thus, while potentially being an important tool for the access to education, the ECHR does not cover the broader challenges in the field of education as presented earlier.

The ECHR contains only very few specific clauses regarding juvenile delinquency. Article 5 covering the right to liberty and security permits "[...] the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority". Thus, the convention also allows the jurisdiction of juvenile courts in non-criminal cases. Interestingly, it appears that 'minor' has an autonomous meaning under the Convention and thus is not strictly

bound by the age of majority under national law.²¹⁴ Furthermore, Article 6(1) states that in camera hearings may be admissible if the interests of juveniles require it. Broader issues of delinquency and justice involving young persons, as identified in the previous chapter, are not covered by the ECHR.

Environmental rights are not directly covered by the ECHR. However, Article 8 on the respect for private and family life has been used in a number of cases involving the environment.²¹⁵ Yet, it does not appear as though the Convention would encompass environmental rights in a broader sense, such as covered above.

The freedom of thought, conscience and religion can be found in Article 9 of the ECHR. There is a rich and extensive body of case law with respect to the freedom of religion.²¹⁶ While during the research no cases on Article 9 specific to youth were found, there appears to be no reason why it could not, in principle, also be used to assert the rights of young persons in this field, notably in conjunction with Article 14. However, when it comes to conscientious objection, the situation is different. Article 4 of the ECHR on the prohibition of slavery and forced labour states that "any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service"²¹⁷ shall not be regarded as forced or compulsory labour. This wording suggests that states are not obliged to recognise conscientious objection under Article 9.²¹⁸ While the ECtHR recognises that many European states introduced alternative services, it ruled as late as October 2009 that:

"In the Court's opinion, since this Article [Article 4(3)(b)] clearly left the choice of recognising conscientious objectors to each Contracting Party, the fact that the majority of the Contracting Parties have recognised

219 ECtHR, Case of Bayatyan v. Armenia, 27 October 2009, Para. 63.

220 Ovey & White, 2006, p. 315

221 See Ovey & White, 2006, pp. 296 ff.

222 European Social Charter (ESC); Adopted on 18 October 1961, Entered into force on 26 February 1965.

223 Harris & Darcy, 2001, p. 1. For the rationale behind the 'revision' of the ESC that eventually led to the ESC (revised), see Harris & Darcy, 2001, pp. 12 ff.

224 For the lists of ratifications see <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG> (consulted on 10 June 2010).

225 They must accept at least 16 articles or 63 paragraphs, including at least 6 out of 9 'hard-core' articles. See Harris & Darcy, 2001, pp. 18 f.

226 Council of Europe Publishing, 2000, pp. 31 f.

this right cannot be relied upon to hold a Contracting Party which has not done so to be in violation of its Convention obligations. [...] In such circumstances, the Court concludes that Article 9, read in the light of Article 4 § 3 (b), does not guarantee a right to refuse military service on conscientious grounds.”²¹⁹

However, on 10 May 2010 the Case has been referred to the Grand Chamber and thus it remains open, if the Grand Chamber will alter this position. Furthermore, while for now the ECtHR does not recognise the right to conscientious objection, it still requires that the sanctions imposed against conscientious objectors be proportional and not excessive, thus at least limiting the negative effects.²²⁰

Regarding privacy, the ECHR offers effective protection against interference with privacy.¹⁸ Yet, the Convention does not cover the positive aspects necessary to ensure that young persons can effectively enjoy this right, notably when it comes to new media and the internet.

In the field of civil and political rights, the ECHR thus could be used for the protection of youth rights in some cases. However, even using the living instrument argument, many aspects of youth rights are not at all or not sufficiently covered by the Convention and hence it seems to be a rather limited instrument to address the challenges young persons face. However, as the ECtHR is a very effective tool for the fields that are covered by the Convention, it also appears that there still is unused potential for the protection of youth rights, as can be seen for instance in the fact that no case of discrimination on the grounds of age has so far been adjudicated. Hence, while being limited by its scope, the ECHR could be used to protect certain aspects of youth rights.

5.3 — The potential of the European Social Charter

In the European human rights system, economic, social and cultural rights are protected by the European Social Charter (ESC). To be precise, they are protected by two Charters, the original ESC which was adopted in 1961²²² and the ESC (revised), adopted in 1996. While those two Charters currently exist in parallel, the underlying idea is that, as more and more states ratify the ESC (revised), it slowly replaces the old ESC. Hence, if at one point all states parties of the old ESC will also have ratified the ESC (revised), the substantive guarantees in the latter will ultimately replace the former.²²³ While the ESC currently has been ratified by 27 states and the ESC (revised) has been ratified by 30 states, the lists of signatories are not congruent and hence the old ESC remains binding on some European states.²²⁴ However, as the ESC (revised) has been ratified by more states and is the more forward-looking document, this section will only cover the provisions of the ESC (revised).

While the ESC (revised) is much more up-to-date and comprehensive than the old Charter, its implementation still is more complicated and problematic than the implementation of the ECHR. The ECHR as a whole is legally binding on the states parties and can be adjudicated by the very strong ECtHR. The situation is more complex for the ESC (revised). It contains two Parts, the first Part containing policy commitments that are not legally binding, and the second one containing specified rights that are legally binding. Yet, the states parties do not have to accept all articles of Part II, but only a fixed minimum of articles.²²⁵ The states parties have to submit periodic reports on the implementation of their obligations and these reports are examined by the European Committee of Social Rights (ECSR).²²⁶ In 1995, an Additional

227 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints; Adopted on 9 November 1995; Entered into force on 1 July 1998.

228 For the list see http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/INGOL-ist2010_en.pdf (consulted on 10 June 2010).

229 Council of Europe Publishing, 2000, pp. 67 ff.

230 Bell, 2010, p. 47.

231 ESC (revised), Part V, Art. E. It also provides a general prohibition of discrimination in the field of employment on the grounds of sex (Part II, Art. 20).

232 ECSR, Case of International Association Autism-Europe (IAAE) v. France, 7 November 2003, Para. 51.

233 Ibid., Para. 52.

234 Bell, 2010, p.42.

235 Art. 9 also establishes the right to vocational guidance.

Protocol also introduced an optional collective complaints procedure.²²⁷ It aims at increasing the efficiency of the system by providing for collective complaints which can only be submitted by international and national organisations of employers and trade unions, international NGOs from a special list²²⁸ and national NGOs (if the concerned states accept this). However, even after the ECSR might, on the basis of such a collective complaint, conclude that a state has not respected the provisions of the Charter, the final decision whether or not a recommendation will be addressed to that state remains with the Committee of Ministers.²²⁹ Hence, even before looking at the content of the ESC (revised), it already becomes obvious that one main obstacle to its use for the promotion of youth rights is its high complexity and the fact that the supervisory mechanisms and the ECSR are by far not as powerful as the ECtHR.

Besides these inherent restrictions, the ESC (revised), through the reporting system and the collective complaints system might still be used to protect and promote youth rights in certain fields. This is especially interesting, as the ESC (revised) – unlike the ECHR – covers economic, social and cultural rights. Furthermore, while the ECHR protects individual rights, the collective complaints mechanism aims at systematic problems, thus also covering a collective dimension. One problem with individual complaints is that those who are most marginalised are the least likely to know about their rights, while the collective complaints mechanism does not depend on the identification of an individual victim as it addresses systematic problems.²³⁰

Comparable to Article 14 of the ECHR, the ESC (revised) also contains a provision prohibiting discrimination in the enjoyment of the rights set forth by the Charter. The list of grounds also does not explicitly contain age, but again it seems likely that age falls

within “other status”.²³¹ In the case of *Autism-Europe v. France*, the ECSR held that although disability was not explicitly listed, it was still included in “other status”.²³² Then, the ECSR noted that:

“In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.”²³³

The ECSR decided that France had breached the Charter, based on the fact that in practice the proportion of children with autism receiving education was significantly lower than that of non-autistic children.²³⁴ As the Charter covers many different fields, such as employment, education, housing, social security and healthcare, the ESC (revised) could also be used to fight discrimination on the grounds of age in these fields. For instance, it could be envisaged that, as the unemployment rate of young persons is significantly and systematically higher than it is for the average population, this would be a breach of the Charter for those countries who accepted the right to work contained in Article 1 as binding. Thus, through this mechanism, the ESC (revised) could potentially address many challenges youth faces in Europe. However, the fact that this did not happen so far shows the limited impact of the Charter. Yet, it remains open why no efforts in this direction have been undertaken so far.

In Article 17 the revised Charter provides for free primary and secondary education and in Article 10 it establishes the right to vocational training, an important step in ensuring equal access to education for all.²³⁵ Yet, the ESC

236 ESC (revised), Art. 1.

237 Ibid., Art. 7(5). A similar argument could potentially be made with Art. 4 on the right to a fair remuneration.

238 Ibid., Art. 31.

239 Ibid., Art. 13.

240 Ibid., Art. 31.

241 The following articles explicitly refer to young persons: Art. 7 (the right of children and young persons to protection), Art. 10 (the right to vocational training) and Art. 17 (the right of children and young persons to social, legal and economic protection). While those articles are important in protecting young persons, they do not cover most aspects of youth rights that require promotion rather than merely protection.

242 Ibid., Art. 23(2).

(revised) does not cover access to higher education. It also remains silent on the quality of education or on democratic participation of students in the educational institutions.

In the field of employment and social protection, the ESC (revised) establishes many different rights. As mentioned above, it seems that the right to work could potentially be used to address the problem of youth unemployment.²³⁶ Another good example of the potential use of the provision on employment is the right of children and youth to protection, which also recognises “[...] the right of young workers and apprentices to a fair wage or other appropriate allowances”.²³⁷ This may be used in order to address the issue of unpaid internships, although it must be said that it is far from sure whether internships are also covered by this provision. It appears however that, if considered by the ECSR, internships could be tackled with the aid of the 'living instrument' argument, thus creating a legal precedent. This would probably also strengthen the ESC (revised) as an instrument, as it would show that it is able to adapt to new developments in society, thus making it socially relevant. Another open question is whether the right to social security²³⁸ and the right to social and medical assistance²³⁹ could be effectively used to address the marginalisation of young persons and to protect them from social exclusion. But it seems, that in combination with Article 30, stating the right to protection against poverty and social exclusion, the Charter may become an important instrument to combat the marginalisation of young persons, especially as it also covers persons who “[...] risk living in a situation of social exclusion or poverty [...]”.

According to Article 11 states parties have to protect health, including the obligation “[...] to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility

in matters of health”. This could notably be used in connection with education on matters of sexual and reproductive health. However, in a more general way, it appears that the Charter does not address the health issues most relevant for young persons, for instance by creating truly accessible health centres. Obviously, Article 11 could be understood to promote such accessible and adequate health centres, yet it seems unlikely that the Charter provisions will effectively be the source for such measures.

While the promotion of autonomy per se cannot be found in the ESC (revised), the Charter may potentially be used to promote certain aspects of autonomy. For instance, the right to housing both promotes access to housing of an adequate standard and the availability of housing for persons without the necessary resources.²⁴⁰ In combination with the principle of non-discrimination, this provision could be used to promote the access of young persons to adequate and affordable housing, which would be an important contribution to increased autonomy. At the same time, it is unfortunate that the Articles explicitly covering young persons do not include more explicit forms of autonomy, in a way similar to Article 23 on the right of elderly persons to social protection.²⁴¹ It includes for instance the duty for states parties “to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able”.²⁴² The inclusion of a similar provision on the autonomy of young persons would have proven to be a valuable contribution to youth rights.

Overall, the ESC (revised) – comparable to the ECHR – can be used to protect and promote youth rights in certain fields. However, it is often unclear whether certain provisions could effectively be used for young persons, as the case law still is very limited, thus

²⁴³ Committee on the Rights of the Child, 2010.

²⁴⁴ CRC, Art. 1.

²⁴⁵ European Youth Forum, 2010, p. 10.

²⁴⁶ CRC, Art. 5.

there remain a lot of uncertainties. Another, even bigger, problem is the weak supervision mechanism through the ECSR and, even more so, the complicated patchwork of ratifications. Thus, before being able to work with concrete cases, it has to be established (a) if the state concerned has ratified the ESC, the ESC (revised), both, or none; (b) which articles and paragraphs the state has accepted as being legally binding and if they cover the concrete case; (c) if the state also has accepted the collective complaints mechanism; and (d) if the NGO interested in working on the case is on the list of organisations eligible to submit such complaints. Only once these questions have been clarified the work on the case can begin. This clearly shows that, while covering certain important aspects of youth rights, the impact the Charter can have on the ground remains very limited, at least as long as not more states ratify the ESC (revised) and its collective complaints mechanism.

5.4 — Other Sources of International Law

5.4.1 — The Convention on the Rights of the Child : Partly Covering Youth Rights

The CRC is a very good example of how specific rights based on age can be protected by international law. As mentioned earlier, it is one of the most ratified treaties in the UN system, with only the United States of America and Somalia not accepting it as legally binding (and even those two states have at least signed it). The CRC is binding on all European states, but it does not encompass a complaints mechanism. While it still seems that the CRC had an important influence on the legislation of many states, the lack of a complaints mechanism means that its implementation is only subject to a very limited control through the regular reports states parties have to

submit every five years to the Committee on the Rights of the Child.²⁴³

As the CRC adopts a very broad definition of the child, namely every human being below the age of 18 (unless majority is reached earlier),²⁴⁴ it also covers a certain proportion of youth, depending on the definition used. Theoretically this means that the Convention could also be used for youth rights, at least for challenges young persons face before they reach the age of majority. However, this is greatly limited by its overall orientation. According to the European Youth Forum “[...] the CRC’s main concern being to ‘shield’ children from certain social risks, it is highly protective in nature”.²⁴⁵ Meanwhile, as discussed earlier, young persons often rather need the promotion than the protection of their rights. Furthermore, as the Convention was drafted with children in mind, certain provisions might appear patronising when applied to young persons. For instance, Article 5 notes the importance of the rights and duties of the parents. While it at least recognises that these have to be “[...] consistent with the evolving capacities of the child [...]”,²⁴⁶ this hardly seems compatible with the idea of promoting the autonomy of youth.

The fact that the CRC is a very specialised part of international law is a strength when it comes to protecting its addressees, but it also limits its use for the protection of young persons, although there is a certain overlap. This is not to say that the CRC does not contain important provisions for the protection of the rights of young persons as well. Quite the contrary, the importance of the CRC should not be underestimated. For instance Article 13 on the right to freedom of expression is equally important for the child as it is for young persons. Hence the CRC can be used for some limited aspects of youth rights, but overall, it does not appear to be suited for most of the challenges young persons face.

247 Through the Lisbon Treaty, the Treaty establishing the European Community was replaced by the Treaty on the Functioning of the European Union. The competencies in the field of youth are regulated in Title XII on Education, Vocational Training, Youth and Sport. Art. 165 (the former Art. 149 TEC) addresses youth more directly, referring notably to education, mobility and the participation in democratic life in Europe. Consolidated Version of the Treaty on the Functioning of the European Union, Adopted on 13 December 2007.

248 Pernice, 2008, p. 236.

249 Ibid., p. 242.

250 CFREU, Art. 21.

251 Ibid., Art. 24. The CFREU grants children the right to protection. They do also have the right to freely express their opinions and these opinions have to be taken into consideration, according to their age and maturity. The child's best interest has to guide all actions related to them. This best interest is also the only limitation to the right of the child to maintain regular contact with both parents.

252 Ibid., Art. 25. The rights of the elderly encompass the rights "[...] to lead a life of dignity and independence and to participate in social and cultural life". While this is very general, it can be said to grant elderly people the right to autonomy and individual self-determination.

253 In Ibid., Art. 32 on the protection of young people at work, covering working conditions and the protection against economic exploitation.

254 Ibid., Art. 14.

255 Ibid., Art. 34(3).

256 Ibid., Art. 37.

257 Ibid., Art. 10(2).

5.4.2 — The Charter of Fundamental Rights of the European Union: A Recent Instrument with a Finite Impact on Youth Rights

While it has been mentioned earlier that the EU has certain, although limited, competencies in the field of youth, this mostly refers to certain policy initiatives and not to a rights-based approach to youth.²⁴⁷ However, over the years, the EU also developed a system protecting human rights and fundamental freedoms in community acts. This culminated in the adoption of the CFREU, which was first adopted as the second part of the Constitution of the European Union. After the Constitution was rejected by the French and Dutch voters, the CFREU however was not significantly changed and readopted on 12 December 2007 and entered into force through the Treaty of Lisbon.²⁴⁸ In this way, it became part of the primary law of the EU, without extending its competencies.²⁴⁹ This means that the CFREU is legally binding on the institutions of the EU and all legal acts by the EU have to be consistent with it. The European Court of Justice may thus adjudicate whether European law respects the Charter, including acts implementing European law on the national level. However, it does not have a binding effect on the member states when they act as national legislators. Hence, the Charter could have beneficial effects for the respect of youth rights in European law, yet it is limited to this sphere. As the EU is an important actor in Europe, it is still interesting to take a brief look how the CFREU may protect or even promote youth rights.

In the field of discrimination, the CFREU is the first treaty to explicitly prohibit discrimination on the grounds of age.²⁵⁰ The Charter specifically addresses the rights of the child²⁵¹ and of the elderly,²⁵² but it refers to youth only once explicitly.²⁵³ While the rights of the child offer few novelties when compared to the CRC, the rights of the elderly

are rather original as they create a right to autonomy, although they remain limited to acts by the organs of the EU. It is very unfortunate that youth rights were not explicitly recognised in a way similar to children's rights and the rights of the elderly, as this would have been a true innovation. However, many of the general provision can still be beneficial to youth rights.

While the CFREU also contains the right to education, including the right to free compulsory education, the Charter remains silent on the quality of education and on equal access to it (although this could be covered by the prohibition of discrimination).²⁵⁴

When tackling social security, the Charter notes that "[i]n order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources [...]".²⁵⁵ Were this to be promoted by European law, it would potentially have great benefits for the autonomy of young persons. Furthermore, this provision also explicitly states the aim to combat social exclusion, which is also an important aim of youth rights.

The CFREU is the only treaty covered so far that includes environmental protection, making it a priority of Union policies.²⁵⁶ It also mentions the importance of the principle of sustainable development.

In certain fields the Charter even goes much further than the ECHR, such as for instance in Article 10 on the freedom of thought, conscience and religion, which explicitly recognises the right to conscientious objection.²⁵⁷ Yet, as all member states of the European Union either have abolished compulsory military service or provide for some form of conscientious objection, this clause is practically void. Furthermore, it has to be kept in mind that the Charter is only binding for community acts and thus this clause can be seen as being of symbolic nature, as

258 Ibid., Art. 8.

259 Convention Fixing the Minimum Age for Admission of Children to Industrial Employment, Entered into force on 13 June 1921. This Convention was subsequently replaced by up to date Conventions, the one currently in force being the C138 Minimum Age Convention adopted in 1973 (Convention concerning Minimum Age for Admission to Employment, Entered into force on 19 June 1976).

260 C138 Minimum Age Convention, Art. 3. Meanwhile, Art. 4 permits exceptions for developing countries, where the minimum age may in certain cases be 14 years of age.

261 Convention concerning Medical Examination for Fitness for Employment in Industry of Children and Young Persons; Entered into force on 29 December 1950.

262 Convention concerning the Night Work of Young Persons Employed in Industry (Revised 1948); Entered into force on 12 June 1951.

263 Recommendation concerning Conditions of Employment of Young Persons Underground in Mines; Adopted on 23 June 1965.

defence remains far outside of the Unions' competencies.

The CFREU also explicitly recognises that everyone has the right to protection of personal data. This data “[...] must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law”.²⁵⁸ Hence, European law concerning data protection might be required to specifically take into account the situation of young persons, in order to protect their rights under the Charter.

While the Charter thus has certain aspects that could be used to protect and promote youth rights, it has to be kept in mind that it has two major limitations. On the one hand it is limited to the EU, hence not reaching out to all of Europe; on the other hand it is limited to acts by organs of the EU. However, the CFREU could still be used to ensure the compliance of European law with certain aspects of youth rights and thus might prove to be beneficial for the rights of young persons in the EU.

5.4.3 — The International Labour Organisation: Specific Rights for Young Workers

A last source of international law covered here is the ILO. While ILO Conventions usually do not have a strong supervision mechanism, they can still be valuable sources of minimum labour standards. One of the fields the ILO actively sets standards in is the protection of children and young persons at work, notably to fight child labour, but also in other related fields.

The ILO was active in the field of children and young persons from the very beginning of its existence, the first convention in this field being the Minimum Age Convention for Industry, adopted in 1919.²⁵⁹ The question of the minimum age for employment is the most important area for children and youth in which

the ILO sets standards. Thus, the minimum age of employment should not be less than the age of completion of compulsory education and in any case not lower than 15 years of age.²⁶⁰ Other areas in which the ILO is active concerning young persons are for instance the medical examination of young persons below the age of 18,²⁶¹ the regulation of night work of young persons²⁶² or recommendations concerning the conditions of employment of young persons in mines.²⁶³

The ILO, through its minimum standards, can have important effects on the conditions of employment of young persons. Yet, it only has a limited impact. On the one hand, as mentioned above, ILO conventions lack a strong supervision mechanism. On the other hand, as they usually cover minimum standards, they do not always adequately address the challenges young people face in the field of employment in Europe. Notably, a look at the ILO conventions protecting children and young persons shows that – with the exception of the area of child labour – virtually no new or revised instruments have been developed since the early 1970s. Yet, the realities young persons (and children) live in have greatly changed since that time and hence, while still being important minimum standards, the ILO conventions do not sufficiently address the challenges youth faces today.

5.5 — Remaining Gaps in the Protection of Youth Rights in Europe

After having established some of the challenges young persons face in Europe, this Chapter has analysed how these challenges can be addressed using existing human rights instruments. This analysis has revealed that there still is a great margin for improving the protection of youth rights in Europe through these instruments, notably the ECHR and the

ESC (revised). One of the main gaps is the lack of promotion measures in the existing treaties, as they by and large focus on the traditional approach of protection. While the instruments discussed in this thesis are able to cover some important aspects of youth rights, their scope remains limited. Thus they are not always capable of adequately addressing recent developments in society, such as for instance the question of autonomy of young persons. One important point this analysis brings forward is that youth rights, as they can at least partly be traced back to new developments in society, fall outside of the range of the 'classical' instruments, constructed to protect, but not really to promote, rights.

6 — Conclusion: A European
Convention On Youth Rights
Senseless Utopia Or Worthwhile
Expansion Of The European Human
Rights System?

6 — CONCLUSION: A EUROPEAN CONVENTION ON YOUTH RIGHTS SENSELESS UTOPIA OR WORTHWHILE EXPANSION OF THE EUROPEAN HUMAN RIGHTS SYSTEM?

The present thesis began by enquiring into the meaning of youth, establishing that, while the category of young persons indeed exists and can be found in many places, what is lacking is a comprehensive and clear definition of it. While such a definition should not be based on a narrow understanding of chronological age, fairly different approaches could be imagined to encompass the young persons that are the bearers of youth rights. Two examples can for instance be found in the AYC and the ICRY. Those two recent treaties are currently the only binding human rights instruments specifically protecting youth rights and hence their content was briefly analysed in Chapter 3. This showed that, while certain contents are very specific to the respective region, other points can be found in very similar ways in both treaties. This was also corroborated by the analysis of the challenges young persons face in Europe. Thus, the picture emerged that young persons do indeed face quite specific challenges, different from those that both children and older adults face. This engendered the question, how these specific rights are protected and promoted in Europe. The result of this enquiry was that, while certain aspects of youth rights can be protected by the existing instruments, there remains a relatively large gap, notably when it comes to the promotion of these rights.

What the present work has shown is that there certainly are gaps in the protection and promotion of youth rights covered neither by

the specific protection offered to children nor by the universal protection offered to every human being. While certain aspects of youth rights can still be protected by the existing instruments, notably the ECHR and the ESC (revised), these cannot really be used to also promote youth rights. This becomes clear when looking at the full and effective participation of young persons and the promotion of their autonomy. While certain aspects can be – and indeed are – protected by the current European human rights system, as for instance the right to vote for young persons above a certain age or the right to adequate housing, these parts are smaller than the sum that constitutes youth rights. In the absence of their comprehensive protection, it seems that addressing the questions of full and effective political participation and of the autonomy of young persons will significantly contribute to an increased protection and promotion of youth rights. Addressing these issues can, through giving youth a voice of its own, help addressing the other challenges young persons face. This would also increase the possibility to react to new developments and new challenges. In the absence of other – even more far reaching – measures, this would at least create a certain remedy for the most pressing issues.

However, to clearly answer the overall research question, how youth rights can best be protected and promoted in Europe, seems impossible at this point. This is due to the fact that only very little research on the question of youth rights has been done, both globally and in Europe. It can be said that the legal category of youth/young person exists and can be found in many places, but comprehensive definitions are missing. While certain challenges young persons face were identified in Chapter 4, their full extent often remained unclear. Furthermore, it is easily possible that certain aspects were over- or under-represented as no comprehensive studies exist. Hence, before

264 European Youth
Forum, 2010, p. 7.

being able to truly answer the question if youth rights are sufficiently protected in Europe by the existing mechanisms or if completely new instruments are needed, a vast array of research is needed. This research should try to systematically identify the challenges young persons face in their lives and how the existing instruments could potentially be used to address these challenges. In this way, they would also highlight which gaps remain utterly out of reach of the existing European human rights system. Another benefit from such studies would be that they would raise awareness on the existence and importance of youth rights by introducing the concept to those who are not aware of its existence and increasing the available knowledge to both the bearers of these rights, the policy- and decision-makers and the general public.

In the absence of such comprehensive studies on the situation of youth rights, the research undertaken here points in the direction that currently there are significant gaps in the protection and promotion of youth rights. As youth by and large is not protected anymore by children's rights, yet the situation of being in transition from childhood to adulthood creates challenges that are significantly different from those faced by the rest of the population, the existing system does not address the specific needs of young persons. In its own reflections on the question of the protection of youth rights, the European Youth Forum reached the following conclusion:

“Following the poor attention given to youth rights in the implementation of the Universal Declaration of Human rights, the UN Convention on the Rights of the Child, International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other international human rights instruments, such as the European Convention on

Human Rights and the European Social Charter, strong legal documents that specifically guarantee the rights of young people are deemed essential.”²⁶⁴

While not the only potential solution, the creation of a specific instrument, a possibility highlighted by the existence of two regional treaties on youth rights, seems to be a very promising remedy to address these challenges. This is not to say that increased cooperation between the European states, and national initiatives could not promote the cause of youth rights, but such attempts do not seem as promising as the creation of a new specific instrument. Such a potential 'European Convention on Youth Rights' would not only create binding minimum standards for Europe, but it would also – and this should not be underestimated – increase the awareness of youth rights across Europe. One fundamental lesson for such a Convention is the importance of strong supervision mechanisms. Neither the AYC nor the ICYR are endowed with such. Yet, one of the most important lessons from the ECHR (and to a lesser extent from the ESC (revised)) is that a strong supervision of a treaty contributes greatly to the effective impact it has on the ground. Hence, if such a European Convention on Youth Rights were to be drafted, a strong supervision and monitoring mechanism would have to be included or the attempt might not be worth the effort.

Furthermore, such a Convention seemingly would fit well with the idea of the development of the European human rights system, as it would be the proof that it adapts to ever-higher standards and new developments in society. In the perspective of the continuing ageing of the European population, it appears that the younger population faces an increased risk of marginalisation and thus a European Convention of Youth Rights would also be a forward looking instrument, protecting and promoting a part of the population whose

265 These counter-arguments are derived from the authors own reflections during the research-work, as well as from E-Mail exchanges with Klavdija Cernilogar (Head of the Policy Development and Advocacy Department of the European Youth Forum) and Marco Perolini (Human Rights Policy Officer of the European Youth Forum) held during June 2010. As it is impossible to anticipate all counter-arguments and as space is limited, only the most 'obvious' and important ones will be briefly addressed here.

vulnerability risks to increase.

This is not to say that there are no arguments against such a potential treaty. As the debate surrounding the creation of a new instrument has not yet started, no 'official' counter-arguments have been presented so far. Meanwhile, it seems quite likely that certain counter-arguments might be used and thus some of them are briefly addressed in the following paragraphs.²⁶⁵

One of the main counter-arguments probably would be that the inflationary creation of ever more specific human rights instruments, i.e. the increasing fragmentation of the human rights system, might have negative effects on the protection and promotion of human rights in general. While it is hard to completely refute this argument, many instruments for specific groups of persons already exist in the current human rights system, even based on age. It would thus seem arbitrary to use this argument against a potential European Convention of Youth Rights, if it can be established that such a treaty would greatly enhance the protection and promotion of these rights. While the present thesis can and should only be seen as a first step, at the very least it showed that youth indeed is in a specific position and that it faces certain specific challenges that neither children nor older adults face.

Another likely counter-argument would be that the existing legal instruments (notably the ECHR, the ESC (revised) and the CRC) on the one hand cover all age groups (including specific protection for the rights of the child), and on the other hand cover most relevant aspects of human rights, also those specific for young persons. As much more research on the challenges young persons face needs to be undertaken, this argument seems somewhat random, as it is not completely clear what those challenges are. In the absence of such comprehensive research, it was shown above that it seems that the existing legal instruments

do not tackle youth rights effectively and are not able to address many of the specific challenges young persons face. The fact that virtually no case law from either the ECHR or the ESC (revised) exists, seems to indicate that there is a huge lack of awareness on how those instruments can be used to address youth rights and that relatively large gaps in the protection and promotion of these youth rights remain. Linked to this, another interesting field of research would be how certain policies by the CoE and the EU can remedy these gaps and if their codification would also be a viable option (although this seems rather unlikely due to the limited competences of both organisations in the field of youth).

The lack of agreement on a definition of youth could also be used as an argument against the drafting of a European Convention on Youth Rights, due to the importance of clearly defining its scope. While this might effectively be a stumbling block, there seem to be no apparent reasons why a political compromise on this question might not be found. As shown above, the legal category of youth is relatively well established and, using alternative concepts like social age, it should be possible to reach an agreement, in a similar way as it was also possible to reach an agreement on the definition of children for the CRC and even for youth in the AYC and the ICYR.

The last counter-argument to be covered here refers to the lack of implementation of certain international treaties. With a certain dose of cynicism, it could be argued that, since many of the existing treaties are not adequately implemented, the effort of agreeing on yet another treaty that will not be duly applied outweighs its benefits. Yet, this argument should not be understood as an argument against the creation of a European Convention on Youth Rights, but – quite the contrary – as an argument that such a treaty would need a

266 See http://www.coe.int/t/transversalprojects/children/caselaw/caselaw-child_EN.asp (consulted on 14 June 2010).

strong and effective monitoring and supervision mechanisms, or otherwise the attempt would be in vain.

In any case, as the creation of treaties usually takes long periods of time and as more research into its necessity and feasibility needs to be undertaken in the first place, a combination of several approaches seems appropriate.

For the time being and as a result of the research undertaken in this thesis, the following concluding recommendations can be extended to the relevant actors:

—More studies on the challenges which young persons face in Europe are needed. These should aim at presenting a comprehensive overview of the state of youth rights in Europe. Such research should also address the question of how youth rights are currently protected by the existing instruments and how these instruments could be used to further protect and promote these rights. Such research is necessary in order to be able to truly assess how these challenges can be effectively addressed.

—Following this research, a database and a knowledgebase should be created, which cover how the existing European human rights system can be used for youth rights. This would allow young persons and youth organisations to better use the existing system to protect and promote their rights. A potential example for such a database is the Council of Europe's Theseus database, covering case law of the ECtHR relevant to children.²⁶⁶

—To be able to answer the question if a specific European Convention on Youth Rights would be the best answer to the challenges young persons face, the European human rights system should not shy away from learning lessons from other regions. Hence, in cooperation with the AU and the OIJ, the efficiency and efficacy of the AYC and the ICRY should be evaluated. This would not only help answering the question if an international treaty can protect and promote youth rights, but it would also offer insights into best practices.

—As a follow-up to this research, a working group should be created to enquire how the protection and promotion of youth rights can be strengthened. Given its tradition, experience and strong human rights competence, it seems that the CoE might be an appropriate body to create such a working group. Part of the mandate of this working group should be to establish, whether the existing European human rights instruments are able to efficiently address the challenges young persons face in Europe, or whether new instruments are needed. It should also be noted that without the participation of youth and the organisations representing them (i.e. youth organisations, national youth councils and international non-governmental youth organisations, as well as the YFJ as their European umbrella organisation), it is highly unlikely that such a working group could be very effective.

—What should happen anyway, is that policy-makers and decision-makers should not talk about youth, but with youth. Only the mainstreaming of youth issues and the involvement of young persons, can ensure that those challenges are addressed that truly matter for young persons. Such an enhanced involvement of youth and the organisations representing them would also ensure that new developments are addressed in a timely manner. This is not just a matter of youth rights, but also of increasing the reach of democracy.

—When addressing challenges young persons face, inter-governmental organisations and governments should adopt a rights-based approach. Even in the absence of a dedicated European Convention on Youth Rights, the fact that these challenges are not just policy questions, but are about the realisation of the fundamental rights of youth needs to become widely accepted. Thus, the concept of youth rights should be mainstreamed in politics.

—In conjunction with such a rights-based approach it is also important that the relevant actors understand that youth rights require much more promotion than prevention and protection. This seems to be one of the reason why the existing human rights system fails to fully address them. Hence supranational organisations and states have to adopt positive steps to ensure that young persons can fully enjoy their rights.

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How do you argue for enhanced human rights for a group of persons who should already be in the possession of all the essential human rights? How do you convincingly present a case for creating yet another age-based distinction of persons in addition to children and the elderly?

These are the challenging issues raised in this enquiry of Mourad Mahidi. As a matter of fact, he is not alone in thinking that youth, in particular those who already qualify for adults after becoming 18, may experience particular difficulties in the early adulthood, because initiatives in that direction have already been taken on other continents, in Africa and in South America. Europe's changing demographics, with the age pyramid changing shape in a more unhealthy direction, underline a number of problematic issues, for instance, the loss of political power in that age group. Therefore, the time has come to start up a more focused discussion of the special youth issues also in Europe and thus to sustain the work that has already commenced in other regions of the world and at the global level under the auspices of the United Nations.

Several states in Europe have also taken action with regard to the young adults. There exists legislation at the state level concerning particular employment measures for the young persons, special sentences in criminal matters for youth that are more supportive of social integration and re-integration than ordinary prison sentences, and social and educational measures geared towards certain age categories. The time has come to carry out some stock-taking at the national level and to draw conclusions at the European level in such areas as full and effective participation of youth, measures against discrimination based on age, provision of educational opportunities, facilitation of employment on the basis of honourable conditions, proper social protection and health care, fight against poverty, and fair treatment by the justice system. New areas within which issues should be addressed are many, including the guarantee of the autonomy and self-determination of the young person, provision of adequate housing, the right to public space, and rights in the digital space.

This valuable contribution to the human rights discourse in Europe opens up uncharted terrain. It invites the reader to revisit one's established ideas about the sufficiency of the traditional human rights provisions and asks the reader to consider a new angle, the perspective of a young person. Myself not being a young person anymore, this enquiry created a flashback of issues that I remember I struggled with, but about which I could care ever less the older I grew. Nevertheless, the issues and questions are legitimate for each new group of young persons at any given moment and beg for an answer right at the start of adulthood. Mourad Mahidi's interesting work opens up a path for reaching to the answers.

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