Children's rights in Europe

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1. Growing interest in children's rights

The growing interest in children's rights in Europe cannot be isolated from the importance now attributed to them worldwide. The unanimous adoption of the UN Convention on the Rights of the Child on November 20th 1989, the speed with which this came into force (on September 1990) and the fact that it has already been ratified by 150 countries, all constitute proof of this. The speedy response of the international community to this Convention is unique in the history of Human Rights. What is the reason for this? Whilst there are numerous possible explanations, I will attempt to outline briefly two fundamental developments. First, the rapid change in (the de-construction and re-construction of) the "image" of the child during the last few decades, and secondly, the development of the broader "project of human rights" since the Second World War.

1.1. The changing image of the child

In simple terms, it could be said that until the end of the Middle Ages there was little or no social consciousness of children as a social group, they received little or no attention, they did not exist as an independent social group. Given the exceedingly high rates of infant mortality, until the age of six or seven the only concern about children was that they should survive. From this age onwards they became part of the adult world.

This was reflected in the law: the child simply did not exist.

In the exceptional cases when the child did have legal status, (in accordance with the various subsequent evolutions of Roman Law in Europe) this was as a personal possession of the father, and hence he or she was treated like any other private property. It is only with rationalism in the XVII century and more specifically with the Enlightenment (XVIII century) that children were discovered as a social group. From then on they were considered as the "future builders" of the Enlightened society. Their new role as the creators of the future society transformed them into tomorrow's wealth. Due to this strong emphasis on the "future" and "progress", children were considered as

1 As of October 1993.
"not yet human beings" ("do not yet know", "cannot yet do", "are not yet"). Their condition as "not yets" converted them into a "social category apart". Specific laws and institutions were planned in order to oblige children and those responsible for them (parents) to assume the new moral tasks of the Enlightenment. Towards the end of the nineteenth century, new laws came into force all over the Western World, on the one hand "Child Protection Acts" with an emphasis on social control and, on the other, "Compulsory Education Acts", concerned with Socialization.

This far-reaching macro-social definition had numerous consequences for children:
- Specific laws and institutions set children apart from the rest of the world and enclosed them within their own world, a moratorium in which they had to wait, learn and prepare themselves for "real life".
- Children became more and more the property of the (Enlightened) State and less and less the private property of their parents. Children became objects (and not subjects) of the macro-social process directed towards the creation of an ideal future society.

It is with this image of the child that we entered the twentieth century. During the present century this image of the child has become stronger. The youth moratorium (the stage of "not yet") has become even longer. In some European countries: this "not yet" period even extends beyond the legal age of adult majority. The different national laws in the twentieth century reflect this position of the child as an object, as do international regulations. Above all, the Geneva Declaration (1924), and to a lesser extent, the UN Declaration of the Rights of the Child (1959) do not consider the child as subject but as object. This can clearly be seen in the formulation: "The child will be given . . ."

However, a change can be perceived during the 1970's and 80's. The child's condition of "not yet", the condition of "object", was seriously challenged by representatives of different sectors and levels acting for a variety of motives. Their principal demand was that children should be considered as subjects, as fully-fledged "human beings". They argued that children must be considered as having all human rights and with the capacity to exercise these rights independently. (It should be remembered that the Universal Declaration of Human Rights (1948) does not mention age as a criteria for non-discrimination.)

In practice, in recent decades a growing consensus has emerged which considers children to be entitled to human rights. However, the question of their legal capacity to exercise these rights independently is still under debate. It is precisely this dispute over competence which is the central issue in the debate about children today. All this means that we now find ourselves in a

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