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Child friendly justice guidelines  
Recent judgments of the European Court of Human Rights

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This note refers to recent judgments of the European Court of Human Rights in which the child friendly justice guidelines are cited, since their adoption by the Committee of Ministers on 17 November 2010.

## I. Avoiding undue delay

**Paragraphs IV.50-53 (especially, the urgency principle in order to provide a speedy response and protect the best interests of the child)**

### [Kijowski v Poland \(5 April 2011\)](#)

1. Story of a young boy caught in the middle of a conflict between his parents. His parents separated just before his 6<sup>th</sup> birthday; his mother, pregnant with a younger brother, taking him back to live with her mother. Just less than a year later, his father forcibly removed him and with whom he remained until the age of 10, despite court orders requiring the father to return him to his mother. He was only returned to his mother following the arrest and detention of his father for having “kidnapped” him and after a short spell of living with his paternal grandmother. At the age of 11, he ran away twice to be with his father, and where he remained. At the age of 13, a court finally acceded to the request of the father to have the residence order of his son changed in his favour. However, the court prohibited any contact between the father and his second 7 year old son, who had remained with his mother all throughout the separation and divorce.

2. The proceedings before the ECtHR concerned the delay of the Polish authorities in dealing with the father’s application for a change of residence order in respect of the older boy.

3. The court proceedings lasted 22 months. The Court considered that time is particularly significant in cases concerning children, as any procedural delay can always result in the *de facto* determination of the issue. This period was not excessively long. There had been several interim hearings, and an expert opinion involving psychological examinations of the mother, father and child, all of which had taken place within the context of the father’s continuing breach of court orders. A dissenting opinion, however considered the opposite. Citing paragraphs 50 and 51 of the Guidelines, the dissenting judge evoked the age of the child and whose views and preferences were clearly formed and already known by the time of the first interim hearing 12 months on in the proceedings, as well as the *de facto* situation that had been prevailing long before the start of the proceedings. As the judge observed, contrary to Guideline 52, the Polish court refused on three separate occasions to make an interim order. The Court, in the judge’s view, had missed an opportunity to “break a lance” on behalf of expeditious proceedings in child custody cases.

4. Still, violation of a Convention obligation and failure to follow guidance are not of the same qualitative nature. In reality, all that was at stake for the child in this case was the legal uncertainty hanging over his preferred solution.

## II. Children and the police

### Paragraphs IV.27-33, deprivation of liberty – paragraphs IV.19-21, rule of law/due process – paragraphs III.E.2

#### [Blokhin v Russia \(14 November 2013\)](#)

5. Ivan Borisovich Blokhin suffers from attention deficit hyperactivity disorder and enuresis. His parents having been deprived of their parental responsibility, he was brought up by his grandfather. A bit of a “tear away”, at the age of 12, he was arrested and taken to a police station on suspicion of extorting money from a nine-year old the authorities found it established that he had committed offences punishable under the Criminal Code. Since he was below the statutory age of criminal responsibility (16, or 14 for this offence), no criminal proceedings were opened against him. Instead, he was brought before a court, which ordered his placement in a temporary detention centre for juvenile offenders for a period of thirty days in order to “correct his behaviour” and to prevent his committing further acts of delinquency.

6. The case provided the Court with its first opportunity to examine the special procedures put in place by the Russian authorities in respect of children who have (or are accused to have committed) acts of delinquency before reaching the statutory age of criminal responsibility – the 1999 Federal Law on the Basic Measures for Preventing Child Neglect and Delinquency of Minors, and specifically the use of closed educational institutions and, as in the case of Ivan Blokhin, temporary detention centres. Extracts of the Guidelines were reproduced by the Court as part of the relevant international materials for its judgment.

#### - *The right to legal assistance*

7. The conditions under which Ivan Blokhin’s arrest and questioning took place in the police station were disputed. The Court, however, found that it was most unlikely that his guardian was present as the authorities pretended and that it was more probable that he was interviewed alone. Moreover, the authorities maintained that as he was only asked to give an explanation, as opposed to being formally questioned, the law did not require the presence of a lawyer, psychologist or teacher. It was during this session, that he made his confession and signed a written statement – a piece of evidence that, despite Ivan having retracted it, acquired great importance in the subsequent court proceedings when the grandfather tried unsuccessfully to challenge what had happened. The Court stressed the fundamental importance of providing access to a lawyer where the person in custody is a child because of their vulnerability. In Ivan’s case, the Court concluded that the absence of legal assistance during his interview by the police irretrievably prejudiced his defence rights and undermined the fairness of the proceedings as a whole – and so a violation of his right to a fair trial under Article 6.

#### - *Right to obtain the attendance and examination of witnesses*

8. The hearing which led to the placement of Ivan in a temporary detention centre took place a month after the authorities had decided not to institute criminal

proceedings because he was below the age of criminal responsibility. At the hearing, he had a court-appointed counsel, but he did not play an active part in the proceedings. The “prosecution” witnesses were not present, and the court relied only on their written statements and Ivan’s earlier confession. Ivan and his grandfather were present. The court made no attempt to secure the presence of the “prosecution” witnesses because, as the government pointed out, the law did not provide for the possibility for cross-examination of witnesses in the case of proceedings against a child below the age of criminal responsibility. Nor were there any counterbalancing factors, such as the possibility for the defence to scrutinise the witness’s questioning by the investigator, or have its own questions put to them. Nor was it possible for it or the judge to observe their demeanour when giving their statements as no video recording had been made of their interviews. As this evidence was decisive, the Court found that Ivan’s defence rights had been restricted to an extent incompatible with the fair trial guarantees of Article 6.

- Deprivation of liberty

9. The Russian authorities maintained that the placement of a child in the temporary detention centre as provided for the 1999 Federal Law on the Delinquency of Minors was not considered a deprivation of liberty and that in the case of Ivan it was to correct his behaviour so as to prevent future delinquent behaviour. Whether or not there has been a deprivation of liberty for the purposes of the Convention (Article 5) requires an examination of the concrete situation of each case. For the Court in this case the key factors that clearly indicated that Ivan had been deprived of his liberty (and in violation of Article 5) were the fact that the centre was closed and guarded to exclude any possibility of leaving the premises without permission, that there was an entry check-point and alarm to prevent escape, that the inmates were under strict and constant supervision, that the inmates were routinely searched and their personal belongings were confiscated on arrival, and that there was a disciplinary regime breach of which was punishable by disciplinary sanctions. In no way was the detention in conformity with the Guidelines, although these were not cited explicitly in the Court’s assessment. The judgment has been referred to the Grand Chamber.

### **III. Best interests of the child**

**(Paragraph III.B) and avoiding undue delay – “the urgency principle” (paragraph IV.50)**

[Z.J. v Lithuania \(29 April 2014\)](#)

10. The children at the heart of this case were twins (a boy and a girl) whose mother died within a year of their birth. At the request of their father, a district court placed the twins in the temporary care of a guardian – a cousin of his wife. For five years or so the arrangement worked well, the father taking no real interest in the twins – he had three older boys to look after. However, the relationship between the father and guardian soured and became increasingly conflictual when the father sought to have the twins returned to him. They both issued opposing applications (he for custody, her for the termination of his parental rights). There were also criminal proceedings and further family law proceedings by the father for a contact schedule to visit the twins and have them stay with him. The various court proceedings, including interim

hearings and appeals, lasted for four years, at the end of which the status quo was more or less maintained – the twins staying with the guardian but with the door being kept open for the father to have the twins returned to him should the relationship between them improve. The father alleged that the national authorities had violated his right to family life (Article 8) in failing to order the return of the twins to him.

11. Article 8 includes a positive obligation on national authorities to act in a manner calculated to enable family ties to be developed and take measures that will enable parent and child to be reunited. The protracted court proceedings involved frequent meetings and consultations between the child care specialists of the local administration, the father and the guardian and conversations with the twins, the use of psychologists and experts.

12. The Child-friendly Justice Guidelines were cited amongst the relevant international law instruments, particularly the fundamental principles relating to their best interests, the right to be consulted and heard in proceedings involving or affecting them, the need for them to be treated with care and sensitivity throughout them with special attention to well-being and specific needs.

13. The Court found that the national courts had acted reasonably in refusing to return the children to their father. It considered that the considerations were sufficiently sound and weighty so as to conform with the Guidelines (it was clear from the court record that they had placed the children's best interests first – they had been "ingrained" in each and every decision; given the frail health of the twins and the fact that they had lived almost all their lives with the guardian, a move away would jeopardize their physical and psychological welfare; and the father had not shown any interest in their development and had not been supportive of their health and special needs.

14. The Court also cited the Guidelines in considering the decision-making process. It observed that the urgency principle should be applied in child custody cases, this being in line with the Guidelines. The Appeal court had done in overturned an earlier decision to suspend the father's application for custody pending determination of the guardian's application for his parental rights to be terminated, and in the district court promptly setting a date for the father's resumed application for a contact schedule.

#### **IV. Historic child-abuse**

15. Since the beginning of 2011, there have been some 15 judgments either selected for publication or otherwise considered to make a significant contribution to development, clarification or modification to the case-law of the Court and which centre on the best interests of the child. Six of them are Grand Chamber judgments.

[\(Louise\) O'Keefe v Ireland \(28 January 2014\)](#)

16. The applicant mainly complained under Article 3 that the system of primary education failed to protect her from sexual abuse by a teacher in 1973 and, under Article 13, that she did not have an effective domestic remedy in that respect. She also invoked Article 8 and Article 2 of Protocol No. 1, both alone and in conjunction with Article 14 of the Convention. She also complained about the length of her civil

proceedings and about the absence of an effective domestic remedy in that respect, invoking Article 6 alone and in conjunction with Article 13 of the Convention.

17. For 6 months in 1973, the applicant was subjected to some 20 sexual assaults by a teacher at her primary school. She did not report them. But the school had received a similar complaint from a parent of another child 2 years earlier. In September 1973, the girl's parents were informed by other parents of children at the school of similar allegations; and, following a meeting with the school and the parents, the teacher resigned. The allegations were not reported to the police, education ministry or other state authorities. The child suppressed the sexual abuse and although she had psychological difficulties she did not associate them with the abuse.

18. 23 years later she was contacted by the police in the context of a complaint of abuse from another pupil of the same school and in relation to the same teacher, and also referring back to the early 1970s. This led to the conviction of the teacher of sexual abuse on the basis of 21 sample charges. He had been charged with 386 offences. It was only on hearing the evidence during the trial and through the counselling that she received did she make the link between her psychological problems and the earlier abuse. So in 1998, 25 years after the abuse, she brought a civil claim for damages against the state for failing to properly supervise the school and not stop the abuse (which it had been subsequently found to have taken place since 1962 - i.e. 11 years before her own misfortune); also, for vicarious liability as employer of the teacher and breaching her constitutional right to bodily integrity.

19. The events taking place before the UN Convention on the Rights of the Child was drafted, the judgment cites the pre-existing system of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights as placing obligations on the state to protect children from maltreatment and establish appropriate social programmes for the prevention of abuse and the treatment of victims.

20. As to the historic character of the case, the Court underlined that the state's responsibility had to be assessed from the point of view of facts and standards of the events in question (1973) and, notably disregarding the awareness in society today of the risk of sexual abuse of minors in the education context, which knowledge is the result of recent public controversies on the subject, including in Ireland. And the Court found that the international instruments adopted prior to 1973 emphasised the necessity for states to take special measures for the protection of children.

21. The Court examined the historical context – statistical evidence of rising sexual crime directed against boys and girls in contemporary reports (with a steady rise in prosecutions of sexual offences against children prior to the 1970s) – so that it could hold that there was enough evidence of the problem at the time for the state to have been aware of the risk and therefore to be (now) under a positive obligation (Article 3 – prohibition of inhuman or degrading treatment) to have taken steps to protect the applicant.

22. One of the dissenting opinions was based on the idea that the starting point for when time began to run on the state's obligation was the time when the complaints

were made officially to the state (the police) and when, in this case, the state acted swiftly.