



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

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**“The Role of the European Convention on Human Rights  
in strengthening the human rights of children”**

*High-Level Launching Conference of the Council of Europe Strategy  
for the Rights of the Child 2022*

*Rome, 8 April 2022*

**Robert Spano,  
President of the European Court of Human Rights**

It is my great pleasure, as President of the European Court of Human Rights, to be in Rome to participate in your High-Level Conference which launches the Council of Europe’s new Strategy for the Rights of the Child (2022-2027), the “Rome Strategy”.

Let me begin by thanking and congratulating the Italian Presidency of the Committee of Ministers of the Council of Europe.

I know that enhancing women's empowerment and the rights of children and adolescents is one of your key priorities. Indeed, I have spoken at two conferences in the last weeks on women's rights, one on femicide and the other on gender in the judiciary. I am particularly pleased to be participating in this event on the rights of children.

You have had a number of tremendous challenges to deal with during your Presidency, in addition to the global pandemic, and here I am of course speaking of the war in Ukraine and the human consequences of this tragedy firstly for the lives of Europeans and also for our own organisation.

One of the six strategic objectives<sup>1</sup> of the new Council of Europe Strategy is children's rights in crisis and emergency situations and that could not be more relevant during the present armed conflict. We know that during armed conflict women and children are particularly at risk of violence, as well as exposure to sexual exploitation and abuse.

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<sup>1</sup> The Strategy identifies six strategic objectives: Freedom from violence for all children ; Equal opportunities and social inclusion for all children ; Access to safe use of technologies for all children ; Child-friendly justice for all children ; Giving a voice to every child and Children's rights in crisis and emergency situations.

My modest contribution to your discussions will focus on the most recent case-law of the European Court of Human Rights which highlights the six priority areas of the new Strategy.

It may come as a surprise to the modern reader that the European Convention on Human Rights contains only two explicit references to children (in Article 5 of Protocol No. 7 on “Equality between Spouses”).

Yet that fact most probably reflects the position of the child in society when the Convention was drafted roughly 70 years ago. Applying the living instrument doctrine the Court’s case-law has developed over the last decades to take into account a more child-centred, more humane, approach to human rights. One can take just one example: the changing views on the corporal punishment of children over the last decades to understand this evolution. Over the years the Court has developed a rich and extensive body of case-law concerning the rights of the child. This case-law covers family-centred issues such as custody and access rights as well as child adoption. It also covers domestic violence, sexual exploitation and fair trial guarantees.

In my intervention, I intend to give you an overview of the most recent judgments in this field which demonstrate the Court's overall trajectory when it comes to Convention protections afforded to children.

With these preliminary remarks, allow me to turn to the particular areas of Convention law where the Court has recently delivered important judgments in the field of children's rights.

### **Freedom from violence for all children**

I will begin by discussing the issue of protecting children from violence. It is a sad reality that complaints relating to the sexual exploitation and sexual abuse of children are not new. They have been lodged and dealt with by the Court since its early beginnings, where the Court found that children and other vulnerable individuals are entitled to effective protection by the State. Over the years the Court has therefore dealt with examples of sexual abuse in various settings such as within the family<sup>2</sup>; in care homes<sup>3</sup>; at school<sup>4</sup>; or in churches<sup>5</sup>.

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<sup>2</sup> *D.P. and J.C. v. the United Kingdom*, no. 38719/97, 10 October 2002

<sup>3</sup> *X and Y v. the Netherlands*, 26 March 1985, Series A no. 91

The recent case I would wish to discuss in this context is *R.B. v. Estonia*<sup>6</sup> from June 2021.

The case concerned the criminal investigation into the allegations of sexual abuse of a four and a half year old child by her father. In the case the failure of the investigator to advise the child of her duty to tell the truth and her right not to testify against her father led to the exclusion of her testimony and her father's acquittal of sexual abuse by the decision of the Supreme Court.

The Court found that there had been significant flaws in the domestic authorities' procedural response to the applicant's allegation of rape and sexual abuse by her father, which had not sufficiently taken into account her particular vulnerability and corresponding needs as a young child so as to afford her effective protection as the alleged victim of sexual crimes.

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<sup>4</sup> *O'Keeffe v. Ireland* [GC], no. 35810/09, ECHR 2014 (extracts)

<sup>5</sup> *J.C. and Others v. Belgium* (no. 11625/17)

<sup>6</sup> *R.B. v. Estonia*, no. 22597/16, 22 June 2021

Accordingly, without expressing an opinion on the guilt of the accused, the Court concluded that the manner in which the criminal-law mechanisms as a whole had been implemented in the present case, resulting in the disposal of the case on procedural grounds, had been defective to the point of constituting a violation of the respondent State's positive obligations under Articles 3 and 8.

### **Equal opportunities and social inclusion for all children**

Moving to the area of equal opportunities and social inclusion, an issue which has also become quite salient during the pandemic, the case I have chosen is *G.L. v. Italy* from 2020.<sup>7</sup> The case concerned the inability for a young girl suffering from nonverbal autism to receive specialised learning support during her first two years of primary education even though the support was provided for by law.

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<sup>7</sup> *G.L. c. Italie*, n° 59751/15, 10 septembre 2020

The Court found that the child had not been able to continue attending primary school in equivalent conditions to those available to other children and that this difference was due to her disability. The Court further noted that the discrimination suffered by the child was all the more serious as it had taken place in the context of primary education, which formed the foundation of child education and social integration, giving children their first experience of living together in a community. The Court concluded, unanimously, that there had been a violation of the provision of discrimination under Article 14 of the Convention taken in conjunction with the right to education under Article 2 of Protocol No. 1.

### **Access to safe use of technologies for all children**

Allow me then to turn a field which is becoming ever more important for the health and welfare of children, their safety in cyberspace. We all know that digital safety is of the utmost importance especially to children.

Already as early as in 2008 the Court dealt with the theme of protecting children from being targeted by paedophiles on the internet. The landmark judgment of the Court, and often discussed, is of course the case of *K.U. v. Finland*.<sup>8</sup> The applicant, a minor aged 12 years' old at the time, was the subject of an advertisement of a sexual nature on an Internet dating site. The identity of the person who had placed the advertisement could not, however, be obtained from the Internet service provider due to the legislation in place at the time. The Court noted that “that sexual abuse is unquestionably an abhorrent type of wrongdoing, with debilitating effects on its victims. Children and other vulnerable individuals are entitled to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives”.

A more recent case, *Trabajo Rueda v. Spain* of 2017, dealt with online pornography of children but from the perspective of a man whose computer was seized on the grounds of the material contained therein.<sup>9</sup>

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<sup>8</sup> *K.U. v. Finland*, no. 2872/02, ECHR 2008

<sup>9</sup> *Trabajo Rueda v. Spain*, no. 32600/12, 30 May 2017



The Court has not yet had an opportunity to deal with cyberbullying in respect of children. However, it is noteworthy to mention that in *Buturugă v. Romania*<sup>10</sup> from 2020, the Court found that the Romanian authorities had failed to respond to a woman's complaints of domestic violence and cyberbullying by her former husband. On that occasion the Court pointed out that cyberbullying was recognized as an aspect of violence against women and girls and that it could take on a variety of form, including cyberbreaches of privacy, intrusion into the victim's computer and the capture, sharing and manipulation of data and images, including private data.

### **Child-friendly justice for all children**

Next I will turn to the Court's case-law on child-friendly judicial procedures. The case of *N.Ç. v. Turkey*<sup>11</sup> from February 2021 concerned the failure to protect the personal integrity of a vulnerable child in the course of excessively long criminal proceedings relating to sexual abuse.

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<sup>10</sup> *Buturugă v. Romania*, no. 56867/15, 11 February 2020

<sup>11</sup> *N.Ç. v. Turkey*, no. 40591/11, 9 February 2021

The facts of the case, like the facts of many of these cases, are disturbing. The applicant was forced to work as a prostitute by two women while she was only twelve years old. The following year she lodged a complaint against them, and against the men with whom she had had sexual relations. Regarding her complaint as to the failure to provide her with help during the proceedings, the Court relied on several international instruments including the Council of Europe's Lanzarote Convention. These provided guidance regarding the assistance that should be provided to child victims of sexual abuse and exploitation. In this case, for eighteen months after her complaint had been lodged, the applicant was at no point supported by a welfare assistant, a psychologist or any kind of expert, either before the police or the prosecutor, or during the hearings before the assize court. This finding was sufficient to conclude that the applicant had not been cared for in an adequate manner during the proceedings in question.

## **Giving a voice to every child**

Whilst Article 8 contains no explicit procedural requirements, a child must be sufficiently involved in the decision-making related to his/her family and private life. The general principles have been developed to provide the child with the right to be consulted and heard in order to protect his/her best interests. For children of a certain age, the Court favours the national judge hearing them in person in any proceedings affecting their rights under Article 8. As I will elaborate further in a moment, the case-law has therefore incorporated international and European standards to the effect that children must no longer be considered as parents' property but as independent rights holders.

An example of this jurisprudential development is the recent case of *C v. Croatia*<sup>12</sup> from 2020, the applicant was a minor child who was nine years old at the time of the court proceedings where the issue of his custody was being determined. The fact that his views were not heard meant that the decision-making process was deemed to be flawed and his Article 8 rights were violated.

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<sup>12</sup> *C v. Croatia*, no. 80117/17, 8 October 2020

## **Children's rights in crisis and emergency situations**

My final case reflects the growing number of complaints brought before the Court which address the situation of migrant children. *Khan v. France*<sup>13</sup> 2019 concerned the failure by the authorities to provide an unaccompanied foreign child with care before and after the dismantling of a makeshift refugee camp. While the domestic authorities faced a complex task in identifying children among all the persons present on the site and of providing them with appropriate care, the Court was not convinced that they had done all that could reasonably be expected of them to fulfil their positive obligation in the present case, bearing in mind that the applicant, as a young unaccompanied foreign minor unlawfully present in the territory had therefore belonged to one of the most vulnerable categories in society. The combination of the applicant's living environment and the non-enforcement of the protection order had amounted to degrading treatment and a violation of Article 3 of the ECHR.

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<sup>13</sup> *Khan v. France*, no. 12267/16, 28 February 2019

Before concluding, I would like to draw your attention to a sensitive case currently pending before the Grand Chamber of the Court also against France. The case concerns the unsuccessful requests by the applicants for the repatriation by the French authorities of their respective daughters and grandchildren, who are being held in the al-Hol camp in north-eastern Syria run by the Syrian Democratic Forces.<sup>14</sup> The case was heard in the Grand Chamber in September last year and we are now at the deliberative and drafting stages.

## **Conclusion**

Dear participants,

I would like to conclude by underlining the depth and the breadth of the issues covered by the Court's case-law on children's rights. Today I have only been able to share with you a fraction of the sensitive and interesting questions which the case-law raises. All are pertinent to the Council of Europe's new Strategy.

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<sup>14</sup> *H.F. and M.F. v. France and J.D. and A.D. v. France* (application nos. 24384/19 and 44234/20).

There are two overarching elements I would like to focus on in conclusion. The first is this.

Bearing in mind that children are holders of rights, rather than simply objects of protection, the Court has increasingly started to treat children as independent beneficiaries of all of rights guaranteed by the Convention. To be clear, this jurisprudential strand in the Court's case is still developing, in particular in cases related child custody and parental contact with children. This development takes account of an ever growing awareness and understanding of the child's status as an independent human person in European and international human rights law, requiring legal protections on the basis of the primordial principle of the child's best interest which does not necessarily coincide with or can be determined by the classical parameters of the parental-child relationship in all circumstances. This development can often have procedural implications, for example when it comes to questions of victim status and representation before the Court.

The second point I would like to highlight is the intersectionality of children's rights, which is mentioned in the Strategy itself under "cross-cutting dimensions or approaches". The children at the heart of the Court's case-law are all minors, but they also fall into other groups which deserve our attention: they may be disabled, they may be part of the LGBTI community, they may be migrant children, they be a trafficked girls or boys. This is why the solutions to these cases are often complex and transversal and require considered engagement and knowledge of the often difficult societal and cultural elements that impact the lives of children in all of the member states of the Council of Europe.

Thank you for your attention.