

CHILDREN'S RIGHTS



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CHILDREN'S RIGHTS

These summaries are made under the sole responsibility of the Department for the Execution of Judgments of the European Court and in no way bind the Committee of Ministers.

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The European Court, drawing on international and European human rights treaties, has underlined the children's need for special protection due to their vulnerability. Thus, every child has the right to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the State. In the same vein, the Committee of Ministers has recommended that families, society and States invest more on the protection of children, given their fragility and dependence on adults for their development.¹

As a result, in all decisions concerning children, the latter's best interests are paramount and must be fully and effectively respected. This has as a consequence States' positive obligations vis-à-vis children so that any measures taken should never harm the children's health and development.

The present factsheet sets out a number of examples of general and, where possible, individual measures adopted and reported by States, in the context of the execution of the European Court's judgments, in order to safeguard and protect children's rights, notably: their right to freedom from ill-treatment and servitude, their right to liberty and security, access to a court, family life, return proceedings in abduction cases and freedom from discrimination in family law, inheritance matters and education.

¹ Recommendation [CM/Rec\(2009\)10](https://www.coe.int/en/web/execution/cm/rec200910) on integrated national strategies for the protection of children from violence.

1. PROTECTION OF CHILDREN FROM ILL-TREATMENT AND SERVITUDE

1.1. Protection from domestic violence and abuse

Protection of children from domestic violence pending divorce proceedings

In order to ensure that authorities adopt interim custody measures, sanctions or other measures speedily to protect a child and his mother from violence by the father in the context of divorce proceedings several reforms have been adopted. The 2008 Code of Civil Procedure provided that, to ensure speedy decisions on interim custody measures, the courts are to take these decisions at the hearing where the respective measure has been requested. Furthermore, the 2005 Protection Against Domestic Violence Act provided that in cases of physical, psychological or sexual violence at home, the courts may issue injunctions or take other measures to remove the perpetrator from the home, ban them from approaching the victim's home or workplace, temporarily remove the child from the custody of the perpetrator or impose compulsory education programmes. The domestic courts are to take such decisions in a speedy manner and can order interim measures (to be decided within 24 hours) in urgent cases. In addition, the 2000 Child Protection Act established the State Child Protection Agency and regional Social Care Offices competent to take measures to protect children in danger.

BGR / Bevacqua and S.
(71127/01)

[Judgment final on](#)
[12/09/2008](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2012\)162](#)

Enhancing investigations and criminal proceedings concerning children victims of domestic violence

Following the European Court's judgment, the domestic courts found that the child was a victim of abuse by her father who had custody rights after divorce. In 2016 an appeal court found the father guilty for his daughter's bodily injury and imposed a fine on him. In 2015 a court granted custody rights to the child's mother.

CRO / M. and M.
(10161/13)

[Judgment final on](#)
[03/12/2015](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2020\)228](#)

Protection of children from domestic violence has been enhanced, notably through the adoption, in 2014, of the Protocol on Conduct in cases of ill-treatment and neglect of children. It established detailed procedures to be followed by professionals in this area (police, prosecutors, judges, social welfare services and medical staff) and is applicable to all possible forms of ill-treatment against children. Moreover, criminal liability for child abuse by a family member was reinforced in 2015 through Criminal Code amendments. Furthermore, in the framework of a project for the protection of children in criminal proceedings, launched in 2014 by the Ministry of Justice in cooperation with UNICEF, municipal and county courts were equipped with video-link devices necessary for obtaining testimonies from children, alleged victims or witnesses of domestic violence participating in criminal proceedings. Finally, several Constitutional Court's judgments delivered between 2017 and 2019 underlined the State's obligation to enable children to actively participate in criminal proceedings against those who have ill-treated them.

Amendments of civil law enhancing safeguards against domestic violence

In 2003, following the facts of the case, the Code of Civil Procedure was amended and enabled all victims of domestic violence to seek protection, requiring the authorities to take interim measures promptly. The law allows victims to request competent courts to impose a temporary ban of home accessing on persons whose presence therein may lead to violence. If further cohabitation is not possible due to violence or threats thereof by a spouse or a person close to the family, the Civil Code provides that courts may limit these persons' access to home or their exclusion therefrom. Finally, if a (former) husband, during marriage or after divorce commits physical or mental violence against a spouse or a person living with him, courts shall decide that he is not entitled to a substitute dwelling.

SVK / E.S. and Others
(8227/04)

[Judgment final on](#)
[15/12/2009](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2012\)501](#)

Enhancing effectiveness of investigations into children's sexual abuse

In 2003, following the facts of the case, the Law on preventing and combating domestic violence was adopted to ensure, *inter alia*, cooperation between the prosecution and child protection institutions. The law defined the actions or omissions constituting domestic violence, including sexual violence against children, and granted victims the right to be informed and to benefit from counselling and services for rehabilitation and social reintegration. In 2004, the Law on certain measures to protect crime victims provided that child victims of sexual offences have the right to free psychological assistance and support, as well as to free legal aid. Taking into account the 2004 Law on the protection and promotion of the rights of the child, the Prosecutor General issued, in 2006, an Order by which specialised prosecutors should be assigned cases where the rights and interests of a child are at stake. In 2008, the police introduced working rules and a methodology for police officers who are specialised in investigations into sexual abuse, notably against children. In 2009, a handbook of good practices explaining the investigative activities of the prosecuting authorities, particularly in cases of sexual offences, was issued and included in an order issued by the Public Prosecutor's Office at the High Court of Cassation and Justice and the Ministry of Administration and Interior. In 2012, the General Prosecutor of Romania and the Inspector General of the Romanian Police issued a joint order aiming at ensuring promptness of investigations.

ROM / M. and C.
(29032/04)

[Judgment final on](#)
[27/12/2011](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2013\)233](#)

Criminalisation of intrusive photography affecting children's personal integrity

The case concerns a violation of the applicant child's private life given that Swedish law, as it stood in 2002 when the specific act of the applicant's stepfather covertly attempting to film the applicant naked in their bathroom for a sexual purpose occurred, did not ensure protection of her right to respect for her private life in a manner that complied with the State's positive obligations under Article 8 of the Convention.

In 2013, a provision on 'intrusive photography' was introduced into the Criminal Code. This provision criminalised, under certain circumstances, acts of covert filming of individuals in private places, such as bathrooms and changing rooms, without their permission, thus ensuring protection of one's private life as prescribed by the Convention.

SWE / Södermann
(5786/08)

[Judgment final on](#)
[12/11/2013](#)

[Final Resolution](#)
[CM/Res\(2014\)106](#)

Enhancing criminal proceedings and redress of children victims of crime

In 2014, following the facts of the case which concerns deficiencies in court proceedings related to domestic violence suffered by a child, the Ministry of the Interior and the Prosecutor's Office issued guidelines on the handling of criminal complaints and the coordination of criminal investigations by the judicial police and prosecutors. Under these guidelines, complaints regarding offences against children are considered special and urgent and are dealt through an

ROM / D.M.D.
(23022/13)

[Judgment final on](#)
[03/01/2018](#)

[Action plan](#)

accelerated procedure in special hearing rooms adapted to children, when these are available. Moreover, targeted training sessions for judges, prosecutors, police officers, staff of the social and child protection services and psychologists have been organised. Failures by the Child Protection Authority to verify complaints of ill-treatment, to refer them to the police and to take appropriate measures for the protection of victims are subject to penalties under the new Criminal Code.

[Status of execution: pending](#)

Following the 2014 amendment of the Code of Criminal Procedure, the criminal courts' ex officio obligation to rule on compensation when the victim has no capacity or restricted legal capacity has been replaced by the obligation for the victim's legal representative or for the prosecutor to lodge a civil action for damages. The courts are nevertheless required to inform the victims and their legal representatives of their right to request damages through a civil action.

New legislative safeguards to protect children from corporal punishment

UK. / A.
(25599/94)

Following the Court's judgment, which concerns the failure of the state to protect the applicant child from ill-treatment by his step-father, who was acquitted of criminal charges brought against him after he raised the defence of "reasonable chastisement", in England and Wales the defence of "reasonable chastisement" which was contained in the Children Act 2004 was removed and replaced by one of "reasonable punishment". This defence was limited to cases charged as "common assault", notably cases where the injury suffered is transient or trifling. Defence may no longer be invoked in cases where the physical punishment amounts to assault occasioning actual bodily harm to children, cruelty or more serious assault offences. In Northern Ireland, similar legislative provisions were introduced by the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order of 2006. In Scotland, the Criminal Justice (Scotland) Act 2003 provided for a defence to a charge of assault against a child where certain conditions are satisfied (referred to as "justifiable assault"). The determining criteria (i.e. the nature of what was done, the circumstances in which it took place, any effect whether physical or mental) reflect the European Court's criteria set out to assess whether ill-treatment falls within the scope of Article 3 of the Convention.

[Judgment final on
23/09/1998](#)

[Final Resolution
CM/ResDH\(2009\)75](#)

1.2. Protection from ill-treatment in schools and during home evictions

Operational measures to prevent violence among pupils in schools

TUR / Kayak
(60444/08)

In 2006-2015 the Ministry of National Education prepared strategic actions plans to prevent violence in education, in response to the violations found in this case resulting from the fatal stabbing in front of the school of the applicants' son by another pupil and the authorities' failure to ensure supervision of the school premises. According to the above plans, executive boards in charge of preventing and de-escalating violence among pupils were set up in provinces, districts and schools. In addition, since 2013, schools are required, at the beginning of each school year, to prepare a psychological and social intervention action plan in order to address situations of violence amongst pupils.

[Judgment final on
10/10/2012](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2016\)302](#)

As to the school where the incident took place, additional security measures were taken: a wire fence was erected, a guardian was stationed at the security gate, the number of teachers on duty was increased and a video security system was installed. Similar measures were implemented countrywide between 2009 and 2015.

Legislative and operational measures to prevent pupils' sexual abuse by teachers

IRL / O'Keefe
(35810/09)

The Department of Education issued, between 1991 and 2011, guidelines to schools to improve child protection arrangements in schools, including from the potential sexual abuse by teachers. These guidelines included new child protection policies, including reporting and investigations into child abuse; the setting up of new procedures for school inspections including a specific review of child protection policies; the designation of a school liaison person with public child protection agencies; teacher training and the organisation of information meetings with parents and encouragement of disclosure by children.

In February 2016, the Department of Education also updated the procedures for responding to child protection concerns. Furthermore, in 2012, the failure to disclose to the police information relating to sexual offences against children became a criminal offence.

In addition, the Children First Act 2015 put key elements of the national child protection guidance on a statutory basis and made mandatory the reporting of child abuse to the Child and Family Agency (established in 2014 and responsible for the oversight of the safety and wellbeing of children) by certain professionals, including teachers. It also required that all organisations working with children, including schools, undertake a risk assessment and prepare a Children Safeguarding Statement outlining procedures to mitigate any risks identified. The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 and 2016 introduced statutory vetting arrangements for persons working with children.

[Judgment final on
28/01/2014](#)

[Action plan](#)

[Status of execution: pending](#)

Protection of children during house evictions

ROM / Ioan Pop and Others
(52924/09)

In order to prevent ill-treatment of children during house evictions, the 2013 Code of Civil Procedure provided that when a minor is present, enforcement proceedings shall be carried out in the presence of a representative of the General Directorate of Child Protection and Social Assistance, and when the latter considers it necessary, in the presence of a psychologist appointed by them. In 2010 the National Union of Bailiffs and the Ministry of Internal Affairs established a procedure to be followed by the police when accompanying bailiffs during house eviction. Furthermore, the General Directorates of Social Assistance and Child Protection and the County Police Inspectorates have established specific procedures in order to ensure proper cooperation in matters regarding police operations involving minors.

[Judgment final on
06/03/2017](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2018\)65](#)

1.3. Protection from servitude

Adoption of criminal legislation enhancing children's protection from servitude

FRA / Siliadin
(73316/01)

In 2003 the Criminal Code was amended in order to prevent violations similar to the one found in this case due to the fact that the criminal-law provisions in force did not afford the applicant, a migrant minor held in servitude, specific and effective protection. The servitude-related offences may now be established if there is knowledge of the person's vulnerability or dependence, instead of the criterion of "abuse" of the person's state of weakness or dependence used in the texts applicable earlier. Moreover, the Criminal Code instituted a presumption of vulnerability for minors or for persons against whom the offences are committed on arrival in France. Also, the law included the victim's minority as an aggravating circumstance. The penalties were increased to five years' imprisonment and €150 000 fine, or seven years' imprisonment and €200 000 fine if the offences are committed against a minor or a group of persons.

[Judgment final on
26/10/2005](#)

[Final Resolution
CM/ResDH\(2011\)210](#)

In addition, a 2007 law defined a new criminal offence of trafficking in human beings, punishable by seven years' imprisonment and a fine of €150 000. This offence is punishable by ten years' imprisonment and a fine of €1 500 000 if it is committed against a minor.

As regards the applicant, the domestic civil courts granted the applicant the sums owed to her in respect of unpaid wages plus an indemnity, and also €15 245 in compensation for the "significant psychological trauma" which she had suffered.

2. DETENTION OF CHILDREN

2.1 Detention of children in criminal proceedings

Legislation enhancing safeguards of children detainees' rights

In 2005 the Juvenile Protection Law was adopted and aimed to prevent violations similar to the one found in this case due to the excessively lengthy pre-trial detention of a juvenile in an adult detention facility. The law set out principles and procedures for the protection of juveniles, including their well-being, in detention centres and prisons. Notably prison sentences and measures restricting liberty shall be the last resort for juveniles. In addition, juveniles shall be held separately from adults in the facilities where they are detained and shall have access to psychological support and professional training. Likewise, juveniles who are taken in custody shall also be held separately from adults, at the bureau for minors of the security directorate. The law also provided that proceedings before law enforcement authorities and investigation proceedings in respect of juveniles shall be carried out by bureaux for minors at security directorates and juvenile units at Public Prosecutor's Offices.

*TUR / Nart
(20817/04)*

[Judgment final on
06/08/2008](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2016\)304](#)

Protection of children detained in police stations

The 2005 Juvenile Protection Law provided safeguards to prevent violations similar the one found in this case on account of a child's detention in a police station without being reported to the child welfare authorities. The law provided that upon the initiation of criminal proceedings involving juveniles, the juvenile unit of the law enforcement agencies shall notify the case to the juvenile's parent or guardian, to the Bar and to the Social Services and Child Protection Agency. Furthermore, the juvenile shall be allowed to be accompanied by a next-of-kin whilst they remain in police custody. Furthermore, in 2017 Judicial Interview Rooms were established by the Ministry of Justice and are used for children's testimonies. Lastly, under a protocol signed between the police and the Ministry of Family, Labor and Social Services, the former shall notify to the latter all proceedings initiated against children in need of protection.

*TUR / Tarak and Depe
(70472/12)*

[Judgment final on
09/07/2019](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2020\)116](#)

Legislation aimed at preventing arbitrary detention of minors in juvenile holding facilities

In 2010, following the facts of the case, the Law on the Placement of Children in Juvenile Holding Facilities was amended and provided an exhaustive list of well-defined grounds for the placement of children in juvenile holding facilities and the procedure for such placement. Furthermore, the 2012 Code of Criminal Procedure provided that minors may only be detained when they are suspected or accused of having committed serious or especially serious crimes, provided that no other measures of restraint may be effective. Parents shall be notified immediately of the arrest or detention of a minor.

*UKR / Ichin and Others
(28189/04)*

[Judgment final on
21/03/2011](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2017\)357](#)

Preventing detention and establishment of special care facilities for children with specific needs

Under the Children Act 2001 (fully implemented in 2007) a court may not make an order imposing a period of detention on a child unless it is satisfied that detention is the only suitable way of dealing with the child.

*IRL / D.G.
(39474/98)*

[Judgment final on
16/08/2002](#)

The amended Child Care Act 1991 imposed statutory duties on the Health Service Executive in relation to children in need of special care or protection. As regards offending children, a range of new community sanctions for children, operated by the Probation Service, was introduced giving courts more alternatives to custody for young offenders.

[Action report](#)

[Final Resolution
CM/ResDH\(2014\)234](#)

The Child Care (Amendment) Act, 2011 created a statutory framework for the High Court to deal with special care cases, instead of the High Court employing its inherent jurisdiction. Under this law, the Health Information and Quality Authority (HIQA) will register Special Care Units. A Special Care Unit provides a secure residential service to children and young people who are in need of specialised targeted intervention, whose behavior is deemed to pose a risk to themselves or others. The detention, by order of the High Court of a child in a Special Care Unit, is considered as a last resort, for as short a time as possible, and when other forms of residential or community care are considered to be unsuitable.

2.2 Migrant children's detention

Prohibition of detention of unaccompanied migrant children

In order to prevent recurrence of detention of an unaccompanied migrant child in an adults' facility, a law adopted in 2012 prohibited the detention of unaccompanied migrant children. If a doubt exists about a child's age, a law adopted in 2007 provided, as an exception, that the child may be detained for a maximum period of six days, accompanied with specific medical and social assistance in order to determine his age. Furthermore, under a law of 2004, a guardian is appointed for each unaccompanied migrant child. The guardian has the capacity to challenge a deportation order and must be involved in the process of finding a lasting solution for the child. In addition, the 2012 law required that the Aliens Office made sure that an unaccompanied migrant child once deported will be properly received and cared for in the receiving country.

*BEL / Mubilanzila Mayeka
and Kaniki Mitunga
(13178/03)*

[Judgment final on
12/01/2007](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2014\)226](#)

Prohibition of detention of migrant children with their families in closed facilities

Following the Court's judgment concerning the detention of migrant children and their mother subject to expulsion in a non-Convention compliant detention facility, a law adopted in 2011 provided that, in principle, migrant children and their families shall not be detained in closed facilities. Detention is possible in places adapted to the needs of families with children and for a short period, only in specific circumstances or as a last resort if the family has not complied with the conditions concerning accommodation in open facilities. Furthermore, various options are now available for housing irregular migrant or asylum-seeking families with children, such as accommodation in open single-family houses, or in open centres for asylum seekers.

*BEL / Muskhadzhiyeva
(41442/07)*

[Judgment final on
19/04/2010](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2016\)](#)

3. CHILDREN'S ACCESS TO A COURT

Abolition of statutory limitations for insurance-related actions initiated by minors

In order to prevent disproportionate limitations of children's access to a court on insurance related matters, the 1874 Law on Insurance was amended in 2014 providing that the statutory limitation of three years for any action concerning an insurance policy cannot run against minors and persons deprived of legal capacity until the day of their majority or of the lifting of their legal incapacity. Furthermore, the new law provided that any amount which is to be paid to a minor or to a person deprived of legal capacity in pursuance of an insurance contract must be paid into an escrow account and remain therein until the person reaches the age of majority or the incapacity is lifted.

BEL / Stagno
(1062/07)

[Judgment final on](#)
[07/10/2009](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2014\)111](#)

Ensuring children's right to access to a court reviewing final care orders

In 2014, following the Court's judgment concerning lack of access to a court to contest a final care order of children whose mother had been handed a suspended conviction, the Act amending the Children and Young Persons (Care Orders) Act entered into force. It set up a mechanism ensuring the right of parents, guardians, children and young adults concerned to access a court reviewing final care orders. Furthermore, the 2014 Criminal Code provided that forfeiture of parental authority over children due to a conviction for certain criminal offences would no longer be automatic but may be imposed by a court after consideration of all the circumstances of a case. In case of a change of circumstances, an offender can apply to a court to remove or change the conditions of the forfeiture of their parental authority.

MLT / M.D. and Others
(64791/10)

[Judgment final on](#)
[17/10/2012](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2014\)265](#)

As regards individual measures, after the Court's judgment, the authorities continued to monitor the changes in circumstances which could have had a bearing on the care order and in June 2012, the children were reunited with their mother.

Children's access to legal assistance and an impartial court

In order to prevent new violations of the Convention due to the inability of a child accused of a crime to have access to a lawyer and subsequently to an impartial court, in 2013 the Act on the Proceedings in Juvenile Cases of 1982 was amended. It provided explicitly for the right of children accused of a crime to have access to a lawyer and for compulsory, *ex officio* defence when a juvenile is placed in detention. In addition, under the new law, juvenile proceedings consist of only one stage and are conducted by a family court. This enhanced the courts' impartiality because it is no longer possible for them to decide on the initiation of a preliminary investigation and then adjudicate on the merits of a case.

POL / Adamkiewicz
(54729/00)

[Judgment final on](#)
[04/10/2010](#)

[Action plan](#)

[Final Resolution](#)
[CM/ResDH\(2014\)171](#)

Access to a criminal court of defendant children with intellectual disabilities

In order to enable defendant children with intellectual disabilities to participate effectively in their trial, following the facts of the case, the Lord Chief Justice issued, in 2000, a "Practice Direction on the Trial of Children and Young Persons in the Crown Court" which advised notably the following: there should be seating on the same level; wigs and gowns should be removed; no uniforms should be worn in court; frequent breaks should be organised; family should sit with the defendant; easy communication with legal representatives should be ensured; most of the media should be observing only through video cameras; and that no members of the

UK / S.C.
(60958/00)

[Judgment final on](#)
[10/11/2004](#)

[Final Resolution](#)
[CM/ResDH\(2011\)171](#)

public should be allowed in the courtroom. Furthermore, the Police and Justice Act 2006 amended the Youth Justice and Criminal Evidence Act 1999 and provided that certain vulnerable defendants, including juveniles, may with the agreement of the court, give evidence to the court as a witness from outside the court room using a live link. Furthermore, the Lord Chief Justice issued a revised Practice Direction in 2007, including steps to be taken to ensure that the defendant understands what is happening, is able to follow court proceedings and that the trial is conducted in a language that the defendant can understand.

4. CHILDREN'S RIGHTS IN FAMILY LAW MATTERS

4.1 Access rights, child custody and family reunification

Enforcement of child-parent contact rights pending divorce proceedings

BGR / Mincheva
(21558/03)

In order to prevent recurrence of a Convention violation due to the authorities' failure to enforce the contact rights of a mother with her son, which had been granted by a final court decision, in 2008, following the facts of the case, the Code of Civil Procedure was amended. It provided that the body which ensures the enforcement of decisions concerning child custody or contact rights can seek the assistance of the police and of social services and can also impose fines on the non-complying party. Furthermore, the 2009 Family Code provided that parties in divorce proceedings can request temporary measures concerning children care which must be examined either immediately or within two weeks after the hearing in which this request was submitted. The court's ruling is not subject to appeal but can be amended by the same court. The domestic courts can order measures for the protection of the child and request that the parent meet the child in the presence of the other parent or a third person, or to request that the parent meet the child in a particular place. Such measures can also be taken after the end of the divorce proceedings.

[Judgment final on](#)
[02/12/2010](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2012\)153](#)

The applicant established regular contacts with her child in 2003.

Prompt enforcement of child-parent contact rights pending divorce or custody proceedings

CRO / Ribic
(27148/12)

In response to the Court's findings criticising the authorities' failure to enforce contact rights between the applicant and his child, a new Family Act entered into force in 2015. It set strict deadlines for the domestic courts in proceedings relating to family matters. It also provided for the possibility of *ex officio* decisions in matters related to contact rights, *ex officio* execution of such decisions and the possibility of issuing *ex officio* provisional measures related to contact rights pending divorce or custody proceedings. In addition, the system of appellate jurisdiction was reformed in 2015, introducing a special jurisdiction for appeal in cases relating to family matters. Furthermore, the new Family Act provided that a non-custodial parent has both a right and an obligation to maintain contacts with the child, while the custodial parent has the obligation to enable and encourage such contacts and damages may be claimed from obstructing parents.

[Judgment final on](#)
[02/07/2015](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2018\)281](#)

Legislation establishing peaceful settlement of disputes on visiting rights

CZE / Reslova
(7550/04)

In response to the Court's judgment concerning notably the domestic courts' failure to exercise special diligence in proceedings concerning parental rights and to enforce the applicants' visiting rights, the Code of Civil Procedure (CCP) was amended and the Act on Social and Legal Protection of Children entered into force in 2008. Under this legislation, in matters concerning minor children (except in cases of domestic violence), courts may stay proceedings for up to three months and order for the parties to take part in mediation meetings or family therapy. Courts may also impose interim measures and order the placement of a child, whose life or development is threatened, in a "suitable environment" during the necessary period. Regarding the execution of court decisions concerning minor children, under the amended provisions of

[Judgment final on](#)
[18/10/2006](#)

[Final Resolution](#)
[CM/ResDH\(2011\)99](#)

the CCP, domestic courts may order parents not fulfilling their obligations to participate in out-of-court meetings, to follow family therapy or to set out a plan enabling gradual contact with the child. As a last resort, courts may order the forced reunion of the parent with the child.

In the cases where the children were still minor, the domestic courts, after the Court's judgment, granted the applicants visiting rights.

Children's reunification with their parents in country of origin

ESP / Salek Bardi
(66167/09)

In order to prevent recurrence of a violation of a stateless mother's right to family life due to the authorities' inadequate response to her request for the return of her daughter to Algeria, the Law for Legal Protection of Minors was amended in 2015. It provided for special proceedings to be initiated in cases concerning unaccompanied migrant children and the search for the child's family and reunification, which should be guided by the principle of the child's best interests. Furthermore, in 2009, the Supreme Court established a list of criteria to guide courts in matters of family reunification fully observing the child's best interests. Also, a national organisation was created (*Observatorio Nacional de la Infancia*), tasked with children's protection and the centralization of all relevant claims.

[Judgment final on
24/08/2011](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2018\)150](#)

Laws entrenching the child's best interest in family disputes

SVN / A.V.
(878/13)

In order to prevent new violations by social work centres and domestic courts of a parent's right to contact their children a new Family Code entered into force in 2019. It amended the competences of social work centres and domestic courts to improve the position of children in family disputes and ensuring a more effective implementation of the principle of the child's best interest. The new Code notably strengthened the use of counselling and mediation in family matters, by providing that parents shall attend prior counselling sessions at the social work centre, before asking a court to decide on the child's custody, maintenance and contact rights. Furthermore, domestic courts may issue interim injunctions, notably to order that contacts take place in the presence of a professional from the social work centre where a child is placed, and decide, *ex officio*, on any measures to protect a child's best interest. Furthermore, under the 2018 Social Security Act, social work centres may provide various care services, including "a help to a family at home" which provides professional counselling and assistance to all family members and care to children in need.

[Judgment final on
09/07/2019](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2020\)82](#)

Strengthening enforcement of custody decisions

MON / Mijuskovic
(49337/07)

Following the Court's judgment that concerned the authorities' failure to execute custody decisions and reunite the applicant with her children, the 2011 Enforcement Act was adopted. It provided that domestic courts shall have exclusive jurisdiction in cases concerning the return of a child to the custodial parent. Furthermore, it provided that courts should pay particular attention to the need to protect a child's best interest to the greatest extent possible when enforcing decisions concerning children. Thus, the competent court shall allow a period of three days for handing over a child to a parent or another guardian voluntarily. If the court's order is not complied with, within the indicated timeframe, the court shall fine the person responsible. As a last resort, the child shall be taken away forcibly and handed over to the parent or another guardian. The courts may also request the assistance of the social care authority in the enforcement proceedings. If the life or development of a child are endangered, the court shall order their immediate surrender to a parent or another guardian.

[Judgment final on
21/12/2010](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2016\)225](#)

Family reunification of children living abroad

In order to avoid recurrence of a Convention violation resulting from the authorities' refusal to allow the applicant's daughter from a previous marriage to join her in the Netherlands, in 2006 the Ministry of Justice adopted a new policy on the minors' right to family reunification with a parent legally residing in the Netherlands. According to this policy, the criterion of "factual family ties" used to determine the existence of a right to family reunification is now presumed if family life exists within the meaning of the Court's interpretation of Article 8 of the Convention.

The applicant's daughter was issued an entry visa and the applicant was issued a residence permit in 2010.

*NLD / Tuquabo-Tekle and
Others
(60665/00)*

[Judgment final on
01/03/2006](#)

[Final Resolution
CM/ResDH\(2010\)108](#)

4.2 Children's rights in filiation matters

Courts' competence to order paternity or maternity tests

In order to remedy the impossibility, in the framework of paternity claims, to compel an alleged father to comply with a court order to undergo a DNA test, a new Family Act was adopted in 2003. It provided that a court may request medical tests to establish paternity or maternity, which must be carried out within three months from the court's order. Under the now established domestic case-law, a person's failure to attend a medical examination to establish paternity or maternity is considered to be evidence in favour of the opposing party.

The alleged father's paternity was established in 2002 and the applicant (his daughter) was granted maintenance.

*CRO / Mikulic
(53176/99)*

[Judgment final on
04/09/2002](#)

[Final Resolution
ResDH\(2006\)69](#)

Flexible time-limits for introducing paternity claims

In order to avoid rigid legislative time-limits depriving one of the possibilities of obtaining judicial determination of paternity, the Children (Relative and Legal Status) Law of 1991 was amended in 2008. The law provided a three-year time-limit starting from the date on which the person concerned can establish that they first became aware of information enabling them to identify their putative father. It is for the claimant to satisfy the domestic court that, despite efforts to inquire into their paternity, which were reasonable in the circumstances, it had not been possible to discover such information earlier. Furthermore, the dismissal or withdrawal of previous paternity proceedings as time-barred cannot be a ground for the dismissal of any new paternity proceedings brought after the 2008 amendments.

*CYP / Phinikaridou
(23890/02)*

[Judgment final on
20/03/2008](#)

[Final Resolution
CM/ResDH\(2010\)43](#)

Elimination of restrictions on actions concerning recognition of paternity

A new Paternity Act entered into force in 2016 introducing an unconditional right to bring an action for the establishment of one's paternity also for children born out of wedlock before 1 October 1976 which had not introduced such a claim before October 1981. Such an action may be considered by courts notwithstanding that a court had previously decided not to establish paternity under the earlier legislation. For such a new action to be considered, a final earlier judgment no longer needs to be first annulled or reversed through an extraordinary appeal.

*FIN / Gronmark
(17038/04)*

[Judgment final on
06/10/2010](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2018\)326](#)

Recognition of filiation concerning children born abroad following a surrogacy agreement

FRA / *Menesson*
(65192/11)

In 2015 the Plenary of the Court of Cassation established that the transcription of foreign birth certificates of children born as a result of surrogacy agreements is authorised, if these certificates are consistent with the authenticity requirements of the Civil Code. In 2017, in order to remedy uncertainty in cases where foreign birth certificates designated the biological father but also the intended mother as parents, the Court of Cassation established that in such cases the transcription of the birth certificate regarding the biological father is possible. However, the Court of Cassation did not accept that the details relating to the intended mother should be transcribed, considering that designating as “mother” a woman other than the one who gave birth does not correspond to reality. In that case adoption would be the solution for the intended mother. Moreover, according to a 2013 circular of the Ministry of Justice French nationality certificates should be issued if foreign civil status documents showing a father-child link with a French man are in conformity with the authenticity requirements of the Civil Code. The mere suspicion of the existence of a foreign surrogacy arrangement is not a sufficient ground to reject such applications.

[Judgment final on 26/09/2014](#)

[Action report](#)

[Final Resolution CM/ResDH\(2017\)286](#)

The authorities issued French nationality certificates to the children concerned.

Adopted children’s right to be informed about their biological mother

ITA / *Godelli*
(33783/09)

In 2013 the Constitutional Court declared unconstitutional the domestic law provision prohibiting adopted persons’ access to information concerning their biological mothers without the courts being entitled to verify the mothers’ will to remain anonymous. Draft legislation has been pending in Parliament establishing a procedure to be followed in order for courts to contact the biological mother when a biological child requests relevant information. This legislative lacuna has been filled in the meantime by the Court of Cassation’s case-law which was developed in 2017 and established that courts receiving such requests may confidentially contact the biological mother to verify her will.

[Judgment final on 18/03/2013](#)

[Action report](#)

[Final Resolution CM/ResDH\(2015\)176](#)

In 2015, the Trieste juvenile court, following a new application lodged by the applicant, ordered, the communication to the applicant of her biological mother’s identity.

Children’s right to distinguish their ethnic origin from that of their parents in civil status documents

MDA / *Ciubotaru*
(27138/04)

The 2012 Law on Civil Status Documents provided that the ethnicity of a child’s parents can be registered in the child’s birth certificate at their request and on the basis of their own declarations. When a child reaches their 16th birthday the ethnicity is registered at their own request according to their own declaration. Information on one’s ethnicity in a birth certificate and other identity and civil status documents, where applicable, can be rectified at the request of the person concerned according to their own declarations.

[Judgment final on 27/07/2010](#)

[Action report](#)

[Final Resolution CM/ResDH\(2016\)84](#)

Domestic civil proceedings were reopened, and the Supreme Court ordered the competent civil status registration authority to change the ethnicity entry in the applicant’s birth certificate from Moldovan to Romanian.

Elimination of statutory limitations for children lodging paternity actions

ROM / *Calin*
(25057/11)

Under the 2007 Civil Code, the paternity action is imprescriptible throughout a child's life. Although the Constitutional Court in 2008 found that this rule was only applicable to children born after the entry into force of the new legislation, under the 2016 case-law established by

[Judgment final on 19/10/2016](#)

the Constitutional Court, the limitation-period of one year from the birth of the child is only applicable in the case of paternity-related actions lodged by the mother or the legal representative of the child but not to actions lodged by the child themselves. Thus, no paternity actions brought by children may be rejected as time-barred, regardless of the date of birth of the children.

[Action report](#)

[Final Resolution
CM/ResDH\(2018\)418](#)

Prompt settlement by courts of paternity issues

In 2001, following the facts of the case concerning the inability of the domestic courts to promptly settle a paternity issue due to the refusal of the putative father to undergo DNA testing, the Civil Code was amended. It provided that in paternity cases where the defendant does not consent to inquiry and examination, the judge shall be able to consider this fact as being against the defendant. Moreover, the 2001 Code of Civil Procedure provided that, in cases of unjustified non-compliance, judges may order the examination to be performed by force. According to case-law of the Court of Cassation established in 2009, it is the domestic courts' duty to determine whether the defendant is the father following examination of all available evidence.

*TUR / Ebru and Tayfun Engin
Colak
(60176/00)*

[Judgment final on
30/08/2006](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2018\)189](#)

The paternity claim of the applicant was admitted.

Elimination of statutory limitations for lodging paternity actions

The 2003 Civil Code introduced an exception to the one-year limitation period allowing claimants to plead that there are circumstances which could justify a delay in lodging paternity actions. Following a Constitutional Court judgment of 2012 which found the one-year limitation period unconstitutional, the above-mentioned time-limit was repealed. Thus, the Civil Code currently in force does not impose any time-limit for bringing paternity claims.

*TUR / Turnali
(4914/03)*

[Judgment final on
06/11/2009](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2017\)17](#)

4.3 Children under the authority of social care institutions

Protection of children's proprietary rights by social welfare authorities

In order to prevent recurrence of a violation concerning the failure of a Social Welfare Centre and of courts to safeguard the proprietary interests of children in a real estate swap agreement and to afford them a reasonable opportunity to effectively challenge this, legislative reforms were carried out. The 2015 Family Act provided that Social Welfare Centres are no longer competent to decide on matters concerning disposal of property owned by children. Such cases are now decided upon by domestic courts in non-contentious proceedings guided by the best interests of the child. Furthermore, domestic courts are allowed to deprive one or both of the child's parents of the right to manage the child's property upon request of a Social Welfare Centre, the child and/or one of the parents. As regards the children's right to challenge decisions regarding their property rights, the 2015 Family Act established the Centre for Special Guardianship (CSG) which is a specialised independent body authorised to represent and protect the best interests of vulnerable persons including children. In proceedings related to property matters, the competent court shall appoint a staff member of the CSG as special guardian of the child. In addition, the Family Act provided that the child shall be informed of the court's decision, of its consequences and of their right to lodge an appeal.

*CRO / S.L and J.L.
(13712/11)*

[Judgment final on
19/10/2015](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2018\)120](#)

Prohibition of placement of children in institutional care solely due to parents' financial situation

CZE / Wallová and Walla
(23848/04)

The 2012 Civil Code provided that inadequate housing conditions and the financial situation of the parents may not be *per se* reasons for a court to order a child's placement in an institution. The child's best interest is of primary concern and institutional care is now a subsidiary measure after the exhaustion of other alternatives. Similar provisions were introduced in the 2012 Family Act. In addition, the Law on Social and Legal Protection of Children, as amended in 2006, prescribed that after removal of children from parents' care, the competent authorities should aim to effectively reunite the family and provide parents with immediate and comprehensive assistance including as regards applications for financial and other social welfare benefits. Furthermore, amendments to the Rules of Civil Procedure adopted in 2008 and 2012 strengthened the right of the child to be heard and provided that the latter can be accompanied by a person of their choice throughout court hearings.

[Judgment final on
26/03/2007](#)

[Final Resolution
CM/ResDH\(2013\)218](#)

Preserving family ties of children placed in social care

ITA / Roda and Bonfatti
(10427/02)

In order to remedy the authorities' failure to maintain contact between children placed in social care and their families, several legislative reforms were implemented. The Civil Code, as amended in 2012 and 2013, provided for a child's right to be heard by a court in proceedings that concern them, including those relating to the child's adoption. In addition, the Civil Code regulated the relations between biological parents and the child in divorce proceedings, physical separation and interruption of cohabitation and established the principle that children should maintain contacts with both parents. Lastly, 2013 legislation provided that courts shall inform social services of cases where their intervention is needed in order to support the family of origin to allow the child to be raised therein.

[Judgment final on
26/03/2007](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2016\)27](#)

Placement of children in social care and their right to preserve links with families

ITA / Scozzari
(39221/98)

Legislative reforms were introduced following the Court's judgment concerning the authorities' failure to effectively protect the right of children placed in social care to preserve their ties with their mother. A 2001 law provided that social care placement orders must indicate how a child's guardian is to exercise guardianship and how parents and other members of the nuclear family are to maintain their links with a child placed in social care. It also provided that placement orders must define the duration of the placement, which must be fixed having as principal aim the child's reunification with the family of origin. In addition, the law provided that the competent social care service must facilitate a child's relations with and the return to their family. Lastly, seminars were organised to raise the awareness of youth magistrates and social workers of the requirements of the Convention, as interpreted by the European Court, in family law matters.

[Judgment final on
13/07/2000](#)

[Final Resolution
CM/ResDH\(2008\)53](#)

Parents' effective participation in proceedings concerning social care placement of their children

PRT / Soares de Melo
(72850/14)

In order to prevent similar violations due to the placement of children in a social care institution with a view to their adoption without securing the mother's participation in the proceedings and her legal representation, a new law was adopted after the facts of the case. The 2015 Law on the Promotion and Protection of Children and Youth in Danger made parents' legal representation mandatory in proceedings concerning the social care placement or adoption of their children. Furthermore, the European Court's judgment was disseminated to the 309

[Judgment final on
16/05/2016](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2019\)123](#)

Commissions for the protection of children and young people in order to prevent similar violations.

Following an interim measure adopted by the Court, the applicant mother renewed contacts with her children in 2016. Following the annulment of the impugned decision by the Constitutional Court in 2016, and in the framework of a "promotion and protection agreement" established by the competent court with the parents, the minor children were reunited with the applicant mother.

5. CHILD ABDUCTION AND RETURN PROCEEDINGS

Enhancement of child return proceedings under the Hague Convention

In response to this judgment which concerns the authorities' failure to enforce a court injunction requiring the applicant's children to be returned to her, after their abduction by their father, Romania adopted the 2004 Law on the Implementation of the Convention on the Civil Aspects of International Child Abduction (hereinafter: 'the Hague Convention') (amended in 2014). It notably provided for: the establishment of one court (the Bucharest tribunal for children and family issues) competent to deal with requests for return of children under the Hague Convention; the establishment of a procedure allowing domestic courts to impose a deterrent fine on a parent who refuses to return a child or to allow visiting rights; a deadline of two weeks in which the parent must abide by the obligation to return the child. In addition, a 2004 Law on the protection and promotion of the rights of the child provided that a child has a right to maintain personal relations and direct contacts with their parents, the exercise of these rights being established by a judicial authority. Furthermore, the new Code of Civil Procedure provided for a specific enforcement procedure concerning judgments relating to minors.

ROM / Ignaccolo-Zenide
(31679/96)

[Judgment final on](#)
[25/01/2000](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2015\)185](#)

Increase of criminal penalties in child abduction cases

In 2002, following the facts of the case concerning the authorities' failure to guarantee the applicant's custody rights in respect of her child who was kidnapped by his father, the Criminal Code was amended and provided for higher penalties, qualifying child abduction as a criminal offence thus also making it easier for domestic courts to request international action and cooperation in such of cases.

ESP / Iglesias Gil and A.U.I
(56673/00)

[Judgment final on](#)
[29/07/2003](#)

[Final Resolution](#)
[ResDH\(2006\)76](#)

The child was returned to his mother in 2000, who thus recovered her custody rights.

Ensuring swift and effective proceedings under the Hague Convention

A 2018 law aimed to regulate the competences and procedures to be followed by the competent central authority (the Minister of Justice) in cases covered by the Hague Convention and other relevant international instruments (including the "Brussels II bis Regulation"). Under the law, the central authority's task is to accept relevant motions and handle them promptly, to monitor the state of proceedings and to inform applicants living abroad about the state of their cases. Furthermore, the law amended the Code of Civil Procedure to streamline the proceedings, providing notably for: the introduction of a six weeks' deadline to deal with a request (at first instance and on appeal); the introduction of a cassation appeal against the decision on merits concerning a child's abduction, and the obligation to reason these decisions *ex officio*; the examination of requests under the Hague Convention only by selected regional courts and by one appeal court (the Warsaw Court of Appeal); the introduction of an obligation for experts to prepare immediately their opinion in these cases; the introduction of the parties' compulsory representation by a lawyer.

POL / Oller Kaminska
(28481/12)

[Judgment final on](#)
[18/04/2018](#)

[Action report](#)

[Status of execution: pending](#)

The applicant was reunited with her daughter in 2012.

New legislation enhanced administrative and court proceedings in international child abduction cases

*SUI / Bianchi
(7548/04)*

A 2009 law aimed to improve the handling of cases of international child abduction. It notably: assigned these cases to a single cantonal court, gave preference to the conclusion of friendly settlements in conflicts between parents, combined decisions on return with enforceable measures and required cantons to designate a single authority in charge of enforcement. In addition, the law provided that the parties should whenever possible be heard by the court and that the children should be heard in an appropriate manner. Lastly, the competent court is required to work with the competent authorities of the state in which the child habitually resided immediately before being abducted.

[Judgment final on
22/09/2006](#)

[Final Resolution
CM/ResDH\(2008\)58](#)

In 2007 the Italian police and judicial authorities in co-operation with the Swiss authorities, succeeded in finding the secret hiding place of the mother of the applicant's son in Mozambique. She was expelled and, finally, returned to Switzerland. Consequently, the applicant was reunited with his son.

Setting-up simplified and accelerated return proceedings concerning international child abduction

*AUT / M.A.
(4097/13)*

The 2017 Law on the Return of Children established a new national procedure under the Hague Convention return proceedings to simplify and accelerate the return of wrongfully removed children. The new law complemented the Non-Contentious Proceedings Act which entered into force in 2005 and already provided for the merging of competence to deal with requests for return and the re-establishment of contact between the abducted child and the affected parent. It notably introduced the following: during return proceedings contacts between the child and the left behind parent have to be maintained or re-established, unless this would negatively affect the child's best interests; the return order shall include the enforcement order; and no exceptions can be invoked in the enforcement stage that have already been examined in the first stage of the proceedings. In addition, the return order is enforceable immediately – even when an appeal is lodged - unless the court provides an exception for specific reasons. Lastly, measures, such as the appointment of a counsellor, for assisting the child during the return proceedings can be taken.

[Judgment final on
15/04/2015](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2018\)273](#)

Acceleration of administrative and specialised court proceedings under the Hague Convention

*CRO / Karadzic
(35030/04)*

In response to the Court's findings, the Act on Implementation of the Hague Convention entered into force in 2019. It provided that upon receiving a request from a foreign authority, the competent ministry immediately contacts the competent social welfare centre and initiates the return proceedings before the competent court. The Act stipulated tight deadlines for the decision-making: six weeks for the court to decide on the return request and eight days from the final hearing to render the decision. Furthermore, it streamlined these proceedings, vesting only two domestic courts with competence to conduct them. In addition, regarding the effective enforcement of return decisions, the Family Law of 2015 provided for fines and imprisonment of up to six months for parties hindering enforcement proceedings. As a last resort, it provided for the forcible seizure of the child with the police assistance.

[Judgment final on
15/03/2006](#)

[Action plan](#)

[Status of execution: pending](#)

Following the European Court's judgment, the applicant and the child's father came to an agreement that the child would live with the father and the applicant would have regular contacts with the child. The applicant was exercising her parental right until her son attained adulthood in 2013.

Streamlining and accelerating national authorities' action for the execution of enforcement orders in child return proceedings

*BIH / Sobota-Gajic
(27966/06)*

The 2003 Enforcement Procedure Act of Republika Srpska provided that a child shall be returned voluntarily by the person mentioned in the enforcement order within three days after the receipt of such a decision. Domestic courts will impose fines in case of non-compliance and, if necessary, request the assistance of the custody authorities. As a last resort, the child will be taken forcibly. Furthermore, domestic courts have the obligation to protect the child's interests during the enforcement of a custody order. Moreover, child abduction falls within the scope of the Domestic Violence Act of Republika Srpska of 2005: it provides that, when confronted with child abduction situations, police, public prosecutors, custody authorities and courts are obliged to provide protection to the victims and to examine such cases as a matter of priority.

[Judgment final on
06/02/2008](#)

[Final Resolution
CM/ResDH\(2011\)45](#)

The judgment awarding custody to the applicant was executed and she was reunited with her son in 2007.

New civil proceedings accelerating returns of internationally abducted children and enhancement of mediation in parental disputes

CZE / Macready (4824/06)

The 2008 Code of Civil Procedure established special proceedings related to international child abduction which led to: the determination of a special court competent in return proceedings, empowering domestic courts to decide on the conditions for the return of a child and/or on interim arrangements concerning the complainant's contact with their child and the implementation of a statutory six-week time-limit for the court to deliver a decision on the merits.

[Judgment final on
04/10/2010](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2012\)21](#)

Also, emphasis was placed on mediation in parental disputes. The role of an informal mediator in the international child abduction disputes is performed by the OILPC (Office for International Legal Protection of Children), whose task it is to reach solutions that would have the least possible negative impacts on the family crisis caused by illegal international removals of children.

6. PROTECTION FROM DISCRIMINATION

6.1 Family law and inheritance matters

Second-parent adoptions in unmarried same-sex couples

Legislative changes were made in order to avoid recurrence of discrimination against a person who lives in a stable homosexual relationship and was unable, under domestic law, to adopt the child of the other partner without severing the mother's legal ties with the child (second-parent adoption). In 2013 the Law amending the Civil Code and the Registered Partnership Act entered into force and allowed second-parent adoption in same sex couples (registered or not) without it entailing the termination of family relationships with the natural parent.

AUT /X and Others
(19010/07)

[Judgment final on](#)
[19/02/2013](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2014\)159](#)

Custody-related discrimination against fathers of children born out of wedlock

In order to eliminate discrimination in custody matters against fathers of children born out of wedlock, compared to fathers who originally held parental authority and later separated from the mother or divorced, legislative measures were adopted. The 2013 Law amending Child Custody Law and the Law on Names facilitated a father's joint custody with the mother even if the mother of a child, born out of wedlock, is still given the custody of a child. In addition, if there is an agreement between the parents, they may obtain joint custody by submitting the agreement to the registrar (an agreement on custody before a court is not required anymore). Lastly the law provided for a judicial review in custody matters. In cases where no consent can be reached the child's father can initiate court proceedings to obtain custody, where the court decides, in accordance with the child's interests, on whom will obtain custody. The court, even in the absence of the mother's consent, may decide that custody should be exercised by both parents or, if joint custody is not in the child's interests, custody may be transferred to the child's father.

AUT / Sporer
(35637/03)

[Judgment final on](#)
[03/05/2011](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2015\)19](#)

Removal of filiation-related discrimination suffered by children born out of wedlock

In response to the Court's findings, the Act Amending Various Legal Provisions Concerning Affiliation was adopted in 1987, amending the relevant provisions of the Civil Code. Accordingly, the Civil Code provided that a child's mother is the person so designated in the child's birth certificate. Thus, voluntary recognition by a mother is henceforth no longer necessary. Furthermore, regarding the effects of the filiation on family and patrimonial rights, the law laid down the general principle of equality of the different methods of filiation. Lastly, the provisions of the Civil Code, which discriminated against children born out of wedlock in inheritance matters, were repealed.

BEL /Marckx
(6833/74)

[Judgment final on](#)
[13/06/1979](#)

[Final Resolution DH\(88\)3](#)

Removal of discrimination against adulterine children in inheritance matters

In order to eliminate the discrimination suffered by adulterine children in inheritance matters, compared to their legitimate siblings, the domestic courts promptly gave direct effect to the European Court's judgment by setting aside the application of Article 760 of the Civil Code, which had established the difference in treatment between legitimate and adulterine children. A 2001 law on the reform of succession rights of the surviving spouse and adulterine child,

FRA / Mazurek
(34406/97)

[Judgment final on](#)
[01/05/2000](#)

[Final Resolution](#)
[ResDH\(2005\)25](#)

codified this development and removed the discrimination between adulterine and other children.

End of inheritance-related discrimination suffered by children born out of wedlock

*GER / Brauer
(3545/04)*

In response to the European Court's judgment, the Second Act for equal inheritance rights for children born out of wedlock, amending the Code of Civil Procedure and the Fiscal Code, entered into force in 2011. According to this Act, all children born out of wedlock will have a statutory right to inheritance in respect of their fathers and paternal relatives. As regards cases in which the State had become the statutory heir, the children concerned became entitled to claim compensation from the State.

[Judgment final on
28/05/2009](#)

[Final Resolution
CM/ResDH\(2012\)83](#)

End of custody-related discrimination against fathers of children born out of wedlock

*GER / Zaunegger
(22028/04)*

Legislative measures were adopted in order to prevent discrimination against fathers of children born out of wedlock who could not obtain joint custody if the child's mother did not consent, in comparison with fathers who had originally held parental authority and latter separated or divorced. The Act to Reform Parental Custody of Parents Not Married to Each Other entered into force in 2013, and provided that, upon a parent's motion, joint custody shall be granted as far as this is not contrary to the child's best interest. This interest is presumed if the mother does not submit any reasons that could be contrary to such joint custody, and if no such reasons are otherwise apparent to domestic courts.

[Judgment final on
03/03/2010](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2014\)163](#)

In this case, domestic courts granted joint custody to both parents in a special simplified proceeding.

Removal of filiation-related discrimination against children whose fathers have died before the former's birth

*NLD / Camp and Bourimi
(28369/95)*

The case concerns a discrimination suffered by a child who had been recognized by his father, who died before the former's birth, through letters of legitimisation but which, under domestic law did not have retroactive effect from the time of the child's birth. In 1998, following the facts of the case, the Civil Code was amended and the option of letters of legitimisation has been replaced by a judicial declaration of paternity. This judicial declaration has retroactive force from the time of a child's birth.

[Judgment final on
03/10/2000](#)

[Final Resolution
CM/ResDH\(2007\)57](#)

6.2 Education

Elimination of discrimination in accessing schools on purely residential grounds

*BEL / Belgian linguistic case
(1474/62)*

In order to eliminate discrimination suffered by children with French as their mother tongue, living in certain Dutch-speaking districts, who were unable to follow classes in French, legislative, including constitutional, and institutional reforms were carried out and completed in 1970. These reforms included the recognition and organisation of the Dutch, French and German communities and the Flemish, Walloon and Brussels regions. The six outlying districts/communes covered by the judgment became an integral part of the Flemish region. In order to promote the cultural homogeneity of the linguistic communities, it became legitimate for French-language education provided in these districts to be restricted to French-speaking children living there with their parents. Thus, discrimination on purely residential grounds

[Judgment final on
23/07/1968](#)

[Final Resolution 12/04/1972](#)

[Memorandum of the
Belgian Government \(1972\)](#)

noted by the European Court was reported to have disappeared as a result of the above-mentioned reforms.

Children's right not to follow religious instruction at school

In order to eliminate the adverse impact on pupils whose parents were agnostic and who, despite their wishes, were not provided with a course in ethics, and the resultant absence of a mark for "religion/ethics" in these pupils' school reports, the 1992 Ordinance issued by the Minister of Education on the Organisation of Religious Instruction was amended in 2014. It abolished the minimum threshold of three pupils interested in a course of ethics for organising an inter-school group. Consequently, any pupil wishing to enrol in an ethics class, instead of religious instruction, may do so.

*POL / Grzelak
(7710/02)*

[Judgment final on
22/11/2010](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2014\)85](#)

Ensuring education respectful of the religious and philosophical convictions of parents and their children

The Education Act was amended in 2005, in order to safeguard parents' right to ensure for their children's education is in conformity with their own religious and philosophical convictions. It improved the system of exemption from courses in "Christianity Religion and Philosophy" (KRL) providing that it is sufficient for parents to notify to schools their wish for exemption in order for their children to benefit from an exemption from KRL classes, without providing any reason. Legislative amendments in 2008 renamed the above courses to "Religion, Philosophies of Life and Ethics" and provided that these courses must be presented in an objective, critical and pluralistic manner, in accordance with human rights. The law provided that schools shall respect the religious and philosophical convictions of pupils and their parents and ensure the right to equivalent education. In addition, a new clause defining the object of education was adopted by Parliament in 2008, which no longer gives undue preference to the Christian faith. Christianity is mentioned as one, but not the only source, on which the fundamental values of education must be founded. The curriculum has been adapted accordingly. Lastly, any dispute on the application of the exemption clause may be brought before the national courts which accept the direct effect of the judgments of the European Court and will thus consider the matter with a view to preventing any new violation of the Convention.

*NOR / Folgero and Others
(15472/02)*

[Judgment final on
29/06/2007](#)

[Final Resolution
CM/ResDH\(2011\)237](#)

6.2.1. Education of Roma children

Elimination of segregated classes and Roma children's access to education

In order to eliminate discrimination of Roma children due to the lack of objective and reasonable justification for their placement in Roma-only classes, amendments to the Law Governing Primary and Secondary Education entered into force in 2010. The amended law provided a clear basis for access of Roma children to mainstream education. They are no longer placed in separate (Roma-only) classes in case of linguistic shortcomings and are now taught the regular full-scale curriculum as all other pupils. The amended law also established a framework providing for targeted assistance for Roma children, notably allowing the creation of a dedicated programme for children lacking command of the Croatian language. Since 2010, Roma, state-funded teaching assistants have been reinforced in primary schools in an effort to provide unhindered access of Roma children to quality primary education. Furthermore, secondary legislation enacted in 2013 provided that the mandatory testing of children in the Croatian language shall take place prior to their enrolment in primary schools and on the basis

*CRO / Orsus and Others
(15766/03)*

[Judgment final on
16/03/2010](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2017\)385](#)

of objective criteria. In addition, legislative amendments in 2013 made mandatory kindergarten and preschool attendance for all children under the age of seven, in order to ensure, *inter alia*, that Roma children acquire sufficient language skills before entering schools.

Although the applicants reached the age of 15 and were thus no longer under an obligation to pursue their primary education, evening classes were still available to them should they wish to complete their education. The applicants were also entitled to benefit from the assistance mechanisms introduced in order to improve Roma's access to education.

Closure of segregated school and facilitation of Roma children's access to education

In order to end segregation of Roma pupils in the impugned 12th primary school of Aspropyrgos, this school was closed in 2014. All pupils were enrolled in the 11th primary school of Aspropyrgos as well as in other schools. In order to support pupils who do not have a good command of the Greek language and to facilitate their integration into the national education system, welcome and support classes were created in addition to the ordinary classes, according to the French model of "Priority Education Zones". In addition, the Minister for National Education issued circulars in 2010 and 2013 which provided for the right of Roma pupils to be enrolled in or transferred to a school without providing proof of residence or any other document normally required for all other pupils. School principals were also instructed to admit Roma children on the basis of the "school card" established for Roma children, to seek out Roma children to ensure their enrolment and to ensure their mandatory vaccination. Lastly, a 2016 law established in the Ministry of Labour and Social Solidarity a Special Secretariat for the social integration of Roma which is responsible, *inter alia*, for Roma educational matters.

All applicants of compulsory school age were enrolled in the 11th primary school of Aspropyrgos. The applicants who reached adulthood were invited by a ministerial circular of 2013 to attend schools of "second chance" or schools set up for adults.

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