

Standing of a minor in the domestic proceedings and in the proceedings before the European Court of Human Rights



Council of Europe

- Human rights
- Parliamentary democracy
- Rule of law
- Legal co-operation
- Social standards
- Culture, Education, Youth



European Convention on Human Rights

- Adopted in 1950 by 14 States
- Catalogue of basic civil rights, Articles 2-14
- European Commission of Human Rights
- European Court of Human Rights
- Six additional protocols
- Several amending protocols
- 47 Member States



ECHR decision bodies

- Single Judge formation
- Committee of 3 judges
- Chamber of 7 judges
- Grand Chamber of 17 judges



ECHR procedures

- Single Judge procedure – clearly inadmissible cases
- Committee procedure - complicated inadmissible cases and cases in which well-established case-law exists
- Chamber procedure – legally complicated cases
- Grand Chamber procedure – most complicated cases, revision of the previous case-law

Applicable Convention Rights

Several examples

- Art. 2 – Right to life
- *Kontrovà v. Slovakia*
- Failure of the authorities to protect life of children from knowingly violent father

- Art. 3 – Prohibition of torture
- *Tyrer v. the United Kingdom*
- Corporal punishment at school

Applicable Convention Rights

Several examples

- Art. 4 – Prohibition of slavery and forced labour
- Siliadin v. France
- Keeping a 15-years old girl in domestic slavery

- Art. 5 – Right to liberty and security
- Mubilanzila Mayeka and Kaniki Mitunga v. Belgium
- Holding of a 5-years old girl in facilities for illegal immigrants for two months

Applicable Convention Rights

Several examples

- Art. 8 – Right to respect for private and family life
- K. U. v. Finland
- Failure of the authorities to oblige the internet provider to reveal identity of a person, who placed on the web request for intimate relationship in the name of a minor
- Scozzari and Giunta v. Italy
- Placement of two minors in children's home, founders of which had been previously convicted for sexual abuse

Applicable Convention Rights

Several examples

- Art. 14 – Prohibition of discrimination
- Marckx v. Belgium, Mazurek v. France
- Discriminatory law as to the right of children born out of wedlock to inherit the property

- Art. 2 of Protocol No. 1
- Timishev v Russia
- Exclusion of children from school because their father had no registration of residence in the given region

Applicable Convention Rights

Several examples

- Art. 2 of Protocol No. 1
- D.H. v. the Czech Republic, Sampanis and Others v. Greece, Oršuš and Others v. Croatia
- Informal segregation of Roma children in secondary schools



Requirement of speediness in the proceedings involving children and their interests

- « special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (see *Laino*, cited above, § 18). In particular, exceptional diligence is required in dealing with cases where the impugned proceedings concerned a child custody dispute (see *V.A.M. v. Serbia*, cited above, § 101)» (VELJKOV v. SERBIA)

Case of H. v the United Kingdom

- **(d) Importance of what was at stake for the applicant**
- 85. In the present case, the Court considers it right to place special emphasis on the importance of what was at stake for the applicant in the proceedings in question. Not only were they decisive for her future relations with her own child, but they had a particular quality of irreversibility, involving as they did what the High Court graphically described as the "statutory guillotine" of adoption (see paragraph 28 above).
- In cases of this kind the authorities are under a duty to exercise exceptional diligence since, as the Commission rightly pointed out, there is always the danger that any procedural delay will result in the de facto determination of the issue submitted to the court before it has held its hearing. And, indeed, this was what happened here.

Case of Schaal v. Lumembourg

- 47. In the present case, it is clear that the applicant was charged with rape and indecent assault on his daughter. Thus, pending the outcome of criminal proceedings, the interests of the minor legitimated the suspension of access and thus justified the interference with the applicant's right to respect for family life. The interference was, therefore, pending the outcome of criminal proceedings "necessary to protect the rights of others", namely those of the child C.
- 48. However, the same interests of the child also required to allow family ties to be re-established once the measures no longer appeared necessary. While it is clear that visitation was suspended until investigations into allegations of the applicant's wife had not been completed, unreasonable delays in criminal proceedings had a direct impact on the applicant's right to family life. Because of the above deficiencies in the conduct of this procedure, it cannot therefore be considered that the Luxembourg authorities have taken all necessary measures that could reasonably be requested of them to restore his family life with her young child, in the interests of these two persons.

Sahin v. Germany

- 73. As regards the issue of hearing the child in court, the Court observes that as a general rule it is for the national courts to assess the evidence before them, including the means used to ascertain the relevant facts (see *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 33). It would be going too far to say that domestic courts are always required to hear a child in court on the issue of access to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned.
- 74. In this connection the Court notes that the child was about three years and ten months old when the appeal proceedings started, and five years and two months at the time of the Regional Court's decision. The expert reached her conclusion, namely that a right of access without prior contact to overcome the conflicts between the parents was not in the child's interests, after several meetings with the child, her mother and the applicant father. Consulted on the question of hearing the child in court, she plausibly explained that the very process of questioning entailed a risk for the child. Such a risk could not be avoided by special arrangements in court.
- 75. Considering the methods applied by the expert when meeting the child and her cautious approach in analysing the child's attitude towards her parents, the Court is of the opinion that the Regional Court did not overstep its margin of appreciation when relying on her findings, even in the absence of direct questions on the child's relationship to the applicant.
- 76. In this context, the Court notes that, in the course of the proceedings before the Regional Court, the applicant unsuccessfully challenged the expert for bias and criticised her scientific approach. The applicant pursued these arguments in the present proceedings, but the Court has no cause to doubt the professional competence of the expert or the manner in which she conducted her interviews with all concerned.
- 77. Having regard to the foregoing and to the respondent State's margin of appreciation, the Court is satisfied that the German courts' procedural approach was reasonable in the circumstances and provided sufficient material to reach a reasoned decision on the question of access in the particular case. The Court can therefore accept that the procedural requirements implicit in Article 8 of the Convention were complied with.

Savin and Savina v. Ukraine

- 55. The Court notes that the domestic authorities based their decision on a finding that the applicants, by virtue of insufficient financial means and personal qualities, were unable to provide their children with proper nutrition, clothing, sanitary environment and health care, as well as to ensure their social and educational adaptation, thereby endangering the children's life, health and moral upbringing. The Court finds that these reasons were undoubtedly relevant to the taking of the requisite decision.
- 56. In assessing, however, whether they were also sufficient, the Court doubts the adequacy of the requisite evidentiary basis for the finding that the children's living conditions were in fact dangerous to their life and health. ...
- ...
- 59. The Court also notes that at no stage of the proceedings were the children (including O.S., who was thirteen years of age when the first-instance proceedings were pending in December 2004) heard by the judges and that by way of implementation of the removal order not only were the children separated from their family of origin, they were also placed in different institutions. Two of them live in another city, away from Romny where their parents and siblings reside, which renders it difficult to maintain regular contact.



T. v. the United Kingdom V. v. the United Kingdom

- Two boys, aged 11, were tried in public over three weeks in an adult court – with extremely high levels of press and public interest – for the murder of a toddler (Jamie Bulger) which they had committed aged 10. They were convicted of murder.
- Among other things, the Court found that the boys did not have a fair trial, in violation of Article 6 § 1. A child charged with an offence had to be dealt with in a way which took full account of her/his age, level of maturity and intellectual and emotional capacities. Both boys were suffering from post-traumatic stress disorder following their crime and both found the trial distressing and frightening and were unable to concentrate. The formality and ritual of the Crown Court must have been intimidating and the raised dock in which they had to stand must have increased their discomfort. It was unlikely that they would have felt able to cooperate with their lawyers inside or outside the court room. The Court found no violation of Article 3 either concerning the applicants' age (there was no clear common standard in Europe on the minimum age of criminal responsibility) or the length and public nature of the trial. Measures taken following the judgment.
- (From Factsheet «Child Protection» by the Press Unit of the Court)

S.C. v. the United Kingdom

- An 11-year-old boy, with a very low intellectual level for his age, was tried in an adult court and sentenced to two-and-a-half year's detention for attempting to steal a bag from a woman aged 87, who fell and fractured her arm.
- The Court found a violation of Article 6 § 1, in that the boy was not capable of fully participating in his trial; he did not understand the role of the jury and his need to make a good impression on them or that he risked going to prison; he expected to go home with his foster father. It was essential that a young applicant of limited intellectual ability be tried by a specialist tribunal. Measures taken following the judgment.
- (From Factsheet «Child Protection» by the Press Unit of the Court)



Ichin and Others v. Ukraine

- Two boys, aged 13 and 14, were held in a juvenile holding facility for 30 days for stealing food and kitchen appliances from a school canteen, although the boys had already confessed to the theft and returned some of the stolen goods and were under the age of criminal responsibility.
- The Court found that the boys had been detained arbitrarily in a place that had failed to provide the “educational supervision” required, in violation of Article 5 § 1 (right to liberty and security).
- (From Factsheet «Child Protection» by the Press Unit of the Court)



Scozzari and Giunta v. Italy

- 138. The Court points out that in principle a person who is not entitled under domestic law to represent another may nevertheless, in certain circumstances, act before the Court in the name of the other person (see, *mutatis mutandis*, the Nielsen v. Denmark judgment of 28 November 1988, Series A no. 144, pp. 21-22, §§ 56-57). In particular, minors can apply to the Court even, or indeed especially, if they are represented by a mother who is in conflict with the authorities and criticises their decisions and conduct as not being consistent with the rights guaranteed by the Convention. Like the Commission, the Court considers that in the event of a conflict over a minor's interests between a natural parent and the person appointed by the authorities to act as the child's guardian, there is a danger that some of those interests will never be brought to the Court's attention and that the minor will be deprived of effective protection of his rights under the Convention. Consequently, as the Commission observed, even though the mother has been deprived of parental rights – indeed that is one of the causes of the dispute which she has referred to the Court – her standing as the natural mother suffices to afford her the necessary power to apply to the Court on the children's behalf, too, in order to protect their interests.
- 139. Moreover, the conditions governing individual applications are not necessarily the same as national criteria relating to *locus standi*. National rules in this respect may serve purposes different from those contemplated by Article 34 of the Convention and, whilst those purposes may sometimes be analogous, they need not always be so (see the Norris v. Ireland judgment of 26 October 1988, Series A no. 142, p. 15, § 31).

European Court of Human Rights

