

The Children's Rights Alliance unites over 100 organisations working together to make Ireland one of the best places in the world to be a child. We improve the lives of all children and young people by ensuring Ireland's laws, policies and services comply with the standards set out in the United Nations Convention on the Rights of the Child.

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Children's Rights Alliance

31 Molesworth Street, Dublin 2, Ireland

Tel: +353 1 662 9400

Email: info@childrensrights.ie

www.childrensrights.ie

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Introduction

The Children's Rights Alliance unites over 100 organisations working together to make Ireland one of the best places in the world to be a child. We improve the lives of all children and young people by ensuring Ireland's laws, policies and services comply with the standards set out in the United Nations Convention on the Rights of the Child.

The Alliance has prepared this report to assist in the understanding of the application of the European Convention on Human Rights to similar issues that may arise in the Irish context. This report comprises a compilation of cases relating to children. The material is sourced from recent factsheets from the Press Unit of the European Court of Human Rights and is not intended as a binding summary or to be exhaustive. The document will be updated by the Alliance on an annual basis.

1. Education

1.1 Case: [Timishev v. Russia](#) (Application nos. 55762/00 and 55974/00)

Date of judgment: 13.12.2005

Violation: Article 2 of [Protocol 1 to the ECHR](#) - Right to education

Overview: The applicant's children, aged seven and nine, were excluded from a school they had attended for two years because their father, a Chechen, was not registered as a resident of the city where they lived and no longer had a migrant's card, which he had been obliged to surrender in exchange for compensation for property he had lost in Chechnya.

Decision: As Russian law did not allow children's access to education to be made conditional on the registration of their parent's place of residence, the Court found a violation of Article 2 of Protocol No. 1. Execution of this judgment is ongoing.

1.2 Case: [Sampanis and Others v. Greece](#) (Application no. 32526/05)

Date of judgment: 05.06.2008

Violation: Article 2 of [Protocol 1 to the ECHR](#) - Right to education
Article 13 - Right to an effective remedy
Article 14 - Prohibition of discrimination

Overview: The Greek authorities failed to enroll in school a group of Greek children of Roma origin – who were receiving no formal education – for an entire academic year. Over 50 children were subsequently placed in special classes in a school annex which was supposed to prepare the pupils concerned for reintegration into mainstream classes.

Decision: The Court noted that the Roma children were not suitably tested either initially, to see if they needed to go into the preparatory classes, or later, to see if they had progressed sufficiently to join the main school. It found a violation of Article 2 of Protocol No. 1 and Article 14, concerning both the enrolment procedure and the placement of the children in special classes, as well as Article 13 (right to an effective remedy). Execution of this judgment is ongoing.

1.3 Case: [Oršuš and Others v. Croatia](#) (Application no. 15766/03)

Date of judgment: 16.03.2010 (Grand Chamber)

Violation: Article 2 of [Protocol 1 to the ECHR](#) - Right to education
Article 14 - Prohibition of discrimination

Overview: Fifteen Croatians of Roma origin complained that they were victims of racial discrimination in that they were segregated into Roma-only classes and consequently suffered educational, psychological and emotional damage.

Decision: The Court observed that only Roma children had been placed in the special classes in the schools concerned. The Government attributed the separation to the pupils' lack of proficiency in Croatian; however, the tests determining their placement in such classes did not focus specifically on language skills, the educational program that subsequently followed did not target language problems and the children's progress was not clearly monitored. The placement of the applicants in Roma-only classes was therefore unjustified, in violation of Article 2 of Protocol No. 1 and Article 14. Execution of this judgment is ongoing.

1.4 Case: [Sampani and Others v. Greece](#) (Application no. 59608/09)

Date of judgment: 11.12.2012

Violation: Article 14 - Prohibition of discrimination

Overview: The case concerned the provision of education for Roma children at the 12th Primary School in Aspropyrgos.

Decision: Violation of Article 14 (prohibition of discrimination) in conjunction with Article 2 of Protocol No. 1 (right to education). The Court, noting the lack of significant change since the *Sampanis and Others v. Greece* judgment, found that Greece had not taken into account the particular needs of the Roma children of Psari as members of a disadvantaged group and that the operation between 2008 and 2010 of the 12th Primary School in Aspropyrgos, which was attended by Roma pupils only, had amounted to discrimination against the applicants. Under Article 46 (binding force and execution of judgments), the Court recommended that those of the applicants who were still of school age be enrolled at another State school and that those who had reached the age of majority be enrolled at "second chance schools" or adult education institutes set up by the Ministry of Education under the Lifelong Learning Programme.

1.5 Case: [Horváth and Kiss v. Hungary](#) (Application no. 11146/11)

Date of judgment: 29.01.2013

Violation: Article 2 of [Protocol 1 to the ECHR](#) - Right to education
In conjunction with Article 14 - Prohibition of discrimination

Overview: The case concerned the complaints of two young men of Roma origin that their education in schools for the mentally disabled had been the result of misplacement and had amounted to discrimination.

Decision: The Court underlined that there was a long history of misplacement of Roma children in special schools in Hungary. It found that the applicants' schooling arrangement indicated that the authorities had failed to take into account their special needs as members of a disadvantaged group. As a result, the applicants had been isolated and had received an education which made their integration into majority society difficult.

See also: [Horváth és Vadàzi v. Hungary](#) (Application no. 2351/06)

1.6 Case: [Lavida and Others v. Greece](#) (Application no. 7973/10)

Date of judgment: 30.05.2013

Violation: Article 14 - Prohibition of discrimination
In conjunction with Article 2 of [Protocol 1 to the ECHR](#) - Right to education

Overview: The case concerned the education of Roma children who were restricted to attending a primary school in which the only pupils were other Roma children.

Decision: The Court found that the continuing nature of this situation and the State's refusal to take anti-segregation measures implied discrimination and a breach of the right to education.

2. Inheritance and the Unmarried family

2.1 Case: [Marckx v. Belgium](#) (Application no. 6833/74)

Date of judgment: 13.06.1979

Violation: Article 8 - Right to respect for private and family life
Article 14 - Prohibition of discrimination

Overview: An unmarried Belgian mother complained that she and her daughter Alexandra were denied rights accorded to married mothers and their children: among other things, she had to recognise her child (or bring legal proceedings) to establish affiliation (married mothers could rely on the birth certificate); recognition restricted her ability to bequeath property to her child and did not create a legal bond between the child and mother's family, her grandmother and aunt. Only by marrying and then adopting Alexandra (or going through a legitimisation process) would she have ensured that her daughter had the same rights as a legitimate child.

Decision: The Court found violations of Article 8 and 14 regarding both applicants, concerning the establishment of Alexandra's maternal affiliation, the lack of a legal bond with her mother's family and her inheritance rights and her mother's freedom to choose how to dispose of her property. A bill to erase differences in treatment between children of married and unmarried parents was going through the Belgian Parliament at the time of the judgment. Measures taken (law changed).

3. Personal Identity

3.1 Case: [Odièvre v. France](#) (Application no. 42326/98)

Date of judgment: 13.02.2003 (Grand Chamber)

Violation: Article 8 - Right to respect for private and family life
Article 14 - Prohibition of discrimination

Overview: The applicant, who was adopted, found out that she had three biological brothers. Her request for access to information to identify them was rejected because she had been born under a special procedure which allowed mothers to remain anonymous. In addition, she could not inherit from her natural mother.

Decision: The Court found that there had been no violation of Articles 8 or 14 in that France had struck a fair balance between the various competing interests at stake: the public interest (the prevention of abortions – especially illegal abortions – and the abandonment of babies); a child’s personal development and right to know her/his origins; a mother’s right to protect her health by giving birth in appropriate medical circumstances; and, the protection of other members of the various families involved. It would also have been possible for the applicant to request disclosure of her mother’s identity with her consent. In addition, the applicant could inherit from her adoptive parents and was not in the same position as her mother’s other natural children.

3.2 Case: [Godelli v. Italy](#) (Application no. 33783/09)

Date of judgment: 25.09.2012

Violation: Article 8 - Right to respect for private and family life

Overview: The case concerned the confidentiality of information concerning a child’s birth and the inability of a person abandoned by her mother to find out about her origins.

Decision: The Court held that the Italian system did not take account of the child’s interests. It considered that a fair balance had not been struck between the interests at stake since the legislation, in cases where the mother had opted not to disclose her identity, did not allow a child who had not been formally recognized at birth and was subsequently adopted to request either non-identifying information about his or her origins or the disclosure of the birth mother’s identity with the latter’s consent.

4. Child Protection

4.1 Case: [*Scozzari and Giunta v. Italy*](#) (Application nos 39221/98 & 41963/98)

Date of judgment: 13.07.2000 (Grand Chamber)

Violation: Article 8 - Right to respect for private and family life

Overview: In September 1997, the applicants' two sons/grandsons, born in 1987 and 1994, were placed by court order in the "Il Forteto" children's home, where – as the national court was aware – two of the principal leaders and co-founders had been convicted of sexual abuse of three handicapped people in their care. Prior to his placement in the home, the eldest boy had been a victim of sexual abuse by a pedophile social worker.

Decision: The Court found that the two leaders played a "very active role" in the care of the two children and that there had been a violation of Article 8 of the Convention, concerning, among other things, the uninterrupted placement of the boys in "Il Forteto".

4.2 Case: [*Nencheva and Others v. Bulgaria*](#) (Application no. 48609/06)

Date of judgment: 18.06.2013

Violation: Article 2 - Right to life

Overview: Fifteen children and young adults died between December 1996 and March 1997 in a home for physically and mentally disabled young people in the village of Dzhurkovo, from the effects of cold and shortages of food, medicines and basic necessities. The manager of the home, observing the problems, had tried without success on several occasions to alert all the public institutions which had direct responsibility for funding the home and which could have been expected to act.

Decision: The Court found a violation of Article 2 of the Convention in that the authorities had failed in their duty to protect the lives of the vulnerable children placed in their care from a serious and immediate threat. The authorities had also failed to conduct an effective official investigation into the deaths, occurring in highly exceptional circumstances.

5. Domestic violence

5.1 Case: [Kontrovà v. Slovakia](#) (Application no. 7510/04)

Date of judgment: 31.05.2007
Violation: Article 2 - Right to life
Article 13 - Right to an effective remedy

Overview: On 2 November 2002 the applicant lodged a criminal complaint against her husband, accusing him of having assaulted and beaten her with an electric cable. She subsequently returned to the police station with her husband to withdraw the complaint, and the police cooperated. On 31 December 2002 the husband killed their daughter and son, born in 1997 and 2001 respectively.

Decision: The Court found a violation of Article 2 because of the authorities' failure to protect the children's lives, and a violation of Article 13, because the mother had been denied the possibility of seeking compensation.

5.2 Case: [E.S. and Others v. Slovakia](#) (Application no. 8227/04)

Date of judgment: 15.09.2009
Violation: Article 3 - Prohibition of inhuman or degrading treatment and effective investigation
Article 8 - Right to respect for private and family life

Overview: In 2001 the applicant left her husband and lodged a criminal complaint against him for ill-treating her and her children (born in 1986, 1988 and 1989) and sexually abusing one of their daughters. He was convicted of violence and sexual abuse two years later. Her request for her husband to be ordered to leave their home was dismissed, however; the court finding that it did not have the power to restrict her husband's access to the property (she could only end the tenancy when divorced). The applicant and her children were therefore forced to move away from their friends and family and two of the children had to change schools.

Decision: The Court found that Slovakia had failed to provide the applicant and her children with the immediate protection required against her husband's violence, in violation of Articles 3 and 8.

5.3 Case: [Errico v. Italy](#) (Application no. 29768/05)

Date of judgment: 24.02.2009
Violation: Article 8 - Right to respect for private and family life

Overview: Emergency removal and taking into care of the applicant's daughter following strong presumptions that the child had been sexually abused by her father and doubts as to the mother's ability to protect her. The child had been removed without first hearing the applicant's views and there were delays in the criminal proceedings against the applicant prolonging his separation from his daughter.

Decisions: This case involved three charges under article 8- no violation to the first two one violation as to the last: Art. 8 ECHR – no violation; Art. 8 ECHR – no violation; Art. 8 ECHR – violation. The Court held unanimously that there had not been a violation of Article 8 in respect of the child's placement in care or the failure to hear representations from her father beforehand. It found that these measures had been proportionate and necessary for the protection of the health and the rights of the child, given the strong evidence of sexual abuse. The Court did find that there had been a violation of Article 8 on account of the delay in concluding the preliminary investigation in respect of the applicant.

5.4 Case: [C.A.S. and C.S. v. Romania](#) (Application no. 26692/05)

Date of judgment: 20.03.2012

Violation: Article 3 - Prohibition of inhuman or degrading treatment and effective investigation
Article 8 - Right to respect for private and family life and the home

Overview: The case concerned a seven-year-old's complaint that it had taken the authorities five years to investigate his repeated rape by a man, eventually acquitted, who had forced his way into the family flat when the boy had come home alone from school in a period from January to April 1998. C.A.S. alleged in particular that the violent sexual abuse to which he had been subjected was of such gravity that it had amounted to torture, and that the proceedings had been slanted, the domestic courts having blamed his parents, and to a certain extent him, for not reacting sooner. Both applicants further complained that their family life had been destroyed and that they had been forced to leave the town in which they lived to rebuild a normal life.

Decision: In this judgment, the European Court clearly recognised that States had an obligation under Articles 3 and 8 to ensure the effective criminal investigation of cases involving violence against children. It, moreover, specifically referred to the international obligations Romania had undertaken for the protection of children against any form of abuse, including helping recovery and social reintegration of victims, and particularly regretted that C.A.S. had never been provided with counselling or been accompanied by a qualified psychologist during the proceedings concerning his rape or afterwards.

6. Abuse by Officials

6.1 Case: [Okkali v. Turkey](#) (Application no. 52067/99)

Date of judgment: 17.10.2006

Violation: Article 3 - Prohibition of inhuman or degrading treatment and effective investigation

Overview: A 12-year-old boy was beaten by police officers to induce him to confess to stealing money from his employer (the accusation of theft was subsequently withdrawn). He left the police station staggering and vomiting, with severe bruising (as large as 30x17 cm). A stay of execution was ordered concerning the convictions of the police officers responsible and they were later promoted.

Decision: The Court found a violation of Article 3 concerning the impunity of the police officers and the absence of special protection for a minor. The Court regretted that nothing in the proceedings indicated concern for the protection of a minor; there was no reference to the applicant's age as an aggravating factor or to any domestic legislation on the protection of minors. The impunity of those responsible also cast into doubt the dissuasive effect of the judicial system and its capacity to protect anyone.

6.2 Case: [Stoica v. Romania](#) (Application no. 42722/02)

Date of judgment: 04.03.2008

Violation: Article 3 - Prohibition of inhuman or degrading treatment and effective investigation
Article 14 - Prohibition of discrimination

Overview: A 14-year-old youth claimed he was beaten up by the police because he was of Roma origin. No prosecution was brought and the police were not prosecuted.

Decision: The Court found that the applicant's injuries were the result of inhuman and degrading treatment, that there had been no proper investigation and that the police officers' behaviour had clearly been motivated by racism, in violation of Articles 3 and 14.

6.3 Case: [Darraj v. France](#) (Application no. 34588/07)

Date of judgment: 04.11.2010

Violation: Article 3 - Prohibition of inhuman or degrading treatment

Overview: A 16-year-old youth was taken to hospital with a fractured testicle, numerous cuts on his face and bruising on his eye, wrist, back and scalp, two hours after being taken to a police station for an identity check, where he was handcuffed, but not charged with any offence. He then needed an emergency operation and was declared unfit for work for 21 days. He claimed he had been hit and kicked in the genitals by police officers; the police officers claimed variously that they had acted in self-defence and that the youth had fractured his testicle by falling on a sink.

Decision: The Court noted that the applicant was in a vulnerable position. He had been handcuffed and had sustained a serious injury while in the hands of police officers (at least two, and of larger build than himself) who were supposed to protect him. It was also unclear why he had been handcuffed, as he had been calm prior to his arrival at the police station and had never before been in police custody. Although the Court found the subsequent investigation into the events to be adequate, no disciplinary proceedings were taken against those responsible and only minimal fines were imposed. So there was a manifest disproportion

between the seriousness of the act and the punishment imposed. There had therefore been a violation of Article 3.

6.4 Case: [*Ciğerhun Öner v. Turkey*](#) (no. 2) (Application no. 2858/07)

Date of judgment: 23.11.2010

Violation: Article 3 - Prohibition of inhuman or degrading treatment

Overview: A 12-year-old boy was ill-treated by police officers while being held in police custody (not registered), after he refused to give his name in an identity check, leaving him with bruises on his thigh and near his right eye.

Decision: The Court found that the boy had been subjected to inhuman and degrading treatment in violation of Article 3 and that there had been no effective punishment of the police officer responsible, in further violation of Article 3.

7. Minors in court

7.1 Case: [S.C. v. United Kingdom](#) (Application no. 60958/00)

Date of judgment: 15.6.2004

Violation: Article 6 § 1 – Right to a fair trial

Overview: 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.

Decision: 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.

8. Minors in detention

8.1 Case: [Seçuk v. Turkey](#) (Application no. 21768/02)

Date of judgment: 10.01.2006

Violation: Article 5 § 3 - Right to liberty and security

Overview: A 16-year-old was held in pre-trial detention for almost four months before being released.

Decision: Having particular regard to the fact that the applicant was a minor at the relevant time, the Court found a violation of Article 5 § 3.

8.2 Case: [Güveç v. Turkey](#) (Application no. 70337/01)

Date of judgment: 20.1.2009

Violation: Article 3 - Prohibition of inhuman or degrading treatment

Article 5 § 3 - Length of detention

Article 6 - Right to a fair trial

Overview: A 15-year-old minor, tried before an adult court and ultimately found guilty of membership of an illegal organisation, was held in pre-trial detention for more than four-and-a-half years in an adult prison, where he did not receive medical care for his psychological problems and made repeated suicide attempts. He had no legal assistance when being questioned by the police, his prosecutor and judge and both he and his lawyer were absent for 14 of the 30 hearings concerning his case.

Decision: The Court found that the youth's detention had undoubtedly caused his psychological problems which prompted his suicide attempts. The authorities were directly responsible for his problems and failed to provide adequate medical care. There had been a violation of Article 5 § 3 and of Article 3, given the applicant's age, the length of his detention with adults and the absence of medical care or measures taken to prevent his suicide attempts. He had also been unable to participate in his trial, in violation of various aspects of Article 6.

8.3 Case: [*Ichin and Others v. Ukraine*](#) (Application nos. 28189/04 & 28192/04)

Date of judgment: 21.12.2010

Violation: Article 5 § 1 - Right to liberty and security.

Overview: 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.

Decision: 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.

8.4 Case: [*Çoşelav v. Turkey*](#) (Application no. 1413/07)

Date of judgment: 09.10.2012

Violation: Article 2 - Lack of an effective investigation

Overview: The case concerned a juvenile’s suicide in an adult prison.

Decision: Violation of Article 2 concerning the suicide of Bilal Çoşelav on 17 December 2004, after several previous attempts. The Court found that the Turkish authorities had not only been indifferent to the applicants’ son’s grave psychological problems but had been responsible for a deterioration of his state of mind by detaining him in a prison with adults without providing any medical or specialist care, thus leading to his suicide. The Court therefore concluded that the Turkish authorities had not only been responsible for the deterioration of Bilal Çoşelav’s problems by detaining him with adult prisoners, but had manifestly failed to provide any medical or other specialist care, in violation of Article 2. The Court also concluded that the Turkish authorities had failed to carry out an effective investigation to establish who had been responsible for Bilal’s death and how, in further violation of Article 2.