# Child Participation Advocacy Tool

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This tool is a quick reference guide for practitioners working in child protection in Ireland seeking to use international law in advocating for children's rights in domestic courts. More specifically, it provides an overview of children's rights sources which can be drawn upon to argue for the participation of children in court proceedings. Utilising these sources of law can also bolster submissions in court, thereby improving decisions for children.

**LAW**

**European Convention on Human Rights (ECHR)**

Ratified by Ireland in 1953. The European Convention on Human Rights Act was enacted in 2003. (See, in particular, S. 2: duty on courts to interpret and apply domestic law (e.g. Child Care Act 1991) in a manner compatible with the ECHR; S. 3: duty on organs of the state (e.g. Tusla, HSE) to perform their functions in a manner compliant with ECHR; S. 4: judicial notice must be taken by the courts of the ECHR; S. 5: declarations of incompatibility).

**Articles**

- **Article 6** (right to a fair trial); **Article 8** (right to private and family life).

**Relevant case law**

The HudoC database provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), the European Commission of Human Rights (decisions and reports) and the Committee of Ministers (resolutions). Some cases of specific relevance:

- **M. and M. v. Croatia** [No. 10161/13], Judgment of 03.12.15 (hearing a child in a disputed custody case); **N.T.S. And Others v. Georgia** [No. 71776/12], Judgment of 02/05/2016 (role of the GAL in a disputed custodial case); **C. v. Finland** [No. 18249/02], Judgment of 09.05.2006 (weight attached to a child's views in a disputed custody and contact case); **Sahin v. Germany** [No. 30943/96], Judgment of 08.07.2003 (hearing a child in a disputed contact case); **Sommerfeld v. Germany** [No. 31871/96], Judgment of 08.07.2003 (expert evidence in a disputed contact case).


European Court of Human Rights, Case-Law Information Note Council of Europe (2011), Child-Friendly Justice Guidelines


O'Mahony, C., O'Callaghan, E. and Burns, K. (2018) Planning Ahead for Potential International Litigation Checklist, IDEA Project, University College Cork

O'Callaghan, E., O'Mahony, C. and Burns, K. (2018) Contact with Children in Care: Case Law of the European Court of Human Rights, IDEA Project, University College Cork.

**European Union Charter of Fundamental Rights**

Entered into force in 2009, following the Lisbon Treaty. The EU Charter of Fundamental Rights only has application when interpreting and applying another source of EU law (e.g. the Brussels II bis Regulation).

**Articles**

- **Article 4** (prohibition of torture and inhuman or degrading treatment or punishment); **Article 7** (respect for private and family life); **Article 24** (the rights of the child).

Click here for the Court of Justice of the European Union. Some cases of specific relevance:

- **Neil Valcheva v. Georgios Babanarakis**, Case C-335/17, Opinion, (grandparents' contact rights); **O.L. v. P.O.**, Case C-111/17, Judgment, (application for return); **Child and Family Agency v. J.D.**, Case C-428/15, Judgment (transfer of a child care case to another Member State).


**Supplementary guidance**


European Union Agency for Fundamental Rights case-law database, FRA Charterpedia.
United Nations Convention on the Rights of the Child (UNCRC)

Ratified by Ireland in 1992. Persuasive source of law, frequently referenced by the European Court of Human Rights in the decision-making process concerning children's cases.

General Principles:
- Article 2 (non-discrimination)
- Article 3 (best interests)
- Article 6 (right to life, survival & development)
- Article 12 (right to be heard)

See also:
- Article 7 (right to be cared for by parents)
- Article 8 (family relations)
- Article 9 (not to be separated from parents)
- Article 19 (to be protected against all forms of violence)
- Article 24 (health)

Third Optional Protocol to the CRC on a Communications Procedure (OP3 CRC):

Relevant Irish cases in which the CRC was cited as a persuasive source:
- N. v. N. [hearing a child] [2008] IEHC 382 (child abduction, return of child)
- Dos Santos & Ors v. The Minister for Justice & Ors [2013] IEHC 237 (deportation of a family)
- F.G. v. The Child and Family Agency & Ors. [2016] IEHC 156 (contact rights with children in care)

The European Court of Human Rights has also drawn on the UNCRC as a persuasive source:
- M. and M. v Croatia [No. 10161/13], judgment of 03.12.15 (hearing a child in a disputed custody case)
- N.T.S. And Others v. Georgia [No. 71776/12], judgment of 02/05/2016 (role of the GAL in a disputed custody case)

General Comments:
- No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006)
- No. 11, Indigenous children and their rights under the Convention (2009)
- No. 12, The right of the child to be heard (2009)
- No. 13, The right of the child to freedom from all forms of violence (2011)
- No. 14, The right of the child to have his or her best interests taken as a primary consideration (2013)
- No. 15, The right of the child to the enjoyment of the highest attainable standard of health (2013)

All CRC General Comments are available [here](http://ideachildrights.ucc.ie/resources/).


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