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Child Participation Advocacy Tool

Improving Decisions through Empowerment and Advocacy

IDEA

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 care in court proceedings. Utilising these sources of law can also bolster submissions in court, thereby improving decisions for children.

This tool was designed as an online interactive resource: click on the case or report name to access the original source.

LAW European Convention on Human Rights (ECHR)

RATIFICATION

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.TS. And Others v. Georgia (No. 71776/12), Judgment of 02/05/2016 (role of the GAL in a disputed custody 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).

Relevant Irish cases that refer to the ECHR: E.E. v. The Child and Family Agency [2016] IEHC 777 (right to fair procedures); Child and Family Agency v. Q. [2016] IEHC 335 (review of special care); F.G. v. The Child and Family Agency & Ors. [2016] IEHC 156 (contact rights with children in care).

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

FRA, European Union Agency for Fundamental Rights (2015) Handbook on European Law Relating to the Rights of the Child
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.

LAW European Union Charter of Fundamental Rights

RATIFICATION

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).

RELEVANT CASE LAW

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.Q, 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).

Relevant Irish cases that refer to the Charter: Child and Family Agency v. J.D. [2015] IEHC 214 (transfer of a child care case to another Member State); R.P. v. S.D. [2012] IEHC 188 (child abduction, wrongful removal); M.J.E. v. L. [2011] IEHC 248 (postponement of surrender under European Arrest Warrant); N. v. N. [hearing a child] [2008] IEHC 382 (child abduction, return of child).

SUPPLEMENTARY GUIDANCE

Law Society of Ireland and The Dublin Solicitors Bar Association (2015) – A Report on the Application of the European Convention on Human Rights Act 2003 and the European Charter of Fundamental Rights and Annexes (list of cases)

European Union Agency for Fundamental Rights case-law database. FRA Charterpedia.

Child Participation Advocacy Tool

LAW

United Nations Convention on the Rights of the Child (UNCRC)

RATIFICATION

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.

ARTICLES

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).

RELEVANT CASE LAW

CRC in Court, Child Rights International Network (CRIN) Legal Database

Third Optional Protocol to the CRC on a Communications Procedure (OP3 CRC): Ratified by Ireland in 2014, this Protocol provides an International Complaints Procedure for Child Rights Violations. First decision: **I.A.M. on behalf of K.Y.M. v. Denmark**, 25th January, 2018.

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.TS. And Others v. Georgia (No. 71776/12), judgment of 02/05/2016 (role of the GAL in a disputed custody case).

SUPPLEMENTARY GUIDANCE

General Comments:
No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006);
No. 9, The rights of children with disabilities (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.

See also: Children's Rights Alliance (2015) Making Rights Real for Children: A Children's Rights Audit of Irish Law.

Gilmore, S., Stalford, H., Hollingsworth, K. (eds.) (2017) Rewriting Children's Rights Judgments: From Academic Vision to New Practice, Oxford: Hart Publishing.

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