

INTERNATIONAL STANDARDS REGARDING PROTECTION OF CHILDREN OF MALTREATMENT



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Abstract

Child abuse is protected by international law and acts and includes all types of physical, sexual and emotional abuse. Child abuse is a global problem with serious consequences throughout life, it is also a global problem with serious consequences for children and their families. In order to prevent this phenomenon, the awareness and consciousness of everyone (society, state) must be increased. Work on joint projects should include the UN, WHO, UNICEF, UNESCO, the EU and the CoE. Knowledge, legislation and ideas in protecting children's health belong to health and safety experts. The case law of the European Court of Human Rights and the Court of Justice of the European Union obliges states to include in their legislation the protection of children from all forms of ill-treatment.

1. Introduction

Despite international effort for more recognition of the rights of children, worldwide, child maltreatment is a huge and underestimated problem. According to the World Health Organization (WHO), more than 57 000 children perish annually as a result of physical abuse. Approximately one in ten is neglected or psychologically abused.

Child abuse often remains a hidden problem, because the perpetrators are usually part of the family, or they are present in the school or the work environment and is especially overlooked at vulnerable communities. Among others, children refugees and children of Roma origin are considered as children in vulnerable situations by the Council of Europe.

There are several international and regional human rights documents concerning the protection of children's rights, especially against violence against children, such as the UN CRC, the ILO Conventions on forced labour, the CoE Lanzarote Convention, the CoE Convention on Action against Trafficking, the ECHR, the EU legislation in form of Directives etc.

2. International Human Rights Instruments and the Child Abuse

In the so-called manual "*Handbook on European law relating to the rights of the child*" it is explicitly stated that according to international law, CRC in the Article 1 determines that "*a child means every human being below the age of eighteen years old*" (EU, ECHR, CoE, 2015).

The manual further expresses that "*European children's rights law is largely based on the UN Convention on the Rights of the Child (CRC)*", due to the fact that all the EU and CoE member states are parties to the CRC. This effectively imposes "*common legal obligations*" on European states with a knock-on effect on the way European institutions develop and apply children's rights. (EU, ECHR, CoE, 2015).

On the one hand, recently, children's rights have been addressed as part of an EU agenda, based on three key milestones (EU, ECHR, CoE, 2015):

- *“The introduction of the Charter of Fundamental Rights of the European Union;*
- *The entry into force of the Treaty of Lisbon in December 2009;*
- *The adoption of the European Commission Communication on a special place for children in EU external action, and of the Council EU Guidelines for the promotion and protection of the rights of the child”.*

On the other hand, the adoption of these treaties by the CoE, addresses a range of specific children’s rights issues as follows: (EU, ECHR, CoE, 2015)

- *“Convention on the Legal Status of Children born out of Wedlock;*
- *Convention on the Adoption of Children, revised in 2008;*
- *Convention on Contact Concerning Children;*
- *Convention on the Exercise of Children’s Rights;*
- *Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)”.*

The role of **The Court of Justice of the European Union (CJEU)** is to interpret and apply the Children’s Rights, according to the article 267 of the ‘Treaty on the Functioning of the European Union’ (TFEU), when the national court requires the EU principal legal interpretation, such as Treaties, or secondary, such as Decisions and legislation. Heretofore, the CJEU has adjudicated several cases of children’s rights related to EU citizenship. CJEU, records only one case that used CRC, how to interpret the rights of children in the EU, in the case *Dynamic Medien GmbH v. Avides Media AG*. *“This case concerns the lawfulness of German labelling restrictions on imported DVDs and videos, which were already subject to similar controls in the United Kingdom. The CJEU concluded that the German labelling checks constituted a lawful restriction of the EU’s free movement of goods provisions (which otherwise preclude double regulatory processes of this nature), given that they aimed to protect the welfare of children referring to the reference to Article 17 of the CRC”* (FRA, ECHR, CoE, 2015).

The role of **European Court of Human Rights (ECHR)** related to children’s rights, adjudicates issues relating to interpretation and implementation of ECHR and its protocols, according to the article 32 of the ECHR, (FRA, ECHR, CoE, 2015). Examples of decisions in respect to protection of children’s rights, you can find below at the part dedicated to **“Child abuse in the court practice of the European Court of Human Rights”**.

International human rights documents, respectively the most important and main international documents for the protection of children’s rights are:

International documents for the protection of children’s rights

- Convention on the Rights of the Child (Article 2, 3, 6, 12) (CRC) (UNHR, 1990).
- Minimum Age Convention, 1973 (No. 138) (ILO, 1973).
- Worst Forms of Child Labour Convention, 1999 (No. 182) (ILO, 1999).
- The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC – OPAC) (UNHR, 2002).
- The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (CRC – OPSC) (UNHR, 2002).
- Optional Protocol to the Convention on the Rights of the Child on the communication procedure (UNHR, 2014).

General comments of the UN Committee on the Rights of the Child

- General comment no. 8 (2006) - The right of the child to protection against corporal punishment and other inhuman or degrading forms of punishment, Committee on the Rights of the Child (Article 19; 28, paragraph 2; and 37 inter alia) (UN, 2006).
- General comment no. 9 (2006) - the right of the child with disabilities (UN, 2006).
- General comment no. 10 (2007) - the right of children in the juvenile justice system (UN, 2007).
- General comment no. 12 - (2009) - the right of the child to have his voice heard (UN, 2009).
- General comment no. 14 (2013) - the right of the child in his best interest to be considered as a priority (Article 3, paragraph 1) (UN, 2013).
- Other general comments of the Committee on the Rights of the Child (19 comments in total) (ICMEC, 2017).

Council of Europe Conventions

- European Convention for the Protection of Human Rights and Fundamental Freedoms (CoE, 1950).
- European Convention on the Legal Status of Children Born Out of Wedlock (CoE, 1975).
- European Convention on the Exercise of Children’s Rights (CoE, 1996).

- Convention on Contact concerning Children (CoE, 2003).
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CoE, 2007).
- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly judicial mechanisms (CoE, 2010).
- European Convention on the Adoption of Children (revised) (CoE, 2011).

European Union Instruments

- Charter of Fundamental Rights of the European Union (Article 24, paragraphs 1,2,3; 32) (EU, 2012).
- The entry into force of the Lisbon Treaty in December 2009 (EU, Treaty of Lisbon, 2007).
- A special place for children in EU foreign affairs (EC, 2008).
- EU Agenda for the Rights of the Child (EC, 2011).
- Investing in children, Recommendation of the European Commission 2013/112/EU (EC, 2013).

3. Child's Neglect

Neglect presents a usual form of a child's abuse, that can directly influence in the psychophysical health, with serious consequences in the future of the child.

Neglect can be determined as a failure of the parents and custodians to provide food, clothing or shelter; healthcare, not supervising a child adequately or providing for their safety, thus, as a result harming their health, security and the well-being of a child, by at the same time, destruction of the legal rights of children protected by the criminal-legal legislation of the country to which they belong. The basic forms of neglect are: physical neglect, medical neglect, inadequate supervision, emotional neglect, educational neglect, supervision, etc. (NSPCC, 2021).

In the free Wikipedia Encyclopaedia, we find that neglect is difficult to define because there are no clear cross-cultural standards for desirable or minimally adequate child-rearing practices. The UK Department of Education and Skills defined negligence as:

“Continuous failure to meet a child's basic psychophysical needs, resulting in serious impairment of health or development. Negligence can occur during pregnancy as a result of substance abuse by mothers. Once a child is born, neglect may include a parent or guardian who does not provide adequate food, clothing, and shelter (including abandonment); provide adequate supervision (including due diligence); provide appropriate

medical care or treatment. Neglect or disregard for the child's basic emotional needs may also be involved.” (Bovarnick, 2007). Neglect is also legally defined by the Federal Child Abuse Prevention Act (CAPTA) as *“Any action or omission by a parent or guardian that poses a risk of serious harm to the child.”* (Verywellfamily, 2021).

4. Physical and Emotional Abuse

Child abuse can occur by not giving them the essentials they need (neglect) or by harming them (abuse). Neglect represents the failure to meet the needs of the child such as physical, medical, educational, emotional, etc. Emotional neglect is presented as part of emotional abuse. Child abuse is physical, sexual, and emotional, but often occurs together. Studies show that there is a strong link between physical, sexual or psychological (emotional) abuse of children and the development of psychiatric problems” (DanaFoundation, 2000).

Physical abuse is serious or minor bodily injury such as bruising, fracture or burn caused by other children, their parents or guardian, injuries that do not match the statement given. (Mayoclinik, 2018). Physical abuse is the second most reported form and accounts for 25% of all child abuse cases (Medicinenet, 2018).

Sexual abuse represents the act of involving the child to satisfy the sexual desires of the guardian. We will talk more about sexual abuse in the section **“Sexual abuse and exploitation of children”**.

Emotional abuse can hurt as much as physical abuse (PreventChildAbuse, UN), and present non-compliance to create a suitable environment by their guardian, which actions are summarized as restriction of movement, isolation, harassment, insult, swearing, threats, exposure, threats, discrimination, and forms of non-physical rejection (Kidshelpline, 2018).

According to the US government, *“emotional abuse (or psychological abuse) is a pattern of behaviour that impairs a child's emotional development or sense of self-worth”* (Healthline, 2018).

Consequences on physical health are minor injuries, major injuries, impaired brain development, and poor physical health. Psychological consequences include childhood difficulties, poor mental and emotional health, mental difficulties, and social difficulties. Behavioural consequences of child abuse increase the likelihood of behavioural problems. Studies show that abused children are more likely to have problems such as crime,

pregnancy during adolescence, drug use, smoking, alcohol, drugs, sexual behaviour, etc. (Kidshelpline, 2018).

5. Sexual Abuse and Exploitation of Children

Child sexual abuse was used to satisfy sexual desires by adults. This happens when a child under the age of 18 is sexually exploited by another person. Such persons are often in relationships of trust, power or control with the children they abuse. Worldwide, one in five women and one in thirteen men are sexually abused as children aged 0-17 (WHO, 2020). Children are often abused by people they know and trust. The abusers are usually men, but women can also sexually abuse children (UNICEF, 2020).

Child sexual abuse means various forms such as exposure of intimate body parts, sexual touching of body parts with or without clothes, penetration intercourse, engaging children in sexual activities, sexual activity in front of a child, distribution, exposure of shameful images of children, paying for a child's sexual services, encouraging them to engage in prostitution or pornography, showing images of sexual activities such as photographs, videos, etc. (Kidshelpline, 2018).

Abusers do not look different from other people, they are found at all levels of society and in every professional field, race and religion. (UoA, 2020). They hold high (influential) positions and appear as a respected member of society (CVC, UN).

People who sexually abuse children spend a lot of time gaining their trust and approaching them. They put a lot of pressure on the child to keep the abuse secret (Medium, 2019).

6. Child Labour

Child labour is very present, unfortunately. This not only hinders children in educational development but also harms and endangers them in terms of health. This is difficult to measure and evaluate. They are unorganized and powerless, inexperienced and untrained to deal with dangers, work at a young age, work long hours, work in different environments and eat poorly.

According to the WHO, viewed globally, most children work in Agriculture and 70%, exposing themselves to the risk of pesticides, machinery and heavy loads, etc. For children who do housework, the risks can be psychological, such as isolation, abuse, exploitation. While other jobs that children work are mining (1%) and construction (2%). The best way to identify children at risk are health professionals, who with their advice and recommendations, recognize and assess the risk to their health in places where they live, play, work, study, both in urban and rural environments. , low-income populations, minority communities

and degraded environments. The ILO Global Child Labor Report, in May 2002, describes that 250 million children (one in six children aged 5 to 17 in the world) are involved in child labor, of which about 179 million (one in eight) have entered the worst forms of child labor endangering their psychophysical well-being (WHO, Hazardous child labour, 2002).

Child labor According to UNICEF, about 152 million (1 in 10 children) are child laborers and almost half of them work in hazardous work. By 2025, about 121 million children will be in child labor and 52 million children will be in hazardous work (UNICEF, Child labour, UN).

According to a report prepared by UNESCO on child labor, official ILO data show that some 218 million children are estimated to have worked as children. (UNESCO, 2007).

The protection of children at work under Directive 94/33 / EC of 22 June 1994 applies to three categories: children under the age of 18, children under the age of 15 or in compulsory education and adolescents between the ages of 15 and 18 who have no mandatory education (EU, 2017).

7. Child Trafficking

By child trafficking we mean removing children from their safe environment for exploitation purposes. Trafficking in children at home and abroad is related to the demand for work, where working conditions and treatment at work cause serious violations of children's rights, which are dangerous for the health and development of the child. Child trafficking is done for these purposes (NSPCC, Child trafficking, 2021):

- Sexual exploitation;
- Illegal profit by fraud
- Domestic slavery such as cleaning, cooking and childcare;
- Forced labor in factories or agriculture;
- Committing crimes, begging, stealing, working on cannabis farms and transporting drugs.

According to a study by the United Nations Global Initiative to Combat Trafficking in Human Beings, traffickers use deception, coercion, and force against women, men, and children to engage in illegal sexual activity (UN.GIFT, 2016).

Combating the worst forms of child labour are the initiatives of the International Program on the Elimination of Child Labour, working with governments and NGOs to combat child trafficking, enforcing laws and prosecuting traffickers, and assisting victims.

Convention No. 182 (1999) on the worst forms of child labor classifies trafficking as a form of slavery or a practice similar to slavery.

The ILO estimate in 2005 shows that 980,000.00 to 1,225,000.00 children work forced labour as a result of trafficking (ILO, 2016). The main international and most important instruments for combating and preventing trafficking are (ILO-IPEC, 2002):

- UN Convention on the Rights of the Child (CRC).
- ILO Worst Forms of Child Labor Convention (No. 182).
- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

8. Child Abuse in the Court Practice of the European Court of Human Rights

Françoise Tulkens, former Vice-President of the European Court of Human Rights, said in her book "A decision of the European Court of Human Rights is not an end in itself, but a promise for the future, the point of starting a process that should enable rights and freedoms to become effective".

According to Article 1 of the European Convention on Human Rights to ensure that all individuals within its jurisdiction enjoy and are guaranteed the rights guaranteed by the convention arises from the alleged responsibility of a state which has failed to fulfil its obligation. essential.

Liability under the convention includes three obligations:

1. Obligation to end the existing violation;
2. Obligation to pay fair compensation (elimination of consequences that have violated international law);
3. Obligation to avoid similar violations in the future (non-repetition of violations).

Obligations arising from the decisions of the European Court of Human Rights are divided into three categories:

- Fair reward;
- Individual measures;
- General measures.

The decisions of the European Court of Human Rights have a profound and comprehensive effect on the entire scope of administrative, criminal and civil law, both in procedural and material terms.

On the official website of the European Court of Human Rights, we have found several cases of child abuse case law as follows:

N.Ç. v. Turkey (Application no. 40591/11 dated February 9, 2021), A and B v. Croatia (Application no. 7144/15 dated June 20, 2019), V.C. v. Italy (Application no. 54227/14 dated February 1, 2018) (ECHR, 2021), while for illustration we have selected one of the latest decisions of the case law of this court regarding the ill-treatment of children and that Case X and others against Bulgaria (Application no. 22457/16 dated February 2, 2021), as follows:

Case facts

"This case concerns the alleged sexual abuse of three children in an orphanage in Bulgaria prior to their adoption by an Italian couple in June 2012. The complainants also alleged that the Bulgarian authorities had failed in their obligation to protect them from such treatment and then to conduct an investigation process".

Court findings

"The court found that the complainants, due to their young age and their status as children left without parental care and placed in an institution, had been in a particularly vulnerable situation and that the sexual abuse and violence to which they were alleged, if proven, would have been serious enough to fall within the scope of Article 3 (prohibition of inhuman or degrading treatment) of the Convention".

"In this case, the Court ruled that there had been no substantial violation of Article 3, finding, in particular, that there was insufficient information to conclude that the Bulgarian authorities knew or should have known of an immediate truth and danger to children to be subjected to ill-treatment, such as raising the obligation to take preventive measures to protect them from such a risk".

"The court ruled that there had been a procedural violation of Article 3. In this regard, it considered in particular that the investigating authorities, who had not used possible mechanisms of investigation and international co-operation, had not taken all reasonable measures to throw light on the facts of the case in question and had not undertaken a thorough and careful analysis of the evidence before them. In the Court's view, the omissions observed were serious enough to consider that the investigation carried out had not been effective for the purposes of Article 3 of the Convention, interpreted in the light of other applicable international instruments and the Lanzarote Convention of the Council of Europe (ECHR, 2021).

5. Conclusions

Child abuse protected by international law and acts represents abuse and neglect that occurs to children under the age of 18. Child abuse includes all types of physical, sexual, and emotional

abuse that seriously harm the health or dignity of the child in a relationship of trust, power, or control.

Child abuse is a global problem with serious consequences throughout life, causing suffering to children and their families, and is complex and very difficult to study. Child abuse is a major public health problem worldwide, with serious consequences throughout the lives of abused children. It is important to increase the awareness and consciousness of everyone, of society in general and state structures in particular, to prevent this phenomenon. All organizations such as the UN, WHO, UNICEF, UNESCO, EU and CoE, must work on joint and sustainable projects, in the prevention of child labor, before it is possible and requires a multi-sectoral approach.

The most important challenge in combating hazardous child labor is the knowledge, legislation, ideas and action taken in good faith to protect the health of children belonging to health and safety experts.

In conclusion, it can be said that it is clear that there are well-established international legal standards, including the case law of the European Court of Human Rights and the Court of Justice of the European Union, which define and prohibit all forms of child abuse. Especially in vulnerable populations and sets out the state's obligations regarding the protection of its children, thus presenting it as a basis for the development of comprehensive national legislation on the protection of children from all forms of child abuse.

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