**Unit 9: Selected issues on violence against children**

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1. **European Union system on violence against children**

Violence against children includes all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse[[1]](#footnote-1). It can happen in different settings such as in school, at home or on the streets, but also online through the use of mobile phones or other electronic devices connected to the internet. Online violence covers not only the ownership, production and sharing of child sexual abuse material, but also grooming, online harassment, victimization and cyberbullying. Under international law, states must take measures to ensure children benefit from adequate protection and their rights to physical integrity and to and the perpetrator thereof. Thus, states’ duties are more evident where children are under the authority and control of the state, for example where they are placed in public institutions. The state’s duty to protect may prove more difficult in cases where children are exposed to violence by private actors, including their family members. However, states’ duties also include preventive measures and not only protection or assistance measures after violence has taken place. Crisis and emergency situations, such as the coronavirus disease 2019 (COVID-19) pandemic, may increase children’s vulnerability to violence, including sexual abuse and exploitation, which need to be

addressed[[2]](#footnote-2).

One of the EU’s competences in the area relates to cross-border crimes including trafficking in human beings and the sexual exploitation of women and children (Article 83 of the TFEU). Particular legislative measures have therefore been enacted with respect to child sexual abuse material and human trafficking. The EU has also passed legislation requiring Member States to criminalize several forms of sexual abuse, sexual exploitation and actions that solicit children for sexual purposes, including grooming. At CoE level, the ECtHR, through its case law under Articles 2, 3 and 8, has elaborated on states’ duties in relation to a wide range of acts constituting violence against children. The ECSR has also been active in the field, both through its reporting procedure and its collective complaints mechanism. Furthermore, specific CoE conventions, most notably the CoE Lanzarote Convention[[3]](#footnote-3), are in place, with monitoring bodies in charge of supervising their implementation. The Lanzarote Convention is the most comprehensive international legal instrument on the protection of children against sexual exploitation and sexual abuse with far reach (ratified by all 47 CoE member States and Tunisia).

1. **CoE system: the protection under the ECHR and the ECtHR jurisprudence**

* ***Under CoE law***, the ECtHR and the ECSR have developed a substantial body of case law regarding the protection of children against violence in all settings. In addition, specific CoE conventions (e.g. the Lanzarote Convention) provide detailed guarantees to protect children against specific forms of violence.

1. **Violence at home, in schools, online or in other settings:**

❖ scope of state responsibility

❖ abuse in school

❖ sexual abuse

❖ domestic violence and child neglect

***Key points:***

* States have the duty to ensure that children are effectively protected against all forms of violence and harm in all settings, including violence that occurs online.
* States have the duty to provide an adequate legal framework for child protection.
* States must conduct effective investigations into arguable allegations of child abuse, violence against children and harm to children.
* ***Under EU law***[[4]](#footnote-4), the main legal instrument in this feld, enacted on the basis of Articles 82 and 83 of the TFEU, is Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography.

**Scope of state responsibility.**

Under CoE law, the ECtHR has analysed violence against children under various provisions of the ECHR, most notably Articles 2, 3 and 8. The Court has identifed clear duties incumbent on states whenever children are placed in institutions under their authority[[5]](#footnote-5). Likewise, if a certain conduct or situation reaches the level of severity after which it qualifes as inhuman or degrading treatment under Article 3, the state has positive obligations to protect children against ill-treatment, including treatment administered by private individuals. Situations such as long-term neglect by parents[[6]](#footnote-6), repeated sexual abuse by school teachers[[7]](#footnote-7), rape[[8]](#footnote-8), or corporal punishments[[9]](#footnote-9) have all been found to fall within the scope of Article 3 of the ECHR.

In the case of death, a state may be held responsible under Article 2 of the ECHR, even if the death was inficted by a private person, and not by an agent of the state. States’ positive obligations vary from case to case, the core duty being to secure the effective protection of children against violence. In cases of serious forms of ill-treatment, positive obligations include the duty to enact effective criminal law provisions which are backed by the law-enforcement machinery[[10]](#footnote-10). States must also adopt special measures and safeguards for protecting children[[11]](#footnote-11).

The ECHR was faced on several occasions with cases concerning violence against children administered by private individuals in schools, private homes or other establishments which were run by non-state actors, where it was questionable whether state responsibility could arise. In such cases, the EctHR ruled that a state may not absolve itself of the duty to protect children by delegating the administration of important public services – such as education – to private individuals[[12]](#footnote-12). In cases concerning the determination of state responsibility, the ECtHR generally distinguished between the state’s general obligation to protect, when the risk was not clearly identifable, and a specifc obligation to protect, in cases where the risk was clearly identifable. In the former case, the ECtHR analysed whether the absence of state intervention resulted in a real risk of violence for the child victim.

*Example:* The case of Kayak v. Turkey[[13]](#footnote-13) concerns the stabbing to death of a 15-year-old boy by another teenager, in the vicinity of a school. The EctHR found that schools have an obligation to protect those enrolled from all forms of violence. In this specifc case the ECtHR ruled that Turkey was responsible under Article 2 of the ECHR for failing to protect the right to life of the applicants’ son and brother, as there was no effective surveillance system in place at the time. In the absence of such a system, it was possible for a teenager to take a knife from the kitchen of the school, which he used to stab the victim.

*Example:* The case of O’Keeffe v. Ireland[[14]](#footnote-14) concerns acts of abuse committed in the 1970s in an Irish National School. At the time, national schools in Ireland were recognised and funded by the state, whereas the management and administration were entrusted to the Church. The applicant, a pupil at the time, was subjected to approximately 20 acts of sexual abuse by one of the school teachers. She only complained to the state authorities about these acts in 1998, after fnding out about other acts of sexual abuse committed by the same teacher. The ECtHR had to determine whether the state could be held liable for acts of abuse which were not reported at the time to the authorities. The Court frst found that the acts of abuse to which the applicant had been subjected fell within the scope of Article 3 of the ECHR. Then, based on various reports, the ECtHR found that the state should have been aware of the potential risks of sexual abuse in schools. At the time, there was no adequate procedure in place which would have allowed a child or a parent to complain directly to the state about acts of abuse. There was also no supervision mechanisms of the teachers’ treatment of children. The ECtHR therefore concluded that Ireland had failed to fulfl its positive obligations under Article 3 of the ECHR, since it did not provide an effective protection mechanism for acts of abuse against children in schools. Pursuant to the ECtHR, states must also conduct effective investigations into allegations of ill-treatment or loss of life, irrespective of whether the acts were perpetrated by state agents336 or by private persons. An investigation is effective if, upon the receipt of complaints from victims or their successors, states put in place a procedure capable of leading to the identifcation and punishment of those responsible for acts of violence contrary to either Articles 2 or 3 of the ECHR.

Under the ESC, children’s rights to protection from abuse and ill-treatment fall mainly under Articles 7 and 17, which require states to protect children from all forms of ill-treatment. The ESCR has interpreted Article 17 as requiring a legal prohibition against any form of violence against children in all settings (home, schools and institutions). The ECSR in its case law found a violation of Article 17 of the ESC[[15]](#footnote-15) where states lacked legislation setting out “an express and comprehensive prohibition on all forms of corporal punishment of children that is likely to affect their physical integrity, dignity, development or psychological well-being”[[16]](#footnote-16).

Under the Lanzarote Convention, states are required to criminalise various forms of sexual abuse and sexual exploitation against children[[17]](#footnote-17). This convention also requires states to take legislative and other measures to prevent sexual abuse of children, by organising awareness-raising campaigns, training specialist staff, informing children on the risks of abuse, and providing specialist help to individuals who risk committing child abuse crimes. The Lanzarote Committee monitors the convention’s implementation and issues report, opinions and declarations[[18]](#footnote-18). In the case of X and Others v. Bulgaria, the EctHR stressed that Article 3 of the ECHR has to be interpreted in the light of other applicable international instruments and in particular the Lanzarote Convention with regards to investigation and procedural requirements[[19]](#footnote-19). Further more, Articles 4 and 5 of the CoE Istanbul Convention[[20]](#footnote-20) require states to enact special legislative measures and to investigate acts of violence against women and girls. Under Article 22, states are obliged to ensure specialist support services to women and children who are victims of domestic violence. The Group of Experts on Action against Women and Domestic Violence monitors the implementation of the convention[[21]](#footnote-21).

*Example:* The case X and Others v. Bulgaria344 concerns allegations by three Bulgarian children that they were sexually abused in an orphanage in Bulgaria prior to their adoption in Italy. Given the satisfactory legislative and regulatory framework for preventing child sexual abuse and the lack of proof that any of the authorities had been aware of the alleged abuse, the ECtHR found no violation of the substantive limb of Article 3. However, the Court considered that Bulgaria had failed to use all reasonable investigative and international cooperation measures while examining the alleged abuse. In particular, the authorities never attempted to examine the applicants medically or interview them or other children named by them. Moreover, the Bulgarian authorities never considered investigative measures of a more covert nature, such as surveillance of the orphanage perimeter, telephone tapping or the interception of telephone and electronic messages, or the use of undercover agents, which are expressly mentioned in the Lanzarote Convention and widely used across Europe in such cases. The ECtHR concluded that they had not taken all reasonable measures to shed light on the facts and had not undertaken a full and careful analysis of the evidence before them, in breach of their procedural obligation under Article 3 of the ECHR.

* ***Under international law***, the CRC is the key legal instrument for ensuring child protection at state level. Pursuant to Article 19, States Parties have the duty to take legislative, administrative, social and educational measures to protect children against all forms of violence, including corporal punishment. The UN Committee on the Rights of the Child has issued an important number of general comments and recommendations interpreting states’ obligations under the CRC. For instance, General Comment No. 13 describes measures to protect children against all forms of violence[[22]](#footnote-22) and No. 8 calls on states to take appropriate measures against all forms of corporal punishment[[23]](#footnote-23).

**Abuse in school.**

Under CoE law, the ECtHR has analysed complaints about abuse in school as aform of disciplinary measure mainly under Article 3 of the ECHR.Where measures of corporal punishment do not reach the threshold of severity requiredunder Article 3, they may nevertheless fall under Article 8 as part of the rightto physical and moral integrity.

The case of Campbell and Cosans v. the UK concerned corporal punishment of children in state-supported education[[24]](#footnote-24) and was followed by Costello-Roberts v. UK[[25]](#footnote-25) regarding corporal punishment of children in private schools. In neither case did the ECtHR find a violation of Article 3 of the ECHR. However, since Costello-Roberts, there had been a change in social attitudes and legal standards concerning the application of measures of discipline towards children, emphasising the need to protect children from any form of violence and abuse[[26]](#footnote-26).

*Example:* The case of F.O. v. Croatia350 concerns the alleged harassment of a pupil by a teacher in a public school and the failure on the part of the state authorities to effectively respond to his allegation. The teacher had called the applicant “a moron, an idiot, a fool, hillbilly” The EctHR found that, while the teacher’s initial insults against the applicant intended to discipline him and his classmates, the two later occasions could not be seen as anything but verbal abuse amounting to humiliation, belittling and ridicule. The ECtHR emphasised that teachers are expected to understand that verbal provocation and abuse might deeply affect students, particularly those who are sensitive. Moreover, a teacher should be aware that any form of violence, including verbal abuse, towards students, however mild, is not acceptable in an educational setting and that they should interact with students with due respect for their dignity and moral integrity. The Court further stressed that the domestic authorities had to put in place appropriate legislative, administrative, social and educational measures to unequivocally prohibit any form of violence or abuse against children at all times and in all circumstances, and thus to ensure zero tolerance of any violence or abuse in educational institutions. This includes the need to ensure accountability through appropriate criminal, civil, administrative and professional avenues. In the specifc case, the Court found that the only measure taken by the domestic authorities involved a verbal reprimand from the school psychologist, which failed to address the problem that the teacher’s conduct posed. The ECtHR accordingly found that there had been a violation of Article 8 of the ECHR.

**Sexual abuse.**

Child sexual abuse may take many forms, including harassment, grooming, touching, incest or rape. It can take place in various settings, including at home, schools, care institutions and churches, as well as online through the use of internet and digital technologies. Children are particularly vulnerable to sexual abuse, as they often fnd themselves under the authority and control of adults and have less access to complaint mechanisms.

* **Under EU law**, Directive 2011/93/EU seeks to harmonise minimum criminal sanctions for various child sexual abuse offences between Member States, largely refecting the approach of the Lanzarote Convention[[27]](#footnote-27). Under Article 3, Member States must punish various forms of sexual abuse through criminal law, offences including causing children to witness sexual activities or sexual abuse, engaging in sexual activities with children, and recruitment and/or coercion of children to participate in pornographic performances. The directive provides for increased penalties if the acts are committed by persons in a position of trust, and against particularly vulnerable children and/or through the use of coercion. Further, Member States must ensure that the prosecution of suspects of child abuse takes place automatically and that persons convicted of sexual abuse crimes are prevented from exercising any professional activities involving direct or regular contact with children. The directive also includes provisions on child-friendly proceedings and ensures the protection of child victims in courts.

Article 10 of this directive requires Member States to ensure that anyone convicted of offences such as child sexual abuse, exploitation and pornography is disqualifed from exercising activities involving direct and regular contact with children. Framework Decision 2009/315/JHA[[28]](#footnote-28) regulating the exchange of criminal record information between Member States facilitates the implementation of the directive by allowing the sharing of information on the criminal records of individuals convicted of child sexual abuse offences[[29]](#footnote-29).

In relation to online content, special consideration must be given to child sexual abuse material that proliferates online. The Directive on combating child sexual abuse obliges Member States’ authorities to remove web pages containing or disseminating child sexual abuse material, both when hosted within their territory and outside it[[30]](#footnote-30). The e-Commerce Directive356 determines the existing liability rules for online intermediaries. Under Article 3 it allows for the notice and takedown mechanisms for illegal content, if this action is necessary for “public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fght against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons”.

An interim regulation[[31]](#footnote-31) adopted in 2021 on the processing of personal and other data for the purpose of combating child sexual abuse provides for a temporary derogation from certain provisions of Directive 2002/58/EC on privacy and electronic communications[[32]](#footnote-32). This ensures that certain online service providers can continue their voluntary actions to detect and report child sexual abuse online. This derogation will last for three years[[33]](#footnote-33).

The revised Audiovisual Media Services Directive has introduced new rules, under Article 6a, requiring Member States to ensure that audiovisual media provided by media services under their jurisdiction that may impair the physical, mental or moral development of children are provided in a way that does not allow children normally to hear or see them, through measures proportional to the potential harm of the programme. The most harmful content, such as gratuitous violence and pornography, must be subject to the strictest measures. Moreover, this article requires Member States to ensure that media service providers provide suffcient information to viewers about content that may impair the physical, mental or moral development of children, through a system that describes the potentially harmful nature of the content of an audiovisual media service[[34]](#footnote-34).

Furthermore, in December 2020 the Commission proposed a Digital Services Act, which is a comprehensive reform of the obligations in the online space and includes the protection of children and other vulnerable groups[[35]](#footnote-35).

* **Under CoE law**, the ECtHR has examined cases of sexual abuse under Articles 3 and 8 of the ECHR. Complaints generally concern the failure of states to take appropriate measures to protect children from abuse. In the context of Article 3, the ECtHR has also examined whether states conducted effective investigations into allegations of sexual abuse. Child abuse claims made under Article 8 concern the impact of such acts on the physical or psychological integrity of the victim and on the right to respect for family life. At times, the distinction between states’ obligations under Articles 3 and 8 is rather blurred, the ECtHR using similar reasoning for finding violations of both Articles. It should be noted, however, that Article 8 cases have been more common in situations concerning undue removal/taking into care and the impact of allegations of child abuse on the family[[36]](#footnote-36).

*Example:* In M.C. v. Bulgaria[[37]](#footnote-37) the applicant, a 14-year-old girl claimed to have been raped by two individuals after she had gone out one evening. Her complaint before the domestic authorities had been dismissed mainly as no form of physical violence had been found. The ECtHR noted that allegations of rape fell under Article 3 of the ECHR and that the respondent state had to conduct an effective investigation into such allegations. In fnding that the Bulgarian authorities failed to conduct such an investigation, the EctHR relied on evidence that the authorities generally dismissed cases where the victim could not show physical opposition to the act of rape. The Court found that such a standard of proof was not in accordance with factual realities concerning victims of rape and was therefore capable of rendering the authorities’ investigation ineffective in breach of Article 3 of the ECHR.

*Example:* In R.B. v. Estonia[[38]](#footnote-38), a four-year-old girl, who had accused her father of sexual abuse, was recorded in two video interviews. In neither of them was she advised of her right not to testify against a family member or of the duty to tell the truth, although the rules of domestic criminal procedure required such instructions. In subsequent court proceedings, the Supreme Court considered that the failure to properly advise the applicant before her interviews was of such importance as to render her testimony, which was decisive evidence in the case, inadmissible. The father was consequently acquitted. The ECtHR stressed that investigations and criminal proceedings had to be carried out in a manner that protected the best interests and rights of children, such protection requiring the adoption of child-friendly and protective measures for child victims in criminal proceedings. In particular, it was essential to safeguard children’s testimony during both the pre-trial investigation and the trial. According to the CoE Committee of Ministers’ Guidelines on child-friendly justice, where less strict rules on giving evidence or other child-friendly measures are applied, such measures should not in themselves diminish the value given to a child’s testimony or evidence, without prejudice to the rights of the defense. However, the applicant’s testimony had been found to be inadmissible precisely because of the strict application of procedural rules, which had made no distinction between adults and children, and thus did not provide for exceptions or adaptions for child witnesses. Consequently, the ECtHR concluded that there had been significant flaws in the domestic authorities’ procedural response to the applicant’s allegation of sexual abuse by her father, which had not sufficiently taken into account her particular vulnerability and corresponding needs as a young child, in breach of the respondent state’s positive obligations under Articles 3 and 8 of the ECHR[[39]](#footnote-39).

*Example:* The case of A.Ş. v. Turkey[[40]](#footnote-40) concerned a sexual assault and physical violence to which the applicant was subjected while in pre-trial detention as a child. The ECtHR concluded that, although Turkish criminal law criminalized attacks on persons’ physical integrity of the kind complained of, in the present case, by requiring the applicant to lodge a formal complaint as a prerequisite for instituting criminal proceedings, without taking account of his particular vulnerability, it had rendered ineffective the legal enforcement measures designed to protect individuals against treatment contrary to Article 3 of the ECHR.

The Lanzarote Convention regulates in detail the right of children to be protected from sexual abuse. This convention, adopted in the framework of the CoE, is also open to ratification by states outside Europe. This binding instrument is backed by a plethora of non-legally binding instruments aimed at further ensuring that states enact effective measures against child sexual abuse[[41]](#footnote-41). As the Lanzarote Committee clarifies, the Lanzarote Convention also requires states to protect children against sexual abuse in the digital environment[[42]](#footnote-42). In 2019, the Lanzarote Committee adopted an opinion on Article 20 of the Lanzarote Convention with respect to child self-generated sexually suggestive or explicit images and/or videos. The opinion identifies situations that do not constitute criminal offences and those that call for criminal prosecution as a last resort[[43]](#footnote-43). Sexually suggestive or explicit images and/or videos generated by children in a particularly vulnerable situation should be considered the result of abusive/exploitative conduct[[44]](#footnote-44). See Section 7.2.3 for more information on child sexual exploitation material.

The Lanzarote Convention also addresses the prevention of sexual abuse against children through, inter alia, education for children: each Party should take the necessary legislative or other measures to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves,

adapted to their developing capacity.

Example: A.R. and L.R. v. Switzerland371 concerns the refusal by a primary school to grant the first applicant’s request that her daughter, then aged seven and about to move up to the second year of primary school, be exempted from sex education lessons, which were mandatory for children between the ages of four and eight. The ECtHR noted that sex education at kindergarten and in the first years of primary school was not systematic; the teachers merely had to react to the children’s questions and actions. The refusal to exempt a primary school pupil from sex education fell within the state’s margin of appreciation and therefore did not constitute a breach of Article 8 of the ECHR. The complaint was accordingly declared inadmissible.

**Domestic violence and child neglect.**

* **Under CoE law**, domestic violence cases are usually brought either by women alone or together with their children, complaining that the state has failed to adequately discharge its obligation under Articles 2, 3 and 8 of the ECHR to protect them against harm. States must comply with their positive obligation to take effective measures against domestic violence and conduct an effective investigation into arguable allegations of domestic violence or child neglect.

*Example:* Kurt v. Austria concerned the murder of the applicant’s son at school by her husband. She complained that the authorities had failed to protect her family from her violent husband, who had already been convicted of domestic violence against her and barred from their home. The ECtHR recalled that, in the context of domestic violence, the obligations incumbent on the state authorities firstly required an immediate response to allegations of domestic violence. Secondly, the authorities had to establish whether or not there existed a real and immediate risk to the life of one or more identified victims of domestic violence, by taking due account of the particular context of domestic violence cases and bearing in mind that violence against children belonging to the common household could be used by perpetrators as the ultimate form of punishment against their partner. The risk assessment had to be autonomous, proactive and comprehensive; the authorities should not rely solely on the victim’s perception of the risk, but complement it by their own assessment, collecting and assessing information on all relevant risk factors and elements of the case. Thirdly, if the outcome of that assessment was the existence of such a risk, the authorities’ obligation to take adequate preventive operational measures proportionate to the level of the risk assessed was triggered.

In the applicant’s case the authorities had responded immediately to her domestic violence allegations, had taken evidence and had issued barring and protection orders, without any delays or inactivity. Their risk assessment, while not following any standardized procedure, fulfilled the requirements of being autonomous, proactive and comprehensive and did not identify any real and immediate risk of an attack on the children’s lives under the Osman test373 as applied in the context of domestic violence. Consequently, there had been no obligation incumbent on the authorities to take further preventive operational measures specifcally with regard to the applicant’s children, in either private or public spaces, such as issuing a barring order for the children’s school. The ECtHR accordingly found no violation of Article 2 of the ECHR.

*Example:* In the case of Kontrová v. Slovakia[[45]](#footnote-45), the applicant had on several occasions been physically assaulted by her husband. She complained to the police, but later withdrew her complaint. Her husband subsequently threatened to murder their children. A relative reported this incident to the police. Nevertheless, several days after the incident, the applicant’s husband shot himself and their two children dead. The ECtHR held that a state’s positive obligations arise in the sphere of Article 2 of the ECHR whenever the authorities know or ought to know of the existence of a real and immediate risk to the life of an identified individual. In this case, the Slovak authorities should have known of such a risk by virtue of the pre-existing communications between the applicant and the police. The positive obligations of the police should have entailed registering the applicant’s criminal complaint, launching a criminal investigation and initiating criminal proceedings, keeping a proper record of the emergency calls and taking action in respect of the allegations that the applicant’s husband had a shotgun. The police, however, failed to meet its obligations and the direct consequence of those failures was the death of the applicant’s children, in breach of Article 2 of the ECHR.

*Example:* The case of Talpis v. Italy[[46]](#footnote-46) concerned several episodes of violence against the applicant and her children by her husband. Following the frst two episodes, the applicant fled a complaint against him and requested protection measures. The police questioned her for the frst time seven months after her complaint. Meanwhile, the third episode of violence resulted in the death of the couple’s son and in injuries to the applicant. The ECtHR took note of the following failures of the authorities: (a) they did not conduct any investigation for seven months following the applicant’s complaint, nor did they take any measures to protect her during that time; (b) the husband was convicted of serious bodily harm three years after the applicant had fled her complaint and only after he had killed their son and attempted to kill the applicant; and (c) the police remained inactive for six months after the prosecutor’s request to take immediate action on the applicant’s request for protection. The Court found an Article 2 violation for failing to protect the lives of the applicant and her son, an Article 3 violation for failing to protect the applicant against domestic violence and a violation of Article 14, read in conjunction with Articles 2 and 3.[[47]](#footnote-47)

Cases of child neglect, either in state institutions or at home, have also been raised under the ECHR. The obligations of the authorities in situations of parental child neglect are similar to those in the cases presented previously. On the one hand, the state needs to put in place effective mechanisms for child protection, while on the other, state authorities must take action for protecting children in cases of reported child neglect, or where there is enough evidence of child neglect at their disposal, be it in homes or in privately run institutions[[48]](#footnote-48). Cases of neglect in state institutions impose direct obligations on the authorities to protect children by ensuring that they receive adequate (medical) care, that the facilities where they are placed are adequate and/or that the staff is trained to deal with the needs of children[[49]](#footnote-49).

The Istanbul Convention is the first legally binding international instrument on preventing and combating violence against women and girls at international level, signed by all EU Member States, and the EU[[50]](#footnote-50), and includes several references to children[[51]](#footnote-51). First, under Article 3 (f), girls below the age of 18 are to be considered ‘women’, therefore, all the provisions of the convention apply to them. Secondly, under Article 2 (2), States Parties are encouraged to apply the convention to all victims of domestic violence, which can include children. In fact, in most cases children are witnesses to and are severely affected by domestic violence within the home. Finally, child-specific provisions of the convention include obligations for states to take measures to address the needs of child victims, raise awareness among children, and protect child witnesses.

In the same vein, under Article 17 of the ESC, states are obliged to prohibit all forms of violence against children and to adopt adequate criminal and civil law provisions.

The issues of domestic violence and child neglect have been addressed in various non legally binding instruments of the CoE[[52]](#footnote-52).

**4. Child exploitation:**

❖ Forced labour

❖ Child trafficking

❖ Sexual exploitation

***Key point:***

* State authorities have a duty to cooperate effectively to protect children against

forced labour, traffcking and child sexual exploitation material, including in the conduct of investigations.

**Forced labour.**

* **Under EU law**, slavery, servitude, forced or compulsory labour are prohibited (Article 5 (2) of the EU Charter of Fundamental Rights). The employment of children is generally prohibited by Article 32 of the charter, which specifes that the minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. The minimum school-leaving age varies across the EU, mostly between 15 and 18 years of age[[53]](#footnote-53). Directive 94/33/EC is the main legal instrument prohibiting child labour.384 Member States are allowed to set the minimum age for employment below the minimum school leaving age only in exceptional circumstances (Article 4 (2)), and they have to ensure that young people admitted to work beneft from appropriate working conditions (Articles 6 and 7). Furthermore, children can only be employed for certain activities, such as light domestic work or social and cultural activities (Articles 2 (2) and 5).

In many instances, forced child labour cases involve traffcked children[[54]](#footnote-54). Directive 2011/36/EU on preventing and combating traffcking in human beings recognises forced labour as a form of child exploitation (Article 2 (3))[[55]](#footnote-55). Children traffcked for the purposes of forced labour are protected under the directive in the same way as victims of traffcking for other purposes.

* **Under CoE law**, Article 4 of the ECHR prohibits in absolute terms all forms of slavery, servitude, forced and compulsory labour. The ECtHR defnes “forced or compulsory labour” as “work or service which is exacted from any person under the menace of any penalty against the will of the person concerned and for which the said person has not offered himself voluntarily”[[56]](#footnote-56). Servitude includes, in addition, “the obligation for the ‘serf’ to live on another person’s property and the impossibility of altering his condition”. Servitude is therefore an aggravated form of compulsory labour.

In cases concerning allegations of forced labour, the ECtHR first determines whether the allegations fall within the scope of Article 4 of the ECHR[[57]](#footnote-57). It then analyses whether states have complied with their positive obligations to put in place a legislative and administrative framework that prohibits, punishes and effectively prosecutes cases of forced or compulsory labour, servitude and slavery. As regards the procedural aspect of Article 4, the ECtHR examines whether the domestic authorities conducted an effective investigation into arguable allegations of forced labour or servitude[[58]](#footnote-58).

*Example:* The case of C.N. and V. v. France393 concerns the forced-labour claims of two sisters of Burundian origin. After the death of their parents, they were taken to live with their aunt and her family in France. They were accommodated for four years in the basement of the house in allegedly very bad conditions. The older sister did not attend school and spent all her time doing household chores and taking care of her aunt’s disabled son.

The younger sister attended school and worked for the aunt and her family after school and after having been given time to do her homework. Both sisters lodged a complaint with the ECtHR that they had been held in servitude and subjected to forced labour. The ECtHR found that the frst applicant had indeed been subject to forced labour as she had to work seven days a week with no remuneration and no holiday. Moreover, she had been held in servitude because she had the feeling that her situation was permanent, with no likelihood of change. The ECtHR further found that the state did not meet its positive obligations, since the legal framework in place did not offer effective protection to victims of compulsory labour. Concerning the procedural obligation to investigate, the ECtHR held that the requirements of Article 4 of the ECHR had been met, as the authorities had conducted a prompt independent investigation capable of leading to the identifcation and punishment of those responsible. The ECtHR dismissed the second applicant’s allegations of forced labour, reasoning that she had been able to go to school and was given time to do her homework.

The ESC guarantees the right of children to be protected against physical and moral dangers within and outside the working environment (Article 7 (10)). The ECSR observed that domestic/labour exploitation of children, including traffcking for the purposes of labour exploitation, must be prohibited at state level[[59]](#footnote-59). States Parties to the ESC must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice[[60]](#footnote-60).

Child trafficking.

* **Under EU law**, Article 83 of the TFEU identifes traffcking in human beings as feld where the EU Parliament and Council have legislative powers. Article 5 (3) of the EU Charter of Fundamental Rights contains an express prohibition of traffcking in human beings. The contribution of the EU is valued here, as this is an area with cross-border dimensions.

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims is the first instrument passed by the European Parliament and the Council based on Article 83 of the TFEU.398 Under Article 2 (1) of this directive, traffcking is defned as “the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefts to achieve the consent of a person having control over another person, for the purpose of exploitation”. The purpose of the directive is to set out minimum rules for the defnition and sanctioning of human traffcking-related offences (Article 1). The directive as a whole is relevant for children, and it also includes several child-specifc provisions relating to assistance and support of child victims of traffcking and protection in criminal investigations (Articles 13–16)[[61]](#footnote-61). Specifc support measures are to be taken pursuant to a specialist assessment of each individual victim (Article 14 (1)). States should appoint a guardian to represent the child’s best interests (Article 14 (2)) and provide support to the family of the child (Article 14 (3)). During criminal proceedings, children have the right to a representative, free legal counselling, and the right to be heard in adequate premises and by trained professionals (Article 15 (1)– (3)). Further protection measures include the possibility to conduct hearings without the presence of the public and the possibility to hear the child indirectly via communication technologies (Article 15 (5))[[62]](#footnote-62).

Directive 2004/81/EC is also relevant for traffcked children if, by way of derogation, Member States decide to apply this directive to children under the conditions laid down in national law[[63]](#footnote-63). Under this instrument, victims of traffcking may be issued residence permits by the host Member States, provided they cooperate in the criminal investigation.

* **Under CoE law**, the ECHR does not refer specifcally to traffcking. Nevertheless, the ECtHR interprets Article 4 of the ECHR as including a prohibition of traffcking[[64]](#footnote-64). The Court has adopted the same defnition of traffcking as laid down in Article 3 (a) of the Protocol to prevent, suppress and punish traffcking in persons, especially women and children, supplementing the UN Convention against Transnational Organized Crime (Palermo Protocol) and Article 4 (a) of the CoE Convention on Action against Traffcking in Human Beings[[65]](#footnote-65). The ECtHR frst identifes whether a particular situation involves a credible allegation of trafficking and thus falls under the scope of Article 4. If it does, the ECtHR’s analysis will follow the patterns described in Section 7.2.1: the Court looks into whether the legal framework of the respondent state offers effective protection against traffcking, whether the state has discharged its positive obligations in the particular circumstances of the case and whether the authorities have conducted an effective investigation into arguable allegations of traffcking. The Court has also drawn on its case law under Articles 3 and 8 in respect of acts of violence, as children are particularly vulnerable, to ascertain whether or not the measures applied by the state to protect them against acts falling within the scope of Article 4 are effective, include reasonable steps to prevent acts of which the authorities had, or ought to have had, knowledge, and are effectively deterrent[[66]](#footnote-66).

*Example:* The case of Rantsev v. Russia and Cyprus[[67]](#footnote-67) was lodged by the father of a young Russian girl who died under suspicious circumstances in Cyprus. She had entered Cyprus on a cabaret artist visa. After what appeared to be an escape attempt, she died by falling off the balcony of an apartment belonging to acquaintances of her employer. Her father lodged a complaint against both Russia and Cyprus, essentially claiming that the authorities had not appropriately investigated the death of his daughter. The ECtHR held for the first time that trafficking in human beings falls under the scope of Article 4 of the ECHR. Although Cyprus had an adequate legal framework to combat traffcking, Article 4 was violated, as the administrative practice of requiring employers to issue fnancial guarantees for cabaret dancers did not offer effective protection against traffcking and exploitation. Further, in the particular circumstances of the case, the Cypriot authorities should have known that the applicant’s daughter was at risk of being trafficked. The Court ruled that the police failed to take measures to protect Ms Rantseva against exploitation. Finally, it found a violation of Article 4 by Russia, since the Russian authorities did not appropriately investigate the allegations of traffcking[[68]](#footnote-68).

*Example:* The case of V.C.L. and A.N. v. the United Kingdom[[69]](#footnote-69) concerned two Vietnamese children discovered by police offcers to be working on cannabis farms, following which they were arrested and charged with drug-related offences. The applicants were not referred immediately for assessment as potential victims of traffcking, but later the competent authority determined that both had been traffcked. The prosecution service disagreed with that assessment and pursued their prosecution. Both applicants pleaded guilty to the charges and were convicted. This was the frst time the Court had considered the relationship between Article 4 of the ECHR and the prosecution of victims and potential victims of traffcking. No general prohibition on the prosecution of victims of traffcking could be construed from international anti-traffcking standards, nor could prosecuting child traffcking victims be precluded in all circumstances. Nevertheless, the prosecution of (potential) victims of traffcking might, in certain circumstances, be at odds with the state’s duty to take operational measures to protect them where the authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an individual had been traffcked. For the prosecution of a (potential) victim to demonstrate respect for the freedoms guaranteed by Article 4, early identifcation of victims was of paramount importance. As soon as the authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an individual suspected of having committed a criminal offence might have been traffcked or exploited, the person should be assessed promptly by trained and qualifed individuals, based on the criteria identifed in international standards, having specifc regard to the fact that threat of force and/or coercion was not required where the individual was a child. Moreover, the ECtHR stressed that any decision on whether or not to prosecute a potential victim should, as far as possible, be taken only once a qualifed person had made a traffcking assessment, in particular if the potential victim is a child In the applicants’ case, the ECtHR found the prosecution service’s reasons when deciding to prosecute wholly inadequate and inconsistent with the defnition of traffcking in international law. Coupled with that, the authorities’ failure to conduct a timely assessment of whether or not the applicants had in fact been traffcked amounted to a breach of their positive obligations under Article 4 of the ECHR. The ECtHR also considered that the foregoing had violated the applicant’s right to a fair trial, guaranteed under Article 6 of the ECHR.

The ECSR considers traffcking in human beings to constitute a grave violation of human rights and human dignity, amounting to a new form of slavery[[70]](#footnote-70). Under Article 7 (10), states must enact legislation to criminalise it[[71]](#footnote-71). This legislation must be backed by an adequate supervisory mechanism, sanctions, and an action plan to combat child traffcking and sexual exploitation[[72]](#footnote-72). At treaty level, the CoE Convention on Action against Trafficking in Human Beings is the key instrument addressing human traffcking[[73]](#footnote-73). The convention complements EU Directive 2011/36/EU and is instrumental in combating traffcking in states party to the convention, whether EU members or not, on the basis of common standards and obligations. The implementation of the convention is monitored by a group of independent experts (the Group of Experts on Action against Traffcking in Human Beings (GRETA)), who periodically assess the situation in each country and publish reports[[74]](#footnote-74). On the basis of these reports, the Committee of the Parties to the Convention, the political pillar of the monitoring mechanism under the convention, adopts recommendations to States Parties concerning measures to be taken to implement GRETA’s conclusions and follows up on progress.

Sexual exploitation.

* **Under EU law**, Directive 2011/93/EU415 is the main legal instrument addressing the sexual exploitation of children and child pornography[[75]](#footnote-75).

Article 4 extensively addresses exploitation, including recruiting, coercing and forcing children to participate in pornographic performances or child prostitution and profting from them, attending pornographic performances involving children and engaging in sexual activities with a child forced into prostitution. It defnes child pornography as: “(i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct; (ii) any depiction of the sexual organs of a child for primarily sexual purposes; (iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes.”[[76]](#footnote-76) Article 5 of the directive introduces an obligation for EU Member States to take all necessary measures to ensure that the intentional production, acquisition, possession, distribution, dissemination, transmission, offering, supplying or making available of child pornography as well as knowingly obtaining access to this type of content is punishable.

* **Under CoE law**, the ECtHR has on several occasions analysed cases concerning offences related to child sexual exploitation under Articles 3 and 8 of the ECHR.

*Example:* The case of Söderman v. Sweden was brought by a girl whose stepfather attempted to flm her while she was taking a shower[[77]](#footnote-77). She alleged that the Swedish legislative framework did not adequately protect her private life. The ECtHR held that the state has positive obligations to set up a legislative framework offering adequate protection to victims such as the applicant. As this case concerned only an attempt to flm the applicant, the ECtHR held that such legislative framework did not necessarily have to include criminal sanctions. The remedies offered to a victim – either civil or criminal – had to be effective. On the facts of the case, the ECtHR held that the applicant did not beneft from effective criminal or civil remedies against her stepfather’s attempt to flm her, in breach of Article 8 of the ECHR.

*Example:* The case of N.C. v. Turkey[[78]](#footnote-78) concerned a 12-year-old girl who was forced to work as a prostitute. An investigation was opened rapidly after the applicant’s complaint, and the majority of the perpetrators were sentenced to terms of imprisonment. Nonetheless, in such a serious case, concerning the sexual exploitation of a girl, the ECtHR could not limit itself to that general finding in assessing whether or not the respondent state had fulflled its obligations under Articles 3 and 8. The Court found that the lack of assistance to the applicant, the failure to provide her with protection from the perpetrators, the unnecessary reconstruction of the rape incidents, the repeated medical examinations, the failure to ensure a calm and safe environment at the hearings, the assessment of the victim’s consent, the excessive length of the proceedings and, lastly, the fact that two of the charges had become time barred amounted to a case of serious secondary victimisation. The national authorities’ conduct had not been compatible with the obligation to protect a child who had been the victim of sexual exploitation and abuse. It had been first and foremost the responsibility of the assize court judges to ensure that respect for the applicant’s personal integrity was adequately protected at the trial. The intimate nature of the subject matter and the applicant’s age had been points of particular sensitivity, which inevitably called for a correspondingly sensitive approach on the part of the authorities to the conduct of the criminal proceedings in issue. Consequently, the Court found a violation of Articles 3 and 8 of the ECHR.

Article 9 of the CoE Convention on Cybercrime[[79]](#footnote-79) requires States Parties to criminalise the conduct of offering, making available, distributing, transmitting, procuring or possessing pornography or producing such child pornography or producing such material through a computer system. An important requirement is that this conduct must be intentional. The explanatory report on the convention states that the term ‘pornographic material’ is “governed by national standards pertaining to the classifcation of materials as obscene, inconsistent with public morals or similarly corrupt. Therefore, material having an artistic, medical, scientific or similar merit may be considered not to be pornographic.”[[80]](#footnote-80) The Committee of Ministers of the CoE has also adopted guidelines on the rights of the child in the digital environment, which include a number of measures aimed specifcally at protecting children from sexual exploitation and abuse online[[81]](#footnote-81).

Further, pursuant to Articles 21 to 23 of the Lanzarote Convention, states are required to take legislative measures to criminalize various forms of child pornography. Under Article 21, recruiting, coercing and participating in child pornography activities should be criminalized. Under Article 22, causing children to witness sexual (abuse) acts must equally be criminalized. Finally, Article 23 requires that criminal legislation be enacted in relation to acts of solicitation of children for sexual purposes through information and communication technologies. The Lanzarote Committee has encouraged the States Parties to the convention to consider extending the criminalization of solicitation to cases when the sexual abuse is not the result of a meeting in person but committed online[[82]](#footnote-82). The Lanzarote Convention provides that states have a duty to ensure appropriate responses to technological developments and use all relevant tools, measures and strategies to effectively prevent and combat sexual offences against children, including in the online environment[[83]](#footnote-83).

*Example:* In the case of Centre of Legal Resources on behalf of Valentin Câmpeanu v. Romania, an NGO lodged an application in the name of a young Roma boy who died in a state institution.426 He was HIV-positive and had a severe intellectual disability. The conditions in the institution where he lived were appalling: there was no heating, no bedding or clothes, no support from staff, etc. In the absence of any close relative of the victim, an NGO alleged on his behalf the infringement of the rights established by Articles 2, 3, 5, 8, 13 and 14 of the ECHR. The Court decided that, in the exceptional circumstances of the case (the extreme vulnerability and lack of any known next-of-kin of the young Roma), the NGO had standing to represent the deceased applicant. On the merits, the ECtHR found a violation of the substantive limb of Article 2. The domestic authorities were found liable for the death of Mr. Câmpeanu as they had placed him in an institution where he died due to the lacked adequate food, accommodation and medical care. The ECtHR also found a violation of Article 2 due to the fact that the Romanian authorities did not conduct an effective investigation into the death of Mr. Câmpeanu.

With respect to children living in institutions, the CoE Recommendation Rec(2005)5 spells out that the placement of a child should not be based on discriminatory grounds[[84]](#footnote-84). ECtHR cases concerning children with disabilities have raised several issues, including the state’s positive obligations to protect their lives and physical integrity.

*Example:* The case of Nencheva and Others v. Bulgaria[[85]](#footnote-85) concerns the death of 15 children and young adults in a home for people with mental and psychical disabilities. The ECtHR held that the living conditions of the children in the institution under the sole control of the state were appalling: they lacked food, medicine, clothing and heating. The competent authorities had been alerted to this situation on several occasions and were consequently aware or should have been aware of the risks of death. The ECtHR found a violation of the substantive limb of Article 2 of the ECHR, as the authorities did not take any measures to protect the lives of children placed under their control. Furthermore, the Bulgarian authorities did not conduct an effective investigation into the deaths of the children. In the particular circumstances of the case, they should have launched an ex office criminal investigation. Their investigation was deemed ineffective for several reasons: it had started two years after the death of the children, it had lasted unreasonably long, it did not cover the death of all the children and it did not clarify all the relevant factors in the matter. Consequently, the Court also found a breach of the procedural limb of Article 2 of the ECHR[[86]](#footnote-86).

*Example:* The case of I.C. v. Romania[[87]](#footnote-87) concerned a complaint about the inadequacy of the investigation into a 14-year-old girl’s allegation of rape. The Court considered that the Romanian authorities had put undue emphasis on the lack of proof that the applicant had shown resistance during the incident, basing their conclusions only on the statements given by the alleged perpetrators that the girl had consented to having sexual intercourse, taken together with the fact that her body had shown no signs of violence. Furthermore, neither the prosecutors nor the judges deciding the case had taken a context-sensitive approach, failing to take into account her young age and the fact that the alleged rape, involving three men, had taken place at night in cold weather – all factors that had heightened her vulnerability. Particular attention should have been focused on analyzing the validity of the applicant’s consent in the light of her slight intellectual disability. In that context, the nature of the alleged sexual abuse against her had been such that the existence of useful detection and reporting mechanisms had been fundamental to the effective implementation of the relevant criminal laws and to her access to appropriate remedies. The ECtHR found a violation of Article 3 of the ECHR.

*Example:* The case of V.C. v. Italy[[88]](#footnote-88) concerned a 15-year-old girl apprehended at a party where alcohol and drugs were being consumed. Her parents stated that their daughter suffered from psychiatric disorders and had been approached to pose for pornographic photographs. Although the authorities promptly launched a criminal investigation and the public prosecutor applied to have the applicant admitted to a specialist institution, the ECtHR criticized the fact that more than four months had elapsed before the youth court reached its decision and that thereafter it took the social services another four months to implement the order. In the meantime, the applicant was a victim of sexual exploitation and of gang rape. In the ECtHR’s view, the youth court and the social services had in practice taken no protective measures in the immediate term, even though they had been aware that the applicant was physically and psychologically vulnerable, and that proceedings concerning her sexual exploitation and alleged gang rape were pending. By acting in this way, the authorities had not carried out any assessment of the risks faced by the applicant, in breach of both Articles 3 and 8 of the ECHR.

* **At international level**, Article 16 of the CRPD requires States Parties to take specific measures to protect children with disabilities from abuse and exploitation.

**5.High-risk groups: some children are particularly vulnerable, for example children belonging to ethnic minorities, children with disabilities, LGBTIQ children or children suffering from addictions**

**Key point**

* Some children are particularly vulnerable, for example children belonging to ethnic minorities, children with disabilities, LGBTIQ children or children suffering from addictions.
* **Under CoE law**, ECtHR cases dealing specifically with violence against minority children – outside the context of human trafficking and forced labor – are rather sparse.

*Example:* In the case of Centre of Legal Resources on behalf of Valentin Câmpeanu v. Romania, an NGO lodged an application in the name of a young Roma boy who died in a state institution[[89]](#footnote-89). He was HIV-positive and had a severe intellectual disability. The conditions in the institution where he lived were appalling: there was no heating, no bedding or clothes, no support from staff, etc. In the absence of any close relative of the victim, an NGO alleged on his behalf the infringement of the rights established by Articles 2, 3, 5, 8, 13 and 14 of the ECHR. The Court decided that, in the exceptional circumstances of the case (the extreme vulnerability and lack of any known next-of-kin of the young Roma), the NGO had standing to represent the deceased applicant. On the merits, the ECtHR found a violation of the substantive limb of Article 2. The domestic authorities were found liable for the death of Mr. Câmpeanu as they had placed him in an institution where he died due to the lacked adequate food, accommodation and medical care. The ECtHR also found a violation of Article 2 due to the fact that the Romanian authorities did not conduct an effective investigation into the death of Mr. Câmpeanu.

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* **At international level**, Article 16 of the CRPD requires States Parties to take specific measures to protect children with disabilities from abuse and exploitation.

**6. Missing children: child victims of forced disappearance**

**Key point**

* Child victims of forced disappearance (known as ‘enforced disappearance’ in international law) have the right to preserve or to re-establish their identity.
* **Under EU law**, the EU Commission has launched a hotline number free of charge (116000) for missing children.433 This service takes calls reporting missing children and passes them on to the police authorities, offers guidance to and supports the persons responsible for the missing child, and supports the investigation.
* **Under CoE law**, the enforced disappearance of children has been addressed under Article 8 of the ECHR.

*Example:* In Zorica Jovanović v. Serbia[[95]](#footnote-95), a newborn baby allegedly died in hospital shortly after birth, but his body was never transferred to the parents. The mother complained that the state had failed to provide her with any information about the fate of her son, including the cause of his alleged death or time and place of his burial. The ECtHR held that a state’s “continuing failure to provide [the mother] with credible information as to the fate of her son” amounted to a violation of her right to respect for family life[[96]](#footnote-96). Under Article 46 of the ECHR, the Court ordered Serbia to take all appropriate measures, preferably by means of a lex specialist, and within one year, to establish a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant’s. The Serbian parliament subsequently passed the Zorica Jovanović Implementation Act in February 2020.

*Example:* In the subsequent case of Mik and Jovanović v. Serbia[[97]](#footnote-97), the applicants complained that the Serbian authorities had been too slow and ultimately ineffective in complying with the Zorica Jovanović judgment. Although that legislation had been enacted in 2020 after a significant delay, the issues that had required regulation were in themselves of great sensitivity and considerable complexity. Furthermore, the act, as ultimately passed by parliament, provided for both judicial and extrajudicial procedures with respect to the situation faced by the applicants and other persons in the same situation, and was aimed at discovering the true status of newborn babies suspected to have disappeared from maternity wards in Serbia. In particular, the act provided, inter alia, for a system in which the domestic courts would have the power to investigate and obtain evidence not only at the request of the petitioner but also of their own motion in order to establish all the relevant facts, and would also have the power to award compensation where appropriate. It also provided for a commission with extensive powers, appointed with a majority of representatives of registered parents’ associations dealing with the issue of missing babies. Accordingly, the ECtHR struck the case out of its list of cases.

Article 25 (1) (b) of the International Convention for the Protection of All Persons from Enforced Disappearance[[98]](#footnote-98) stipulates that states must prevent and punish the “falsification, concealment or destruction of documents attesting to the true identity” of children who are themselves or whose parents are subjected to enforced disappearance. States must also take the necessary measures to search for and identify these children, and to return them to their families of origin. In light of these children’s right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, states need to have legal procedures in place to review and annul any adoption or placement of children involved in enforced disappearances (Article 25 (4)). The convention reiterates two of the general principles underpinning children’s rights: the best interests of the child as a primary consideration and the right of the child to express his/her views (Article 25 (5)). Whereas a relatively low number of European states have ratified this convention, its relevance to the European normative framework

should not be dismissed[[99]](#footnote-99).

1. See full defnition in Art. 19 (1) of the CRC. [↑](#footnote-ref-1)
2. World Health Organization (2020), ‘COVID-19: Protecting children from violence, abuse and neglect in the home’; EU, European Commission (2021), ‘The EU Strategy on the Rights of the Child and the European Child Guarantee’; EU Fundamental Rights Agency (2021), The coronavirus pandemic and fundamental rights: A year in review, 10 June 2021; Council of Europe (2021), ‘The COVID-19 pandemic and children: Challenges, responses and policy implications’, 12 March 2021. [↑](#footnote-ref-2)
3. Council of Europe (2007), Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No. 201, 25 October 2007. [↑](#footnote-ref-3)
4. EU, European Parliament and Council of the European Union (2011), Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, OJ 2011 L 335/1. [↑](#footnote-ref-4)
5. ECtHR, Nencheva and Others v. Bulgaria, No. 48609/06, 18 June 2013 [↑](#footnote-ref-5)
6. ECtHR, Z and Others v. the United Kingdom [GC], No. 29392/95, 10 May 2001 [↑](#footnote-ref-6)
7. ECtHR, O’Keeffe v. Ireland [GC], No. 35810/09, 28 January 2014. [↑](#footnote-ref-7)
8. ECtHR, M.C. v. Bulgaria, No. 39272/98, 4 December 2003; ECtHR, M.G.C. v. Romania, No. 61495/11, 15 March 2016, para. 58 [↑](#footnote-ref-8)
9. ECtHR, Tyrer v. the United Kingdom, No. 5856/72, 25 April 1978; ECtHR, M.C. v. Bulgaria, No. 39272/98, 4 December 2003, para. 150; ECtHR, O’Keeffe v. Ireland [GC], No. 35810/09, 28 January 2014, para. 146. [↑](#footnote-ref-9)
10. ECtHR, Tyrer v. the United Kingdom, No. 5856/72, 25 April 1978; ECtHR, M.C. v. Bulgaria, No. 39272/98, 4 December 2003, para. 150; ECtHR, O’Keeffe v. Ireland [GC], No. 35810/09, 28 January 2014, para. 146 [↑](#footnote-ref-10)
11. ECtHR, O’Keeffe v. Ireland [GC], No. 35810/09, 28 January 2014, para. 148; see also ECtHR, M.C. v. Bulgaria, no. 39272/98, ECHR 2003-XII, para. 153. [↑](#footnote-ref-11)
12. ECtHR, M.C. v. Bulgaria, No. 39272/98, 4 December 2003, para. 150; ECtHR, Costello-Roberts v. the United Kingdom, No. 13134/87, 25 March 1993, para. 27. [↑](#footnote-ref-12)
13. ECtHR, Kayak v. Turkey, No. 60444/08, 10 July 2012 [↑](#footnote-ref-13)
14. ECtHR, O’Keeffe v. Ireland [GC], No. 35810/09, 28 January 2014 [↑](#footnote-ref-14)
15. ECSR, Association for the Protection of All Children (APPROACH) v. Czech Republic, Complaint No. 96/2013, 29 May 2015. [↑](#footnote-ref-15)
16. ECSR, Association for the Protection of All Children (APPROACH) v. Slovenia, Complaint No. 95/2013, 27 May 2015, para. 51. [↑](#footnote-ref-16)
17. Council of Europe (2007), Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No. 201, 25 October 2007. [↑](#footnote-ref-17)
18. See, for example, Council of Europe, Lanzarote Committee (2019), Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse, 21 October 2019; Lanzarote Committee (2018), 2nd implementation report: Protection of children against sexual abuse in the circle of trust: The strategies, 31 January 2018; Lanzarote Committee (2017), Interpretative Opinion on the applicability of the Lanzarote Convention to sexual offences against children facilitated through the use of information and communication technologies (ICTs), 12 May 2017; Lanzarote Committee (2015), 1st implementation report: Protection of children against sexual abuse in the circle of trust: The framework, 4 December 2015. [↑](#footnote-ref-18)
19. ECtHR, X and Others v. Bulgaria, No. 22457/16, 2 February 2021. [↑](#footnote-ref-19)
20. Council of Europe (2011), Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No. 210, 11 May 2011. [↑](#footnote-ref-20)
21. Council of Europe, Group of Experts on Action against Women and Domestic Violence (2020), 1st general report on GREVIO’s activities, April 2020. [↑](#footnote-ref-21)
22. United Nations, Committee on the Rights of the Child (2011), General Comment No. 13 (2011): The right of the child to freedom of all forms of violence, CRC/C/GC/13, 18 April 2011. [↑](#footnote-ref-22)
23. United Nations, Committee on the Rights of the Child (2007), General Comment No. 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), CRC/C/GC/8, 2 March 2007. [↑](#footnote-ref-23)
24. ECtHR, Campbell and Cosans v. the United Kingdom, Nos. 7511/76 and 7743/76, 25 February 1982. [↑](#footnote-ref-24)
25. ECtHR, Costello-Roberts v. the United Kingdom, No. 13134/87, 25 March 1993. [↑](#footnote-ref-25)
26. ECtHR, F.O. v. Croatia, No. 29555/13, 22 April 2021. See also ECtHR, V.K. v. Russia, No. 68059/13, 7 March 2017. [↑](#footnote-ref-26)
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