



## KEY THEME<sup>1</sup>

### Article 8

# Representation of the child before the ECHR

(Last updated: 31/08/2024)

## Introduction

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The age of the applicant cannot prevent him from seizing the Court. Be as it may, young applicants can find themselves in a vulnerable position. When it comes to representing their rights, they may also have conflicting interests with one parent or both parents or a third party willing to represent them. The Court has had to deal with quite a few different situations in this context. When a parent is not entitled under domestic law to act on the child's behalf, can he or she nevertheless represent the child before our Court? Useful criteria have been laid down. The Court takes a pragmatic approach, stressing the importance of effective protection of the children's interests and rights.

## Useful criteria and precedents

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In principle, a person who is not entitled under domestic law to represent another may nevertheless, in certain circumstances, act before the Court in the name of the other person (*T.A. and Others v. the Republic of Moldova*, 2021, § 32). In particular, minors can apply to the Court, even, or indeed especially, if they are represented by a parent who is in conflict with the authorities and criticises their decisions and conduct as not being consistent with the rights guaranteed by the Convention (*E.M. and Others v. Norway*, 2022, § 64). Three criteria must be met in order for a person to have standing: (a) a sufficiently close link between the minor and the person lodging the complaint before the Court in the name of that minor, (b) the risk that in the absence of this complaint, the minor will be deprived of effective protection of his or her rights, and (c) the absence of any conflict of interests between the minor and the person representing him or her (*T.A. and Others v. the Republic of Moldova*, 2021, § 33).

### **Parents complaining before the ECHR on behalf of the child:**

- A natural parent normally has the requisite standing to complain on behalf of his or her minor children in a case such as the transfer of custody of his/her child to foster parents and limitation of contact, though there may be exceptions, for example where conflicts of interests are identified (*Roengkasettakorn Eriksson v. Sweden*, 2022, § 61).
- Severance of the legal ties between the parent and the child is not decisive when deciding for whether a parent may have *locus standi* to lodge an application on behalf of the child before the Court (*Strand Lobben and Others v. Norway* [GC], 2019, § 156). Parents who did not have parental rights could apply to the Court on behalf of their minor children: the key criterion in these cases is the risk that some of the children's interests might not be brought to its attention and that they would be denied effective protection of their Convention rights (*Scozzari and Giunta v. Italy* [GC], 2000, § 138; *Lambert and Others*

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<sup>1</sup> Prepared by the Registry. It does not bind the Court.

*v. France* [GC], 2015, § 94; and *Strand Lobben and Others v. Norway* [GC], 2019, §§ 156-159). This is particularly so in a litigation between a parent and the State.

- Where an application has been lodged before the Court by a biological parent on behalf of his or her child, the situation may nonetheless be that the Court identifies conflicting interests between parent and child. A conflict of interest is relevant to the question of whether an application lodged by one person on behalf of another is admissible (*Strand Lobben and Others v. Norway* [GC], 2019, § 158; *E.M. and Others v. Norway*, 2022, § 64), and depending on the particular circumstances of the case, that question may be joined to the merits (*A. and Others v. Iceland*, 2022, § 63).
- When the dispute is between parents (about, for example, the enforcement of contact rights, where the State is not a party to the dispute), it is the parent entitled to custody who is entrusted with safeguarding the child's interests (*C v. Croatia*, 2020, §§ 55-56). In these situations, the position as natural parent cannot be regarded as a sufficient basis to bring an application also on behalf of a child (*Eberhard and M. v. Slovenia*, 2009, §§ 85-88; *Moog v. Germany*, 2016, §§ 39-42; *K.B. and Others v. Croatia*, 2017, §§ 109-110; *A.M. and Others v. Russia*, 2021, § 43 with further references, in the context of a dispute about contact rights).
- A father or mother with parental authority in respect of his or her child can have standing to lodge an application on behalf of the child even if the child does not reside with the applicant (*Petrov and X v. Russia*, 2018, § 83; *R.B. and M. v. Italy*, 2021, § 42; *Y.Y. and Y.Y. v. Russia*, 2022, § 43, in the context of non-enforcement of domestic court judgments granting residence order).
- A foster parent has standing to lodge an application on behalf of the children even if the custody of the children has been legally terminated and they are no longer the legal guardian of the children. Further, the question of *locus standi* can be joined to the merits of the complaint if the dispute is premised on the termination of applicant's custody of the children. In such a situation, where the children's interests are being safeguarded by the social services agency accused of the arbitrary interference, the denial of standing would hamper an effective examination of minors' rights under Article 8 (*Savinovskikh and Others v. Russia*, 2024, §§ 53-57 and 77).
- It is necessary to avoid a restrictive and purely technical approach with regard to the representation of children before the Court (*Strand Lobben and Others v. Norway* [GC], 2019, § 156); in particular, consideration must be given to the links between the child in question and his or her "representatives", to the subject-matter and the purpose of the application, and to the possibility of a conflict of interests (*Paradiso and Campanelli v. Italy* [GC], 2017, § 86 (referring to the Chamber judgment); *A. and Others v. Iceland*, 2022, § 62). Further, parental representation is acceptable if the child has reached an age of majority at the time of application to the Court but was a minor when the application was lodged, and authorised parental representation upon reaching the age of majority (*Biba v. Albania*, 2024, § 36).

### **Legal person complaining before the ECHR on behalf of a child:**

- The standing of a non-governmental organisation (NGO) to lodge an application under Article 3 on behalf of a mentally disabled child, abandoned at birth by parents who also suffer from a mental disability, placed over a year and nine months in an inappropriate institution (*L.R. v. North Macedonia*, 2020, §§ 46-53).
- *Bulgarian Helsinki Committee v. Bulgaria* (dec.), 2016: No *locus standi* for an NGO to lodge application under Article 8 on behalf of deceased children. See in § 52, the application in

this context of the criteria set forth in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, §§ 104-114, and the other references therein.

- *Association Innocence en Danger and Association Enfance et Partage v. France*, 2020: *Locus standi* for two child protection associations to lodge application under Article 3 on behalf of a deceased child who died as a result of ill-treatment at the hands of her parents (see in §§ 122-132, the application of the criteria set forth in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, §§ 104-114).

## Noteworthy examples

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- *Scozzari and Giunta v. Italy* [GC], 2000, §§ 138-141 - suspension of parental rights, restriction of mother's right of access to children in care. Representation of children by mother (see also *Diamante and Pelliccioni v. San Marino*, 2011, §§ 146-147);
- *Neulinger and Shuruk v. Switzerland* [GC], 2010, §§ 1 and 15 - return of child with mother to father's country of residence from which the child had been wrongly removed; representation of the child by abducting mother. See also *Eskinazi and Chelouche v. Turkey* (dec.), 2005: obligation on applicant to return her child to Israel under terms of Hague Convention; representation of child by abducting mother;
- *Paradiso and Campanelli v. Italy* [GC], 2017, § 86 - removal of a child born abroad as a result of a surrogacy arrangement entered into by a couple later found to have no biological link with the child; Inadmissibility of the complaints lodged by the couple on behalf of the child;
- *Strand Lobben and Others v. Norway* [GC], 2019, §§ 156-159 - standing of the mother to lodge a complaint before the ECHR on behalf of her minor son although parents had been deprived of parental responsibilities and son had been adopted by his foster parents;
- *S.P., D.P. and A.T. v. the United Kingdom* (Commission decision), 1996 - application lodged by a solicitor on behalf of children whom he had represented in the domestic proceedings, in which he had been instructed by the guardian *ad litem*: admissible (the mother had displayed no interest, the local authorities had been criticised in the application, and there was no conflict of interests between the solicitor and the children - case referred to in *Lambert and Others v. France* [GC], 2015, § 93);
- *Sahin v. Germany* (dec.), 2000 - dispute between parents over the father's access to the child; no standing for parent who does not have custody in conflicts between parents concerning parental rights other than custody;
- *P., C. and S. v. the United Kingdom* (dec.), 2001 - adoption proceedings and care proceedings in respect of a baby taken from the applicants. Standing of natural parents to apply to the Court on behalf of their child in order to protect her interests;
- *Iglesias Gil and A.U.I. v. Spain*, 2003, §§ 3 and 37 - international child abduction; representation of child before the ECHR by mother who has custody of the child;
- *Siebert v. Germany* (dec.), 2005 - conflict between a natural parent and a State-appointed guardian over a minor's interests. Domestic proceedings brought by natural father for guardianship and access to child; standing granted to father who has never had parental rights;
- *Eberhard and M. v. Slovenia*, 2009, §§ 88-90 - failure to adequately enforce a father's right of access to his minor child; no standing for natural parent who does not have custody rights;
- *Moretti and Benedetti v. Italy*, 2010, §§ 32-35 - inadmissibility of application lodged on behalf of a minor child by foster parents;

- *Z. v. Slovenia*, 2010, § 116 - lack of contact between father and child; representation of the child by parent who has limited contact but still has custody;
- *M.D. and Others v. Malta*, 2012, § 27 - automatic and perpetual deprivation of parental rights following criminal conviction for ill-treatment of children; representation of minor children by biological mother deprived of parental rights;
- *A.K. and L. v. Croatia*, 2013, §§ 48-49 - proceedings divesting the mentally disabled mother of parental rights; representation of child by the biological mother;
- *Kruškić and Others v. Croatia* (dec.), 2014, §§ 101-103 - no standing for grandparents who did not have custody and who had a conflict of interest with the grandchildren;
- *Hromadka and Hromadkova v. Russia*, 2014, §§ 118-120 - representation of the child by the father having permanent custody in an international abduction case (the Hague Convention);
- *N.Ts. and Others v. Georgia*, 2016, §§ 52-59 - court order for children's return to their father against their will; representation of children by their aunt;
- *Bulgarian Helsinki Committee v. Bulgaria* (dec.), 2016, § 55 - even if the mothers remained the children's legal representatives under domestic law, there had been no real link between them and children, with the result that no one had been responsible for protecting the children's best interests. Accordingly, the parents in question could not be regarded as persons "capable of lodging an application with the Court";
- *K.B. and Others v. Croatia*, 2017, §§ 109-110 - Failure of parent without custody rights to secure regular contact with children; no standing for natural parent who does not have custody rights;
- *Charles Gard and Others v. the United Kingdom* (dec.), 2017, §§ 63-70 - representation of the child by parents concerning a medical decision to withdraw life-sustaining treatment for infant child against parents' wishes, (inadmissible); application of the *Lambert and Others v. France* [GC], 2015 criteria to a minor;
- *Petrov and X v. Russia*, 2018, § 83 - insufficient examination of father's case in child care proceedings. The dispute opposed the natural parents and the child was 'resident' with the mother. The applicant father could, nevertheless, represent the child before the Court because, according to Russian domestic law, he retained parental rights despite the residence order in favour of the mother;
- *V.D. and Others v. Russia*, 2019, §§ 72-76 and §§ 81-84 - standing of a guardian (foster parent) to act before the Court on behalf of non-biological minor children; the State's failure to provide a possibility for the family ties between the applicants and R. to be maintained;
- *Blyudik v. Russia*, 2019, § 43 - standing of a father to bring an application in his own name and raise therein complaints on behalf of his daughter, lawfulness of the applicant's daughter's placement in a closed educational institution for minors;
- *C v. Croatia*, 2020, § 56 - standing of the mother who had been granted temporary custody in the main set of custody proceedings;
- *Association Innocence en Danger and Association Enfance et Partage v. France*, 2020, §§ 119-132 - standing of child protection associations which had actively participated in the domestic proceedings with a procedural status in domestic law, to lodge a complaint before the ECHR on behalf of a dead minor;
- *Y.S. and O.S. v. Russia*, 2021, § 57 - representation before the Court of a child by the mother with parental authority, who had taken her from the father living in a conflict zone (issue concerning the return of the child under the Hague Convention);

- *C.N. v. Luxembourg*, 2021, §§ 27-33 - representation before the Court by the parents of a minor recently placed in public care in a case examined under Article 6;
- *T.A. and Others v. the Republic of Moldova*, 2021, §§ 31-37 - representation of a minor before the Court by the grandparents with whom he had spent all his life (compare, *Kruškić and Others v. Croatia* (dec.), 2014);
- *S.N. and M.B.N. v. Switzerland*, 2021, §§ 63-66 - representation of the child by the mother having joint parental authority in the proceedings concerning the return of her child under the Hague Convention;
- *E.M. and Others v. Norway*, 2022, § 64 - mother's lack of standing to act on her children's behalf due to conflicting interests (parental child neglect);
- *Y.Y. and Y.Y. v. Russia*, 2022, § 43 - representation of a child by the mother with custodial rights in a case concerning lengthy non-enforcement of domestic court judgments granting her a residence order;
- *Roengkasettakorn Eriksson v. Sweden*, 2022, § 61 - mother's standing in the proceedings concerning the transfer of custody of her children to foster parents and limitation of contact rights;
- *A. and Others v. Iceland*, 2022, §§ 62-63 and 94-95 - mother's lack of standing to act on her children's behalf due to conflicting interests;
- *Biba v. Albania*, 2024, §§ 30-37 - representation before the Court by the father of a child who had reached the age of majority and therefore acquired full legal capacity;
- *Savinovskikh and Others v. Russia*, 2024, §§ 53-57 and 77 - the standing of a transgender person in proceedings concerning his legal termination of custody and foster care agreement with respect to two children.

## Recap of general principles

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- For an application of the principles established under Article 8 in a case where parents are complaining before the ECHR on behalf of the child, see *Strand Lobben and Others v. Norway* [GC], 2019, §§ 156-159; *T.A. and Others v. the Republic of Moldova*, 2021, §§ 32-33; *E.M. and Others v. Norway*, 2022, § 64.
- For an application of the principles established under Article 8 in a case where legal person is complaining before the ECHR on behalf of a child, see *Association Innocence en Danger and Association Enfance et Partage v. France*, 2020, § 122.
- For an application of the principles established under Article 8 in a case examined under Article 6, see *C.N. v. Luxembourg*, 2021, §§ 29-32.

## Further references

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### Others:

- UN Convention on the Rights of the Child (Article 12) (1989)
- Theseus: children's rights case-law database

## KEY CASE-LAW REFERENCES

- *S.P., D.P. and A.T. v. the United Kingdom*, no. 23715/94 (Commission decision), 20 May 1996 (representation by a solicitor who had represented the children in the domestic proceedings, in which he had been instructed by the guardian *ad litem*: allowed; admissible);
- *Scozzari and Giunta v. Italy*, nos. 39221/98 and 41963/98, ECHR 2000-VIII (representation of children by mother: allowed; violation of Article 8 as regards the first applicant; no violation of Article 8 as regards the second applicant; no violation of Article 3 as regards the first applicant and no violation of Article 2 of Protocol No. 1);
- *Sahin v. Germany* (dec.), no. 30943/96, 12 December 2000 (representation by father who does not have custody rights, in a dispute between parents concerning parental rights other than custody: not allowed; application admissible vis-à-vis complaints under Articles 8 and 14, in relation to the German court decisions; remainder of application: inadmissible - non-exhaustion of domestic remedies);
- *P., C. and S. v. the United Kingdom* (dec.), no. 56547/00, 11 December 2001 (representation by natural parents: allowed; admissible);
- *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, ECHR 2003-V (representation by mother who has custody: granted; violation of Article 8);
- *Siebert v. Germany* (dec.), no. 59008/00, 9 June 2005 (representation by natural father who does not have parental rights, concerning guardianship and access to child: granted; admissible);
- *Eskinazi and Chelouche v. Turkey* (dec.), no. 14600/05, ECHR 2005-XIII (extracts) (representation by natural parent with joint custody rights (abducting parent) in proceedings for the return of the child: allowed; complaints under Article 6 and Article 8 inadmissible - manifestly ill-founded);
- *Eberhard and M. v. Slovenia*, nos. 8673/05 and 9733/05, 1 December 2009 (representation by natural parent who does not have custody rights, concerning enforcement of access arrangements: not allowed; violation of Article 8 in respect of the natural parent);
- *Moretti and Benedetti v. Italy*, no. 16318/07, 27 April 2010 (representation by foster parents concerning adoption: not allowed; violation of Article 8);
- *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, ECHR 2010 (representation of the child by abducting mother in proceedings for the return of the child: allowed; violation of Article 8);
- *Z. v. Slovenia*, no. 43155/05, 30 November 2010 (representation of the child by parent who has limited contact but still has custody, concerning custody and contact arrangements: allowed; no violation of Article 8);
- *Diamante and Pelliccioni v. San Marino*, no. 32250/08, 27 September 2011 (representation by natural parent with parental rights under dispute in the Court proceedings: allowed; no violation of Article 8);
- *M.D. and Others v. Malta*, no. 64791/10, 17 July 2012 (representation of minor children by biological mother deprived of parental rights because of their ill-treatment: allowed; violation of Articles 6 § 1 and 8);
- *A.K. and L. v. Croatia*, no. 37956/11, 8 January 2013 (representation of child by the mentally disabled biological mother divested of parental rights: allowed; violation of Article 8, no separate issue under 6 and 14);

- *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, ECHR 2014 (representation by an association: allowed; violation of Article 2 (both substantive and procedural); violation of Article 13 in conjunction with Article 2; no separate issue under Articles 3, 5, 8 and 14);
- *Kruškić and Others v. Croatia* (dec.), no. 10140/13, 25 November 2014 (representation by grandparents who did not have custody and who had a conflict of interest with the grandchildren: denied; complaint under Article 6 § 1: inadmissible - incompatible *ratione materiae*; complaints under Articles 8 and 13: inadmissible - manifestly ill-founded);
- *Hromadka and Hromadkova v. Russia*, no. 22909/10, 11 December 2014 (representation of the child by the father having permanent custody in an international abduction case: granted; violation of Article 8; no separate issue under Article 13);
- *N.Ts. and Others v. Georgia*, no. 71776/12, 2 February 2016 (representation of children by their aunt in custody proceedings initiated by their father: granted; violation of Article 8 in respect of N.B, S.B, and L.B);
- *Bulgarian Helsinki Committee v. Bulgaria* (dec.), no. 35653/12 and 66172/12, 28 June 2016 (representation by association which had not had any real link with deceased children: denied; complaint inadmissible - incompatible *ratione personae*);
- *Moog v. Germany*, nos. 23280/08 and 2334/10, 6 October 2016 (representation by a biological parent who does not have custody rights, in proceedings for contact: denied; on behalf of the father violation of Article 8 for suspension of contact rights and conduct of the contact proceedings; no violation of Article 8 with respect to non-enforcement of contact rights);
- *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, ECHR 2017 (extracts) (representation of the child by surrogate parents concerning parental rights in surrogacy arrangements: denied; no violation of Article 8 on behalf of the surrogate parents);
- *K.B. and Others v. Croatia*, no. 36216/13, 14 March 2017 (representation by natural parent who does not have custody rights: denied; violation of Article 8);
- *Charles Gard and Others v. the United Kingdom* (dec.), no. 39793/17, 27 June 2017 (representation by parents concerning a medical decision to withdraw life-sustaining treatment for infant child against parents' wishes: Court did not come to a final conclusion; complaint under Articles 2, 5 and 8 examined in the light of the *Lambert and Others v. France* [GC], 2015 criteria: inadmissible - manifestly ill-founded);
- *Petrov and X v. Russia*, no. 23608/16, 23 October 2018 (representation by natural parent who retained parental rights, concerning proceedings for granting a residence order: allowed; violation of Article 8);
- *V.D. and Others v. Russia*, no. 72931/10, 9 April 2019 (standing of a guardian (foster parent) to act before the Court on behalf of non-biological minor children, concerning proceedings for termination of guardianship: denied; violation of Article 8 with respect to the State's failure to provide a possibility for the family ties between the applicants and R. to be maintained);
- *Blyudik v. Russia*, no. 46401/08, 25 June 2019 (representation by the father concerning proceedings for a child's placement in a closed educational institution for minors: allowed; violation of Articles 5 and 8);
- *Strand Lobben and Others v. Norway* [GC], no. 37283/13, 10 September 2019 (representation by mother who had been deprived of parental responsibilities concerning the impending adoption by foster parents: allowed; violation of Article 8);
- *L.R. v. North Macedonia*, no. 38067/15, 23 January 2020 (representation by an association, concerning placing of the child in a State institution: allowed; violation of Article 3);

- *Association Innocence en Danger and Association Enfance et Partage v. France*, nos. 15343/15 and 16806/15, 4 June 2020 (representation of a deceased child victim of domestic violence by child-protection associations which had actively participated in the domestic proceedings: allowed; violation of Article 3; no violation of Article 13);
- *C v. Croatia*, no. 80117/17, 8 October 2020 (representation by the mother who had been granted temporary custody in the main set of custody proceedings, concerning the custody proceedings: allowed; violation of Article 8);
- *R.B. and M. v. Italy*, no. 41382/19, 22 April 2021 (representation by the father with parental authority, in proceedings concerning enforcement of the contact schedule: allowed; violation of Article 8);
- *Y.S. and O.S. v. Russia*, no. 17665/17, 15 June 2021 (representation by the mother with parental authority (the abducting parent), in proceedings for the return of the child: allowed; violation of Article 8);
- *A.M. and Others v. Russia*, no. 47220/19, 6 July 2021 (representation by a biological parent who had lost parental authority concerning parental rights other than custody: denied; violation of Article 8 alone and of Article 14 taken together with Article 8);
- *C.N. v. Luxembourg*, no. 59649/18, 12 October 2021 (representation by the parents who lost parental authority, concerning the recent placement of the child in public care: allowed; violation of Article 6);
- *S.N. and M.B.N. v. Switzerland*, no. 12937/20, 23 November 2021 (representation of the child by the mother (the abducting parent) having joint parental authority in the proceedings concerning the return of her child under the Hague Convention: allowed; no violation of Article 8);
- *T.A. and Others v. the Republic of Moldova*, no. 25450/20, 30 November 2021 (representation of a minor by the grandparents with whom he had spent all his life, concerning removal from their care: allowed; violation of Article 8);
- *E.M. and Others v. Norway*, no. 53471/17, 20 January 2022 (representation by the mother accused of child neglect: denied; no violation of Article 8);
- *Y.Y. and Y.Y. v. Russia*, no. 43229/18, 8 March 2022 (representation by the mother with custodial rights concerning granting of the residence order: allowed; violation of Article 8);
- *Roengkasettakorn Eriksson v. Sweden*, no. 21574/16, 19 May 2022 (representation by the biological mother in the proceedings concerning the transfer of custody to foster parents and limitation of contact rights: allowed; no violation of Article 8);
- *A. and Others v. Iceland*, nos. 25133/20 and 31856/20, 15 November 2022 (representation by the mother who had been deprived of parental authority and who has conflicting interests with the children: denied; no violation of Article 8);
- *Biba v. Albania*, no. 24228/18, 7 May 2024 (representation by the father of a child who was a minor at the time of a debilitating injury inflicted upon him by a peer in a private school but had subsequently reached the age of majority and therefore acquired full legal capacity to represent himself in the Court: allowed; violation of Article 8);
- *Savinovskikh and Others v. Russia*, no. 16206/19, 9 July 2024 (representation by a former foster parent whose custody of the children had been terminated following a diagnosis of “transsexualism” and the change of his gender identity: allowed; violation of Article 8).