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**Dr. Assoc. Prof. Danutė Jočienė**  
**Justice of the Constitutional Court of the**  
**Republic of Lithuania**  
**Mykolas Romeris University**

# The European Convention on Human Rights (the ECHR)

- Adopted in 1950;
- The Convention is a special instrument of European *public order* (*ordre public*) and lies at the heart of the activities of the Council of Europe;
- The Convention is the classical international treaty establishing the international obligations to the States Parties of the Convention (Art. 1, 13, 46, etc.);
- The mission of the European Court of Human Rights (the ECtHR) under Article 19, is “to ensure the observance of the engagements undertaken by the High Contracting Parties”.
- The Convention system is based on the principle of *Subsidiarity* [...].

# The rules of interpretation:

- The Convention cannot be interpreted in a *vacuum* but must be interpreted in harmony with the general principles [and rules] of international law and
- in particular the rules concerning the international protection of human rights (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI).

# *Neulinger and Shuruk v. Switzerland* [GC]

No. 41615/07, Judgment of 06/07/2010, § 132-137

- **In matters of international child abduction** [...] Article 8 [of the ECHR] imposes on the States to take into account
- the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 (*Ignaccolo-Zenide v. Romania*, No. 31679/96, § 95, ECHR 2000-I)
- and
- the Convention on the Rights of the Child of 20 November 1989 (*Monory v. Romania and Hungary*, No. 71099/01, § 82, 05/04/2005);
- The decisive issue - whether a fair balance between the competing interests – those of the child, of the two parents, and of public order – has been struck;
- Primary consideration should be given to the best interests of a child.

# Child's best interests:

- The Convention on the Rights of the Child of 20 November 1989, Article 3:
- “1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”
- Article 24 § 2 of the European Union's Charter of Fundamental Rights:
- “every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests”.
- The child's best interests may, depending on their nature and seriousness, override those of the parents.

# The rights of children in the case law of the ECtHR:

- The ECHR as an International Treaty is NOT specifically aimed at protecting the rights of children, as a specific group;
- However, the **notion „EVERYONE“** used in the text of the Convention Art. 1, Art. 2, Art. 8-11, etc., **implies also the protection of the rights of children;**
- Such protection has widely been developed by the European Court of Human Rights (the ECtHR) (from different angles) through its case-law.

# The rights of children in the case law of the ECtHR:

- The rights of children under the Convention have (mostly) been protected under:
- Article 6 of the Convention (the right to an independent court and various procedural judicial guarantees);
- Cases *T and V v. the UK* (both judgments of 16 December 1999) – ten years aged boys abducted and murdered two-year-old boy. The boys were charged with murder and tried in an adult court. **The ECtHR found the violation of Art. 6 (fair hearing, no adequate possibilities to participate in the proceedings) and concluded:**
- [...] it is essential that a child with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities [...]“.
- Similar position repeated in the case *SC v. the UK* (judgment of 15 June 2004).

# Article 8 – the right to respect for private and family life

- „Family life“ – broadly interpreted by the ECtHR; the existence of „family life“ is essentially a question of fact depending upon the genuineness of close personal tie;
- **Many cases under Art. 8 concern different issues related to the custody rights - *Jucius and Juciuvienė v. Lithuania*, No. 14414/03, 25/11/2008 (separation of two small sisters by the Lithuanian courts when deciding on their custody, violation of Art. 8 (procedural aspect);**
- **ECtHR** - decision-making process at domestic level should be *fair*, affording the requisite protection and all possibilities for the parties (including children) to participate actively in the [judicial] proceedings);
- **In this case - the State should fulfil its [positive] obligation to create the proper conditions so that the two girls could communicate with each other.**



# Article 8 of the ECHR:

- **Access to a child (born out of wedlock - *Sahin v. Germany* [GC], No. 30943/96, 08/07/2003, violation of Art. 14 with Art. 8; [ECtHR](#) – no arguments were provided why fathers of children born outside marriage were treated differently (they had an access to the child only in case the child's mother agreed) from fathers of children born within marriage (divorced fathers were legally entitled to have an access to their children).**

# Article 8 of the ECHR:

- **Temporal restrictions or withdrawal of parental responsibility, placement of children in special care, etc.**
- *Kutzner v. Germany*, no. 46544/99, §§ 65-66, ECHR 2002-I, violation of Art. 8 (two applicants' daughters were placed in a children's home, as the parents were considered as having mental and other problems to raise children properly);
- **ECtHR** – restriction of parents' visiting rights and especially their (parents-daughters) separation was *too radical* and not necessary in the democratic society – some alternative measures could have been sought [...].

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# Art. 8 of the ECHR:

- **Many cases concerning the abduction of children under the 1980 UN Hague Convention:**
- Leading cases of *Neulinger and Shuruk v. Switzerland* [GC], No. 41615/07, 6/07/2010; *X. v. Latvia* [GC] No. 27853/09, 26/11/2013; in both cases – the violation of Art. 8 found) **and many other similar cases;**
- *Neulinger and Shuruk* – requirements for domestic courts' examination – the courts should conduct an in-depth examination of the entire family situation and a whole series of factors (factual, emotional, material, psychological and medical nature) and reasonable assessment of the respective interests of each person;
- *X. v. Latvia* – the ECtHR has mildened its position – the reasoned decision should be taken by domestic courts taking into account the requirements of Art. 8 of the ECHR.

# Article 8 in the case law of the ECtHR:

- **The principal position of the Court in Art. 8 cases:**
- the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life (*Gnahoré v. France*, no. 40031/98, § 50, ECHR 2000-IX).
- The States are obliged to take all measures that will enable parent and child to be reunited (*Olsson v. Sweden* (no. 2), 27 November 1992, § 90).
- **The child's best interests are always of the primary consideration.**

# ***Kutzner v. Germany/Relationship between Art. 6 and art. 8:***

- The applicants relied on Article 6 § 1 of the Convention that they had been denied *a fair trial*, as the domestic courts had relied exclusively on the findings of the District Youth Office, the Society for Family Education and the official expert witnesses, without having regard to the reports of the experts called on behalf of the applicants;
- In the instant case the Court considers that the complaint raised by the applicants under Article 6 is closely linked to their complaint under Article 8 and **may accordingly be examined as part of the latter complaint.**

# The right to education

- Article 2 of the Protocol No. 1 (the right to education) – see, as an example, cases:
- *Belgian Linguistic Case* (“Merits”), 23/07/1968, Viol. of Art. 14 taking together with Protocol First Art. 2; No viol. of Art. 8 (Discrimination established by the ECtHR as regards the French speaking community in the outskirts of Brussels as it had no possibilities to educate their children in French);
- *Catan and Others v. Moldova and Russia* [GC] Nos. 43370/04, 18454/06, etc., 19/10/2012. No Viol. of Art. 2 of Prot. No. 1 in respect of Moldova, violation of that provision in respect of Russia (Closure of schools teaching in Latin script and harassment of pupils wishing to be educated in their national language; Respect for parents' (the Moldovan community in Transdnistria) philosophical convictions).

# Roma Children at schools:

- Segregation [and discrimination] of Roma children:
- *D.H. and Others v. the Czech Republic* [GC], No. 57325/00, ECHR 2007-IV;
- *Sampanis and Others v. Greece* No. 32526/05, 05/06/2008;
- *Oršuš v. Croatia* [GC] No. 15766/03, 16/03/2010;

# The case law of the ECtHR:

- In some cases the protection of children rights can ALSO be based on Art. 3, Art. 5, Art. 9, etc., of the Convention.
- Art. 3 – case of *Costello-Roberts v. the UK* (Series A, No. 247-C, judgment of 25 March 1993), corporal punishment (three strokes with a birch rod) of 15-year-old boy at school;
- The ECtHR: punishment incorporated the element of humiliation, it was, therefore, regarded as „degrading punishment“ prohibited under Art. 3.



# Children rights in the case law of the ECtHR

- **Art. 5** (can also include Art. 3 and/or 8 issues):
- **Expulsion and deportation (of children)** - CASE OF *MUBILANZILA MAYEKA AND KANIKI MITUNGA v. BELGIUM*, No. 13178/03, Judgment of 12 October 2006;
- The second applicant's (5 years old child) detention in the transit zone of the Brussels airport for 2 months and her deportation to DRC violated Art. 3, 8 and also Art. 5 §§ 1 and 4 of the Convention.

***MUBILANZILA MAYEKA AND KANIKI MITUNGA v.  
BELGIUM, No. 13178/03, Arguments:***

- In the absence of any risk of seeking to evade the supervision of the Belgian authorities, **her detention in a closed centre for adults was unnecessary**; these conditions were consequently not adapted to the position of extreme vulnerability;
- **Other measures could have been taken that would have been more conducive to the higher interest of the child** guaranteed by Article 3 of the Convention on the Rights of the Child (*i.e.*, her placement in a specialised centre or with foster parents);
- The second applicant **was an unaccompanied foreign minor, the Belgian State was under an obligation to facilitate the family's reunification** (*Nuutinen v. Finland*, No. 32842/96, § 127, ECHR 2000-VIII).

# The right to education:

- **Convention on the Rights of the Child:**
- **Article 28**
- “1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
- (a) Make primary education compulsory and available free to all; [...].
- **Article 30**
- “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”

# The right to education in the ECHR:

- **ARTICLE 2 (of Protocol No. 1) - Right to education:**
- **No person shall be denied the right to education.** In the exercise of any functions [...] the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.
- The right to education is indispensable to the furtherance of Human Rights; it plays such a fundamental role that a restrictive *access to education* would not be consistent with the aim or purpose of that provision.

# The rights of parents in the education of their children:

- *Folgero and Others v. Norway* [GC], No. 15472/02, judgment of 29/06/2007.
- **Complaints by parents:**
- The refusal of the State authorities to grant their children a full exemption from the KRL (a white paper on Christianity, religion and philosophy).
- The children's compulsory attendance at religious instruction unjustifiably interfered with their parents' right to freedom of conscience and religion under Art. 9 and under Art. 2 of Protocol No. 1, second sentence, to ensure such education and teaching in conformity with their own religious and philosophical convictions.
- ECtHR – examination under Article 2 of Protocol No. 1, as the *lex specialis* in the area of education.

# Respecting parents' religious and philosophical convictions:

- **Case law of the ECtHR:**
- The States Parties themselves decide the scope and content of teaching (*Valsamis v. Greece*, 18/12/1996, § 28);
- Art. 9 and Art. 2 of Protocol No. 1 do not preclude compulsory instruction of various religions or their history; it should be given in an objective, critical and pluralistic manner;
- It does not even permit parents to object to the integration of such teaching in the school curriculum, otherwise all institutionalised teaching would run the risk of proving impracticable (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7/12/1976, § 53).
- The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions.
- **Folgero and Others v. Norway case** - Domestic arrangements allowing parents to object to certain aspects of the education of their children - unsatisfactory under Art. 2 of Protocol No. 1.

# The content of the right to education in the ECHR:

- The right to education (2 aspects):
- guarantees everyone within the jurisdiction of the Contracting States “a right of access to educational institutions existing at a given time”
- but such access constitutes only a part of the right to education.
- For that right “to be effective, it is further necessary [...] to have a possibility to draw profit from the education received;

# The right to education:

- that is to say, **the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed**
- (see Case “relating to certain aspects of the laws on the use of languages in education in Belgium” (merits), 23 July 1968, §§ 3-5, Series A no. 6; *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 152, ECHR 2005-XI).



# The right to education in the case law of the ECtHR:

- The fundamental right of everyone to education is a right guaranteed equally to pupils in State and independent schools, without distinction (*Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, § 27).
- This right is not, however, absolute, but may be subject to limitations;
- The regulation of educational institutions may vary in time and in place, *inter alia*, according to the needs and resources of the community and the distinctive features of different levels of education.

## *The right to education/Freedom of religion*

- *Leyla Şahin v. Turkey* [GC], No. 44774/98, § 152, ECHR 2005-XI:
- The applicant was prohibited to wear the Islamic headscarf and to access to various lectures and examinations at University;
- The complaints under Article 2 of Protocol No. 1 and Article 9 of the ECHR concerned the criticism of the applicable by the University regulation;
- The Court - the restriction was foreseeable, pursued the legitimate aims of protecting the rights and freedoms of others and the interests of the educational system; as well as maintaining public order; there was a reasonable relationship of proportionality.

# *Leyla Şahin v. Turkey*

- The ECtHR: the obvious purpose of the restriction to wear the Islamic headscarf at University was to preserve the secular character of educational institutions;
- The principle of secularism was the paramount consideration underlying the ban on the wearing of religious symbols in Universities.
- The headscarf ban had not interfered with the right to education.
- **No violation of the first sentence of Article 2 of Protocol No. 1; No viol. of Art. 9.**

**Right to *education/Oršuš and Others v. Croatia* [GC], No. 15766/03, Judgment of 16 March 2010:**

- Important judgments by the ECtHR in the sphere of education of Roma children - ***D.H. and Others v. the Czech Republic and Sampanis and Others v. Greece.***
- ***D.H. and Others case*** - a nationwide practice of placing a disproportionate number of Roma children in schools for pupils with learning difficulties **amounted to discrimination based on the applicants' ethnic origin.**
- ***Sampanis and Others*** - the practice of first denying Roma children enrolment in school and their subsequent placement in special classes located in an annex to the main building of a primary school, coupled with a number of racist incidents in the school instigated by the parents of non-Roma children, **amounted to discrimination based on the applicants' Roma origin.**

## *The right to education/Oršuš and Others v. Croatia*

- The present case is to be distinguished from the above two cases, regarding the statistics;
- In *D.H. and Others* between 50% and 70% of Roma children in the Czech Republic attended special schools for pupils with learning difficulties,
- In *Sampanis and Others* all Roma children were attending the separate school.
- As to the present case [...] , in Macinec Primary School varies from 57% to 75%, while in Podturen Primary School it varies from 33% to 36%.

## *The right to education/Oršuš and Others v. Croatia*

- This confirms that it was not a general policy to automatically place Roma pupils in separate classes in both schools at issue.
- Therefore, the statistics submitted do not suffice to establish that a measure or practice was discriminatory.
- However, indirect discrimination may be proved without statistical evidence;
- The ECtHR - the measure of placing children in separate classes on the basis of their insufficient command of the Croatian language was applied only in respect of Roma children in several schools.
- Thus, the measure in question clearly represents a difference in treatment (without any objective justification). (Nine votes to eight - a violation of Art. 14 read in conjunction with Art. 2 of Protocol No. 1 (also a violation of Art. 6 § 1).

# Conclusions:

- In the case law of the ECtHR the protection of the rights of a child has widely been developed;
- The notion „everyone“ used in the Convention text implies also the protection of the rights of children;
- The rights of children have been protected relying on different Articles of the Convention such as Articles 3, 5, 6, 8 (Article 8 is especially important), 9, Article 2 of Protocol No. 1, etc.;
- The child's best interests in the case law of the ECtHR are of the primary consideration;
- The fundamental right of everyone to education is a right guaranteed equally to all pupils in any State; this right is not, however, absolute, it may be subject to limitations [...].

# Thank you for your attention

