**The Council of Europe legal and policy frameworks for children’s rights**

1. **Definition of ‘child’ under Council of Europe frameworks and the child as a holder of rights**
2. **The United Nations Convention on the Rights of the Child** (**UNCRC) standing at the European level**
3. **Strategy for the rights of the child (2022-2027)**
4. **ECHR and its additional protocols: references or relevance to children’s rights**
5. **European Social Charter (ESC): references or relevance to children**
6. **Further scope of legal protection of children’s rights in the Council of Europe.**
7. **The role of the European Court of Human Rights (ECtHR) on child right protection**
8. **The practice of the European Committee of Social Rights (ECSR)**
9. **Definition of ‘child’ under Council of Europe frameworks and the child as a holder of rights**

The official definition of a child is: “A child is any person under the age of 18”. Another definition is: “a person between birth and puberty or full growth”.

Art. 1 from Convention on the Rights of the Child: ”For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

Child - is a human being between the stages of birth and puberty, or between the developmental period of infancy and puberty. It may also refer to an unborn human being. The legal definition of child generally refers to a minor, otherwise known as a person younger than the age of majority.

Dictionary definition: “a young person especially between infancy and puberty”.

National laws use different terms when it refers to people under 18, such as "minor", "adolescent", "young", which generates us difficulties in defining the notion of "child".

Legislation of the Republic of Moldova, in this case the Family Code, disposes that the person who has not reached the age is considered a child for 18 years.

Although art. 1 of the CRC presents a flexible definition, this identifies the child as a person that require special protection, specifying limited childhood, contributing to the unification of the general conception of the notions of "child" which, broadly but differently, was use in national legislation.

Every child in Europe and across the world should enjoy the same rights and be able to live free of discrimination, recrimination or intimidation of any kind.

The protection and promotion of the rights of the child is a core objective of the European Union’s work at home and abroad[[1]](#footnote-1).

1. **UNCRC standing at the European level**

European children’s rights law is largely based on the UN Convention on the Rights of the Child (CRC).

The CRC enjoys an important standing at European level, as all CoE member States are parties to the convention. It establishes common legal obligations on member States and shapes the way European institutions develop and apply children’s rights.

The CRC has become the touchstone for the development of European children’s rights law, with the result that the CoE and the EU increasingly draw on its influence. In particular, the integration of CRC principles and provisions into binding instruments and case law at European level opens up more effective channels of enforcement for those seeking to invoke children’s rights in Europe.

Its comprehensive nature means that the CRC contains standards applicable to all areas of the child’s life including school(Articles 28 and 29) and the family (Articles 3, 5, 12 and 18), as well as in specific setting of alternative care (Article 20, 21) and youth justice and detention (Articles 37 and 40), for example. It provides for children’s well-being in a variety of contexts (Articles 6, 24, 27) and makes specific provision for children with disabilities (Article 23), children whose parents have separated (Articles 3, 9), children who have suffered abuse and exploitation (Articles19, 30–4, 37) and refugee children (Articles 7, 8, 10).

The Convention contains rights of general relevance (Articles 7 and 8 on identity), rights of special importance to children(Articles 18 on family support and 31 on the right to play, rest and leisure) and general human rights adapted to the specific needs of children (Articles 13 on freedom of expression, 14 on expression of religion and 17 on access to information).

The CoE, as an organisation, is not legally bound by the CRC or its optional protocols[[2]](#footnote-2), although all CoE member States are parties to this convention. Since the ECHR is to be interpreted in harmony with the general principles of international law, account should be taken of any relevant rules of international law applicable in the relations between the States Parties to the ECHR; more specifcally, the obligations that the ECHR lays on its States Parties in the feld of children’s rights must be interpreted in the light of the CRC[[3]](#footnote-3). The ECSR has also explicitly referred to the CRC in its decisions[[4]](#footnote-4). Moreover, the standard-setting and treaty-making activities of the CoE are infuenced by CRC principles and provisions.

The Convention’s implementation is monitored by the United Nations Committee on the Rights of the Child and so the Convention’s growing jurisprudence now includes hundreds of Concluding Observations which detail the extent to which each state party has implemented the Convention.

There is no international court to adjudicate on children’s rights issues and no body that children can petition to seek to have their CRC rights vindicated. Although international dialogue on the addition of a protocol to provide children with aright of individual petition has finally begun[[5]](#footnote-5) it is important nonetheless to continue to explore alternative ways in which the Convention’s potential to improve the treatment of children can be realized[[6]](#footnote-6).

1. **Strategy for the rights of the child (2022-2027)**

Protecting the rights of the child is at the core of the Council of Europe’s mission to safeguard human rights, uphold democracy and preserve the rule of law. Since the launch of the programme “Building a Europe for and with children” in 2006, the Council of Europe has striven to advance the rights of the child in its member States through subsequent multiannual Strategies, implemented through standard-setting, monitoring compliance and supporting implementation through co-operation projects.

The Strategy for the Rights of the Child 2022-2027 will aim at developing actions supporting relevant provisions of this Strategic Framework as well as Protecting human rights, democracy and the rule of law in the digital environment: Draft Council of Europe Digital Agenda 2022-2025 while, at the same time, finding synergies with priorities and actions proposed by other Council of Europe Strategies and Action Plans, such as the Disability Strategy (20172023), the Counter-terrorism Strategy (2018-2022), the Gender Equality Strategy (2018-2023), the Strategic Action Plan for Roma and Traveller Inclusion (2020-2025), the Strategic Action Plan on Human Rights and Technologies in Biomedicine (2020-2025), the Youth Sector Strategy 2030, the Council of Europe Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe (2021-2025).

**Strategic context – The added value of a Strategy.** Weaknesses in legislation, family and social protection services and in justice, education and health systems increase children’s vulnerability to human rights violations. This, together with the pervasive social norms that condone violence against children and deny their agency as human rights holders, makes children the category of people the hardest hit by any social, economic or health crisis.

At national level, the adoption of integrated strategies has been identified as key to effectively promote and protect the rights of the child. The adoption of a Council of Europe Strategy for the Rights of the Child serves the same purpose: that of gathering all key stakeholders (internal and external to the Council of Europe) to agree on a shared vision and develop a common reference framework with specific and time-bound objectives and mobilizing all those who have a role to play in achieving them.

**Să adaug aici despre Strategiile Republicii Moldova privind drepturile copilului**

1. **ECHR and its additional protocols: references or relevance to children’s rights**

The European Convention on Human Rights (ECHR) contains few express references to children and so its potential to protect children’s rights is not immediately apparent from its text. In fact, the ECHR mentions children only twice, although other ECHR provisions – notably Article 8 on the right to respect for private and family life – have special relevance to children.

A number of interpretive approaches have been instrumental in the development of ECHR case law in children’s cases, including the development of procedural obligations[[7]](#footnote-7) and the emphasis on effective rights protection[[8]](#footnote-8). The Court has also sought to rely, increasingly, on other children’s rights instruments, notably the Convention on the Rights of the Child (CRC), in order to ensure that its judgments reflect current standards in children’s rights.

Without its supplementing protocols, the ECHR makes no reference to particularly vulnerable groups; its references to children are limited to just two provisions[[9]](#footnote-9).

[**https://nilq.qub.ac.uk/index.php/nilq/article/view/453/347**](https://nilq.qub.ac.uk/index.php/nilq/article/view/453/347)

1. **European Social Charter (ESC): references or relevance to children**

The treaty system of the European Social Charter is an integrated set of international standards concerning social rights and a mechanism for monitoring their implementation within the States concerned.

The European Social Charter complements the European Convention on Human Rights in the field of economic and social rights. It sets out rights and fundamental freedoms and establishes a supervisory mechanism based on collective complaints and state reports, guaranteeing their respect by states parties. The Charter guarantees a wide range of rights; rights relating to housing, health, education, employment, social protection, movement of persons and non-discrimination.

The Charter is the major European treaty which secures children’s rights. It guarantees the rights of a child in many circumstances from birth to adulthood in two different manners:

- Firstly, many of the rights guaranteed by the Charter have a specific relevance to children; for example Article 16 (right of the family to social, legal and economic protection) which protects the rights of children as family members and Article 11 (right to protection of health);

- Secondly, the Charter contains specific rights relating exclusively to children; Article 7 (right of children and young persons to protection) and Article 17 (right of children and young persons to social, legal and economic protection).

The Charter guarantees rights to children from birth (and before) up to the age of 18 in respect of the following issues:

* Protection before birth -maternal health protection
* Rights of the Family
* Legal status of the Child
* Criminal liability of and criminal law in respect of children
* Health protection of children
* Special protection of children-protection from violence, abuse and exploitation, special protection for vulnerable groups
* Right to education
* Prohibition of child labour
* Specific working conditions between 15 and 18
* Rights of migrant children[[10]](#footnote-10).

1. **Further scope of legal protection of children’s rights in the Council of Europe.**

In the Council of Europe, a large number of conventions and their respective treaty bodies focus on specifc aspects of the protection of the rights of the child, including protection from sexual abuse and exploitation, cybercrime, trafficking, gender-based violence and violation of data protection rights. These conventions contribute to enhancing the protection granted to children under the European Convention on Human Rights and the European Social Charter, including by the jurisprudence of the ECtHR and the decisions of the European Committee of Social Rights.

The CoE has had, since its establishment, a clear mandate to protect and promote human rights. Its primary human rights treaty, ratifed by all CoE member States, the Convention for the Protection of Human Rights and Fundamental Freedoms, and the ECHR and its additional protocols, contain specific references to children. The main ones are as follows: Article 5 (1) (d) provides for the lawful detention of a child for the purposes of educational supervision; Article 6 (1) restricts the right to public hearing where this is in the interest of juveniles; Article 2 of Protocol No. 1 provides for the right to education and requires states to respect parents’ religious and philosophical convictions in the education of their children. Moreover, all the other general provisions of the ECHR are applicable to everyone, including children. Some have been shown to have particular relevance to children, for instance Article 8, which guarantees the right to respect for private and family life, and Article 3, which prohibits torture and inhuman or degrading treatment or punishment. By using interpretative approaches that focus on the positive obligations inherent in the ECHR provisions, the ECtHR has developed a large body of case law dealing with children’s rights, including frequent references to the CRC. That said, the ECtHR analyses applications on a case-by-case basis and therefore does not offer a comprehensive overview of children’s rights under the ECHR.

The CoE’s other main human rights treaty, the ESC (revised in 1996), provides for the protection of social rights, with specifc provision for related children’s rights. It contains two provisions of particular importance for children’s rights: Article 7 sets out the obligation to protect children from economic exploitation, and Article 17 requires states to take all appropriate and necessary measures designed to ensure that children receive the care, assistance, education and training they need (including free primary and secondary education), to protect children and young persons from negligence, violence or exploitation and to provide protection for children deprived of their family’s support. Implementation of the ESC is overseen by the ECSR, which is composed of 15 independent experts elected by the CoE’s Committee of Ministers. The ECSR monitors the conformity of national law and practice with the ESC.

In addition, the CoE has adopted a number of treaties that address a range of specific children’s rights issues, including the following:

* Lanzarote Convention;
* Convention on the Exercise of Children’s Rights
* Convention on the Legal Status of Children Born out of Wedlock;
* Convention on the Adoption of Children, revised in 2008;
* Convention on Contact concerning Children;
* Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

At policy level, the CoE has, since 2006, implemented the programme ‘Building a Europe for and with children’ – a transversal plan of action involving national governments, civil society, the EU, and other international organisations and stakeholders. The Steering Committee for the Rights of the Child, established in 2020 as the successor to the Ad Hoc Committee for the Rights of the Child (2016–2019), guides the intergovernmental work in this area. The programme promotes a holistic and integrated approach to children’s rights, mainstreaming child rights across all relevant CoE policy areas.

Under this programme, the CoE’s Committee of Ministers has adopted several soft-law instruments offering practical guidance to complement binding European legal measures relevant to children, including:

* Recommendation on integrated national strategies for the protection of

children from violence;

* Guidelines on child-friendly justice;
* Guidelines on child-friendly healthcare;
* Recommendation on children’s rights and social services friendly to children and families;
* Recommendation on the participation of children and young people under the age of 18;
* Recommendation concerning children with imprisoned parents;
* Recommendation on effective guardianship for unaccompanied and separated children in the context of migration;
* Recommendation on guidelines to respect, protect and fulfil the rights of the child in the digital environment.

1. **The role of the European Court of Human Rights (ECtHR) on child right protection**

The ECtHR mainly decides on individual applications lodged in accordance with Articles 34 and 35 of the ECHR. ECtHR jurisdiction extends to all matters concerning the interpretation and application of the ECHR and its protocols (Article 32 of the ECHR). Protocol No. 16 to the ECHR, which entered into force in 2018, allows the highest courts and tribunals of member States that have ratified the text to ask the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defned in the ECHR or its protocols.

The ECtHR has a vast body of jurisprudence on children’s rights, and has examined many cases under Article 8 of the ECHR (right to respect for private and family life), in particular. Other cases related to the rights of the child have been examined under a range of human rights guarantees protected by the ECHR, such as the prohibition of inhuman or degrading treatment (Article 3 of the ECHR) or the right to a fair trial (Article 6 of the ECHR).

The ECtHR regularly refers to the CRC when addressing claims pursued either by or on behalf of children. In some cases, children’s rights principles, as articulated by the CRC, have had a profound influence on the ECtHR’s reasoning, notably as concerns the Court’s interpretation of Article 6 of the ECHR (right to a fair trial) in relation to the treatment of children in conflict with the law.

***Example: Maslov v. Austria concerns the deportation of the applicant, who had been convicted of a number of criminal offences as a child. The ECtHR held that, where expulsion measures against a juvenile offender were concerned, the obligation to take the best interests of the child into account included an obligation to facilitate the child’s reintegration, in line with Article 40 of the CRC. In the ECtHR’s view, reintegration would not be achieved by severing the child’s family or social ties through expulsion. The CRC was thus one of the grounds used to find that the expulsion was a disproportionate interference with the applicant’s rights under Article 8 of the ECHR (respect for family life).***

1. **The practice of the European Committee of Social Rights (ECSR)**

*Key point:* The ECSR has issued opinions following collective complaints in several child rights areas, including on cases related to exploitation, migration and children in conflict with the law.

The ECSR rules on the conformity of national law and practice with the ESC, either through the collective complaints procedure or the national reporting procedure. Designated national and international organizations can engage in collective complaints against states that are party to the ESC and have accepted the complaints procedure. To date, complaints have looked into issues concerning the economic exploitation of children,58 the physical integrity of children, the health rights of migrant children, access to education by children with disabilities, children in conflict with the law and rights of unaccompanied children.

***Example: In International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, the ICJ and ECRE alleged that Greece had failed to ensure the protection of unaccompanied migrant children in Greece and accompanied migrant children on the northeastern Ae -gean islands because, inter alia, reception facilities were overcrowded. The ECSR found violations of the ESC, on the grounds of the failure to provide adequate and appropriate accommodation to refugee and asylum-seeking children on the islands, the lack of sufficient long-term accommodation and shelter for unaccompanied refugee and asylum-seeking children on the mainland, the lack of an effective guardianship system for unaccompanied and separated migrant children, the detention of unaccompanied migrant children under the ‘protective custody’ scheme, the lack of access to education and the failure to provide sufficient health.***

1. Article 3(3) of the Treaty on European Union (TEU) establishes the objective for the EU to promote the protection of the rights of the child. Article 3(5) TEU sets forth that in its relations with the wider world, the Union shall contribute to (…) the protection of human rights, in particular the rights of the child. [↑](#footnote-ref-1)
2. United Nations (2000), Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed confict, General Assembly Resolution A/RES/54/263 of 25 May 2000; United Nations (2011), Optional Protocol to the Convention on the Rights of the Child on a communications procedure, General Assembly Resolution A/RES/66/138 of 19 December 2011; United Nations (2000), Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, General Assembly Resolution A/RES/54/263 of 25 May 2000. [↑](#footnote-ref-2)
3. ECtHR, Harroudj v. France, No. 43631/09, 4 October 2012, para. 42 [↑](#footnote-ref-3)
4. ECSR, International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, 21 January 2021, para. 158; ECSR, World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, 7 December 2004, paras. 61–63; ECSR, Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, 20 October 2009; ECSR, International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, 8 November 2004. [↑](#footnote-ref-4)
5. Report of the Open-ended Working Group to Explore the Possibility of Elaborating an Optional Protocol to the Conventionon the Rights of the Child to Provide a Communications Procedure, report by the Human Rights Council, UN Doc.A/HRC/13/43, 21 January 2010, available at www.ohchr.org. [↑](#footnote-ref-5)
6. <https://nilq.qub.ac.uk/index.php/nilq/article/view/453/347> [↑](#footnote-ref-6)
7. See D Harris, M O’Boyle, E Bayts and C Buckley,Harris, O’Boyle and Warbrick: Law of the European Conventionon Human Rights 2nd edn (Oxford: OUP 2009), pp. 18–21 [↑](#footnote-ref-7)
8. See Kilkelly,The Child,n.1 above. [↑](#footnote-ref-8)
9. In addition, Article 2 of Protocol 1 guarantees the right to education and Article 5 of Protocol 5 recognisesparental equality and the role of the best interests of the child in the exercise of parental responsibility. Noother provisions give express protection to children’s substantive rights [↑](#footnote-ref-9)
10. <https://rm.coe.int/1680474a4b> [↑](#footnote-ref-10)