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**PROMOTING CHILDREN'S
RIGHTS IN THE EUROPEAN
COURT OF HUMAN RIGHTS:
THE ROLE AND POTENTIAL OF
THIRD-PARTY INTERVENTIONS**

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Introduction

This report examines the nature, scope and effects of Third-Party Interventions (TPIs) in advancing children's rights in cases that come before the European Court of Human Rights (ECtHR or 'Court'). It presents the findings of a review of existing European Convention on Human Rights (ECHR) decisions (by the Chamber and Grand Chamber) concerning children¹ where there was a TPI. This review was conducted as part of a 9-month (March–December 2022) study entitled 'Strategic third-party interventions before international (quasi-) judicial human rights instances: advancing capacity among academics.'²

Whilst there is an emergent body of research and guidance on strategic litigation through a children's rights lens,³ aside from some procedural guidance⁴ there is limited research exploring **the role and impact of expert TPIs in cases concerning children at the European Court of Human Rights**.⁵ Our study therefore had three aims:

¹ See section 1 below for details of case selection methodology.

² This project was funded by the University of Liverpool, Faculty of Humanities and Social Sciences Policy and Participatory Research Support Fund and has involved parallel streams on gender, animal rights, and human rights more generally.

³ Wider research exploring the role of strategic litigation in advancing children's rights includes: Aoife Nolan, Ann Skelton, "'Turning the Rights Lens Inwards": The Case for Child Rights-Consistent Strategic Litigation Practice" (2022), 22 Human Rights Law Review 1; Aoife Nolan, Ann Skelton and Karabo Ozah, 'Advancing Child Rights-Consistent Strategic Litigation Practice' (2022) ACRISL <[Resources – ACRISL](#)>; Commissioner for Children and Young People in Scotland 'Children's Rights Strategic Litigation Toolkit' (2022) CYPCS <[Strategic-Litigation-Toolkit-FINAL.pdf \(cypcs.org.uk\)](#)>; Elizabeth Donger, 'Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization' (2022) 11 Transnational environmental law 263; Nurina Ally, Rubeena Parker, Tess Peacock 'Litigation and social mobilisation for early childhood development during COVID-19 and beyond', (2022) 12 South African Journal of Childhood Education 1

⁴ European Court of Human Rights (ECtHR), 'European Court of Human Rights: Rules of Court' (Rules) (20 March 2023) ECtHR <https://www.echr.coe.int/documents/rules_court_eng.pdf>, Rule 44; ECtHR, 'Practice Direction: Third-party intervention under article 36 § 2 of the Convention or under article 3, second sentence, of Protocol No. 16' (Practice Direction) (13 March 2023) <https://www.echr.coe.int/Documents/PD_Third_Party_intervention_ENG.pdf>

⁵ Wider work exploring the role and impact of TPIs includes (but is not limited to): Kanstantsin Dzehtsiarou, 'Conversations with Friends: 'Friends of the Court' Interventions of the State Parties to the European Convention on Human Rights' (2023) Legal Studies <<https://www.cambridge.org/core/journals/legal-studies/article/conversations-with-friends-friends-of-the-court-interventions-of-the-state-parties-to-the-european-convention-on-human-rights/64042FB418A7448A92E05C10C7C8C2A0>>; Astrid Wiik, *Amicus Curiae before International Courts and Tribunals* (Hart/Nomos 2018); Nicole Bürli, *Third-Party Interventions before the European Court of Human Rights: Amicus Curiae, Member State and Third Party Interventions* (Cambridge:

- 1) To identify and map TPIs in ECtHR cases relating to children;
- 2) To evaluate the impact or 'added value' of TPIs in advancing children's rights;
- 3) To assess whether TPIs could be used more effectively and widely as a mechanism to advance children's rights through the courts.

TPIs provide information and insights relating to particular issues (excluding the facts of the case) to assist the Court in reaching a decision. For that reason, a Third-Party Intervenor is commonly referred to as an ***amicus curiae*** or "friend of the court".⁶ TPIs are usually made in relation to cases of strategic significance, i.e. they have the potential to have an impact beyond the direct parties involved, in an effort to ensure the development of good precedents and jurisprudence. Although ECtHR judgments are binding only on the parties to the case, the principle of *res interpretata* encourages States Parties to comply with the body of the Court's case law in their implementation of Convention rights⁷ highlighting the importance of expert contributions on issues relevant to a diverse range of European populations.

Intersentia 2017); Laura Van den Eynde, 'An Empirical Look at the Amicus Curiae Practice of Human Rights NGOs before the European Court of Human Rights' (2013) 31 Netherlands Quarterly of Human Rights 271; Frans Viljoen, Adem Kassie Abebe, 'Amicus Curiae Participation Before Regional Human Rights Bodies in Africa' (2014) 58 Journal of African Law 22; Gary Born, Stephanie Forrest, 'Amicus Curiae Participation in Investment Arbitration' (2019) 34 ICSID Review 626; S. Chandra Mohan, 'The Amicus Curiae: Friends No More' (2010) Singapore Journal of Legal Studies 352; Obonye Jonas, 'The participation of amici curiae in the African human rights system' (PhD thesis, University of Bristol 2019) < [The participation of amici curiae in the African human rights system — University of Bristol](#)>; Darren Subramanien 'Breaking The Silence: Friends of the Court Can Adduce Evidence: *Children's Institute v Presiding Officer of the Children's Court District of Krugersdorp* Case CCT 69/12 [2012] ZACC 25' (2012) 34 Obiter 333; J. Gerards and A. Terlouw 'Solutions for the European Court of Human Rights: The Amicus Curiae Project', in S. Flogaitis, T. Zwart, J. Fraser (eds) *The European Court of Human Rights and its Discontents* (Edward Elgar Publishing 2013)

⁶ The ECHR and the Rules of Court use the term 'third-party intervention' rather than *amicus curiae*. The jurisprudence of the ECtHR uses both terms interchangeably. The Court's Practice Direction (n4, paras 10–12) makes a distinction between amici curiae on the one hand and interested third parties on the other: for "non-governmental organisations, academics, private individuals, business enterprises, other international organisations, other bodies of the Council of Europe, independent national human-rights institutions, and so on" ... "the interest in intervening normally lies in the opportunity to provide submissions which may assist the Court, and thus to further the "interest[s] of the proper administration of justice". In that sense, they are "friends of the Court" (*amici curiae*). By contrast, those whose legal rights may be directly affected by the outcome of the case may also be given leave to intervene; the Practice Direction terms them "Interested Third Parties"

⁷ Adam Bodnar, 'Res Interpretata: Legal Effect of the European Court of Human Rights' Judgments for other States Than Those Which Were Party to the Proceedings' in Yves Haeck and Eva Brems (eds), *Human Rights and Civil Liberties in the 21st Century* (Springer Dordrecht 2013); Jasper Krommendijk and Kris van der Pass, 'To Intervene or not to Intervene: Intervention before the Court of Justice of the European Union in Environmental and Migration Law' (2022) 26 IJHR 1394, 1397

In 'the interests of the proper administration of justice' requests for leave to intervene may be granted by the President of the Chamber under Article 36 ECHR⁸ and Rules of Court 44.3.⁹ Interventions may also be made in relation to advisory opinions¹⁰ (views given by the Court on questions of principle which support the interpretation of the ECHR)¹¹ or, more rarely, may contribute to a decision on admissibility (i.e. whether the application satisfies the ECtHR's criteria under Articles 34 and 35 ECHR).¹² They can take the form of Member State interventions¹³ or interventions submitted by other persons, for example NGOs, human rights institutions (HRIs), academic experts, states which are not party to the ECHR, or others with an interest in the case but who are not the applicant.¹⁴

Well-considered TPIs are a valuable means by which experts can add value where cases concern issues of public importance, and where this may not be adequately addressed by parties to the case itself. They can also add value by providing insights into the broader social implications of legislation, policy or administrative procedures; highlighting good practice in different States; shining a light on relevant sources of international law; offering legal expertise on a particularly specialised issue; or presenting relevant empirical, doctrinal or theoretical research.¹⁵ Interventions can also benefit an organisation, increasing the credibility or visibility of an institution or body, or helping to further a particular campaign.¹⁶

⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)

⁹ Rules (n4), Rule 44.3

¹⁰ ECHR Protocol No. 16, article 3, second sentence

¹¹ e.g. *Concerning the Recognition in Domestic Law of a Legal Parent-Child Relationship between a Child Born through a Gestational Surrogacy Arrangement Abroad and the Intended Mother*, Advisory Opinion P16-2018-001, European Court of Human Rights (2019)

¹² Van den Eynde (n5) 291; See for example *T.I. v. the United Kingdom*, App no. 43844/98. (ECHR, 7 March 2000)

¹³ On TPIs from other Member States, see Dzehtsiarou (n5)

¹⁴ Justice and Freshfields Bruckhaus Deringer LLP, 'To Assist the Court: Third Party Interventions in the Public Interest' (22 June 2016) 15-20, Justice <<https://files.justice.org.uk/wp-content/uploads/2016/06/06170721/To-Assist-the-Court-Web.pdf>>; See for example, *Abdi Ibrahim v. Norway*, App no. 15379/16 (ECHR [GC], 10 December 2021) where adoptive parents submitted a TPI in relation to their adopted child in a case where the applicant was the biological parent.

¹⁵ Justice (n10); Van den Eynde (n5) 98; Paul Harvey, 'Third Party Interventions before the ECtHR: A Rough Guide' (*Strasbourg Observers*, 24 February 2015) <[Third Party Interventions before the ECtHR: A Rough Guide - Strasbourg Observers](#)>

¹⁶ Van den Eynde (n5) 285

Indeed, TPIs are increasingly being used as a campaigning tool by NGOs and expert bodies in a number of legal fora beyond the ECtHR.¹⁷

Section 1: Overview of Research Methodology

1.1 Research Methodology

The study underpinning this report involved, in the first instance, searching the ECtHR HUDOC database¹⁸ to identify cases concerning children in which TPIs had been submitted by NGOs, academic institutions or other third-parties (excluding States parties). The search was limited to cases heard between January 1st 2017 to 1st January 2022 at Grand Chamber and Chamber levels. An initial basic search using the keyword 'child' provided 677 cases. We manually sifted each of those cases to identify those that involved issues of clear relevance to children and their rights, including those cases where children's rights were not explicitly mentioned in the judgment. This produced 187 cases, in 27 of which there was an intervention by a third party.¹⁹ **In total, in these 27 cases, there were 57 interventions by 53 agencies, NGOs and academic experts:**

- 15 cases had one single intervention
- 12 cases received more than one intervention
- 6 interventions were submitted jointly by two or more bodies
- The 27 cases with TPIs involved 197 applicants to the main proceedings.

Of these applicants, 94 were adults and 87 were children.²⁰ The status

¹⁷ Krommendijk (n7); Vincent Ploton, "Friends of the court" making the most of Amicus Curiae with UN Treaty Bodies' (*Blog of the European Journal of International Law EJIL:Talk!*, 18 April 2022) <["Friends of the court" making the most of Amicus Curiae with UN Treaty Bodies – EJIL: Talk! \(ejiltalk.org\)](#)>; Loveday Hodson, *NGOs and the Struggle for Human Rights in Europe* (Hart Publishing 2011), 1

¹⁸ The HUDOC database is available at: [HUDOC – European Court of Human Rights \(coe.int\)](#)

¹⁹ See Annex 1 for a list of the 27 cases, the intervenors in each case and weblinks to full interventions where available.

²⁰ Given the lengthy time span of proceedings before the ECtHR we have listed child applicants as those who were under 18 years of age at the time of the hearing and applicants who were under 18 at the time of alleged rights infringements but who turned 18 before the case was heard.

of the remaining 16 applicants (as either adults or children) is not made clear.²¹

- Of the 27 cases with TPIs, sixteen resulted in findings of ECHR rights violations
- Two cases were deemed inadmissible in their entirety²² and one case was dismissed due to the abuse of the right to application²³ although the content of the TPIs was still reviewed.
- Of the 57 interventions, two were acknowledged but not summarised in any detail in the judgement, and were not published by the intervenor; we were unable to review these interventions.
- Of the 55 available TPIs: 15 referred to, or engaged to some extent with, substantive children's rights arguments; 24 referred to the children and their needs in the case; but 19 appeared to make no reference to children or to their rights at all.

Our observations are drawn from the substantive summaries and references made to the TPIs by the ECtHR in its decisions as well as a reading of the full text of twenty-one of these interventions that are publicly available online. We analysed the content, scope and impact of those interventions on the children involved in the case. We did this by reference to a children's rights evaluative framework established in a previous research project, *Children's Rights Judgments: From Academic Vision to New Practice*.²⁴ This framework identifies five key features of a children's rights-based approach to judging:

- 1) recognising children as rights-holders by drawing on children's rights principles and provisions;

²¹ *Hudorovič and Others v. Slovenia*, App nos. [24816/14](#) and 25140/14 (ECHR, 10 March 2020)

²² *S.-H. v. Poland*, App nos. [56846/15](#) and 56849/15 (ECHR, 16 November 2021); *Dimitrova and Others v Bulgaria*, App no. [39084/10](#) (ECHR, 11 July 2017)

²³ *Koch v. Poland*, App no. [15005/11](#) (ECHR, 7 March 2017)

²⁴ Helen Stalford, Kathryn Hollingsworth, Stephen Gilmore (eds) *Rewriting Children's Rights Judgments: From Academic Vision to New Practice* (Oxford: Hart Publishing, 2017). See also the report by Aoife Nolan, Ann Skelton and Karabo Ozah, 'Advancing Child Rights-Consistent Strategic Litigation Practice' (2022) ACRiSL (n2) which provides an important framework for practitioners wishing to strengthen their strategic litigation practice with useful insights about involving children at every stage of the litigation process from design to follow up.

- 2) drawing on theoretical and empirical research to inform aspects of decision-making, to challenge or support presumptions and assertions about children and childhood in any given context;
- 3) maximising children’s participation in legal processes to ensure that their voice and experiences are heard and given due weight;
- 4) placing the child at the centre of the judgment narrative to emphasise their rights and experiences as distinct from other parties involved in the case; and
- 5) communicating the judgment in a way that can be understood by the child or children affected by the decision.

We adopt this as a useful framework for evaluating TPIs insofar as they are intended to inform judicial deliberations and decision-making. Adaptations were made to this structure to reflect the distinct process and purpose of interventions to the ECtHR and the role of submitting parties. Our adapted framework is as follows:

1. To what extent does the TPI draw on and apply children’s rights principles?
2. To what extent does the TPI draw on and present research to explain concepts and theories of relevance to children?
3. To what extent does the TPI support and promote children’s participation in the proceedings (for example by bringing the general experience of children to bear on the issues in the case)?
4. Are children’s experiences and rights presented in a way that recognises them as distinct from those of other parties’ rights or interests?
5. Is the content, aims and scope of the TPI communicated to relevant children in a way that they can understand?

1.2 Research limitations and challenges

Our initial search for TPIs was complicated by various issues with the HUDOC database. As a result, our methods required flexibility depending on the information available for analysis. Firstly, there were functionality issues in searching the HUDOC database. We searched the database for the word ‘child’ and then tried to filter

cases by reference to Rule of Court 44.3 and key terms, but this avenue was unproductive, yielding no results. This meant that we had to read the header of all cases where the term 'child' was used to find those where there was a TPI. Given the number of cases the search yielded, finding cases with a TPI was time-consuming and we chose to limit the research to a specific period of five years (Jan 2017- Jan 2022).

Secondly, the database does not give access to documents before the Court, so full third-party interventions were not available. Any reference to the TPIs in the judgments were confined to short summaries ranging from 1 to 12 paragraphs making it difficult in many cases to analyse the extent to which the intervention influenced the Court's reasoning or decision. Twenty-one full interventions were found on the intervenors' websites or at other online locations and in those cases we incorporated the full intervention into the research.²⁵

Thirdly, there is a possibility that a few cases concerning children where there were interventions did not appear in our search. As noted, the search term 'child' yielded a high number of cases. However, as the study progressed it became apparent that the Court utilised a variety of terms synonymous with 'child' such as 'young person', 'minor' or 'juvenile'. The time constraints of the project meant it was not possible to repeat the initial search using these terms.

Notwithstanding these limitations, the TPIs revealed and analysed through this initial study offer some helpful insights into the landscape and potential impact of interventions concerning children's rights at ECtHR level. Before detailing our findings in more depth, we begin by explaining the rationale for what may appear a somewhat niche avenue for analysing and pursuing children's rights.

²⁵ See Annex 1

Section 2: Why Third-Party Interventions in proceedings before the ECtHR are potentially important for children's rights

2.1 The ECHR as an instrument of children's rights

Children's rights are extensive and multi-layered, yet it remains the case that in legal proceedings concerning children their distinct rights are often not invoked, including in cases before the ECtHR. This has been partly attributed to the fact that judges in the ECtHR operate within the framework of a Convention that was not originally drafted with children in mind, that contains limited reference to children, and within a supranational jurisdiction that is not a direct signatory to the UN Convention on the Rights of the Child (UNCRC).²⁶

Whilst only a small number of provisions in the ECHR and protocols refer explicitly to children,²⁷ children are beneficiaries of all rights contained within it.²⁸ Moreover, the fact that all Council of Europe Member States have ratified and are legally bound by the UNCRC²⁹ requires the ECtHR to strike an appropriate balance between recognising Member States' authority to implement and interpret rights in a way that respects their distinct social, economic and political contexts, whilst retaining the ECtHR's role in reinforcing and reminding State Parties of their shared international children's rights obligations.³⁰ In states where full implementation of the CRC has not taken place, or where a children's rights-based approach is in

²⁶ UN Convention on the Rights of the Child (UNCRC) (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3; for discussion on the poor recognition of children's rights under the ECHR in case law see: Jane Fortin 'Accommodating Children's Rights in a Post Human Rights Act Era' (2006) 69 *MLR* 299

²⁷ ECHR article 5(1)(d) defines the contexts in which a child may be deprived of their liberty; article 2 of Protocol 1 protects the rights of parents to ensure their children's education and teaching in conformity with their own religious and philosophical convictions; and article 5 of Protocol 7 asserts that spouses shall enjoy equality of rights and responsibilities in relations with their children insofar as this supports their best interests.

²⁸ According to article 1 ECHR the Convention rights apply to 'everyone' within the State's jurisdiction.

²⁹ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1115 UNTS 331, articles 26 and 31(1)-(2).

³⁰ Article 31(3)(c) of the Vienna Convention on the Law of Treaties enables the Court to consider other relevant rules of international law applicable in the relations between the parties. See further Vassilis Tzevelekos, 'The Use of Article 31(3)(C) of the VCLT in the Case Law of the ECtHR: An Effective Anti-Fragmentation Tool or a Selective Loophole for the Reinforcement of Human Rights Teleology?' *Michigan Journal of International Law*, (2010) Vol 31(3), 621.

retreat, enhanced sensitivity to children’s rights by the ECtHR may be particularly pertinent.³¹

A children’s rights-based approach at ECtHR level, therefore, encourages thoughtful cross-fertilisation of international norms and guidance that are designed to achieve precisely this level of synergy.³² Indeed, there is now a significant body of ECtHR case-law relating to children that increasingly recognises and upholds the distinct status of children as rights-holders. This has been achieved, among other things, through more fluid cross-fertilisation between the ECHR and the UNCRC,³³ enabling the Court to view new and evolving matters from a distinctly children’s rights perspective.

The ECHR also imposes positive obligations on States to ensure the realisation of rights, not only with regard to its own activity, but also to ‘secure the rights and liberties guaranteed in the Convention in relations between private actors.’³⁴ For children this may be particularly important: it means that States must not only act in compliance with their legal duties themselves, but they must also ensure that families and third-party actors are held accountable for promoting and protecting children’s rights.³⁵

This means that TPIs have the potential to allow a wide range of evidence and expertise to be brought to bear on determining the precise nature and scope of these rights and duties, across variable social, economic and political contexts in an ever-changing world. Whilst the Grand Chamber of the ECtHR has been clear that it can look to general principles of international law – including the UNCRC – when determining the scope of rights protected by the Convention, and does so

³¹ Francis FitzGibbon, ‘The Supreme Court Retreats’ (*London Review of Books* Blog, 3 August 2021), <[Francis FitzGibbon | The Supreme Court Retreats · LRB 3 August 2021](#)>; C. Gearty, ‘In the Shallow End’ (27 January 2022) 44 *London Review of Books* <[Conor Gearty · In the Shallow End · LRB 27 January 2022](#)>.

³² Stalford et al (n24) 55–57; Ursula Kil Kelly, ‘The Best of Both Worlds for Children’s Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child’ (2001) 21 *Human Rights Quarterly* 308.

³³ Kil Kelly, *Ibid.*

³⁴ Claire Loven, ‘“Verticalised” cases before the European Court of Human Rights unravelled: An analysis of their characteristics and the Court’s approach to them’ (2020) 38 *Netherlands Quarterly of Human Rights* 246.

³⁵ Claire Fenton-Glynn, *Children and the European Court of Human Rights* (OUP 2021), 5.

regularly,³⁶ there is scope for a more explicit children's rights focus in its jurisprudence and children's rights focussed TPIs might encourage this type of development.

2.2 Stakeholder engagement

Individual applications to the Court have risen considerably since its inception and, despite procedural changes to improve efficiency, 70,000 cases were pending by the end of 2021.³⁷ Although interventions have featured in only a small minority of cases, well-placed TPIs can ensure that the Court's limited resources can be supplemented by external expertise to support nuanced, well-evidenced decision-making. As the Practice Direction states, the role of TPIs is "to put before the Court, as impartially and objectively as possible, legal or factual points capable of assisting it in resolving the matters in dispute before it on a more enlightened basis."³⁸ Certainly, the number of TPIs is rising, reflecting not just the Court's rising caseload but its increased focus on democratic legitimacy which, in turn, has prompted a more receptive attitude to third-party input.

In 2018 the Copenhagen Declaration³⁹ created a "road map" for the Council of Europe with an aim to tackle contemporary criticisms of the regional human rights mechanisms and to ensure the effective and democratic implementation of the European Convention on Human Rights. It made clear the value of stakeholder input, from which a range of views and information could strengthen '...the authority and effectiveness of the Convention system.'⁴⁰ The Declaration highlighted the importance of civil society's role in stimulating dialogue between States and the Court and in developing and implementing rights held within the Convention.⁴¹ In particular, the Court is encouraged to facilitate third-party interventions by

³⁶ See for example *Neulinger and Shuruk v Switzerland*, App no. 41615/07 (ECHR [GC] 6 July 2010); For an updated and detailed analysis of children's rights at ECtHR level see Claire Fenton-Glynn, *Ibid*

³⁷ Council of Europe, 'European Court of Human Rights: Annual Report 2021' (2022), 7 <[Annual Report 2021 \(coe.int\)](#)>

³⁸ Practice Direction (n4), para 2.

³⁹ 'Copenhagen Declaration on the Reform of the European Convention on Human Rights system' (Copenhagen, 12 and 13 April 2018) <https://www.echr.coe.int/Documents/Copenhagen_Declaration_ENG.pdf>

⁴⁰ *Ibid*, para 34

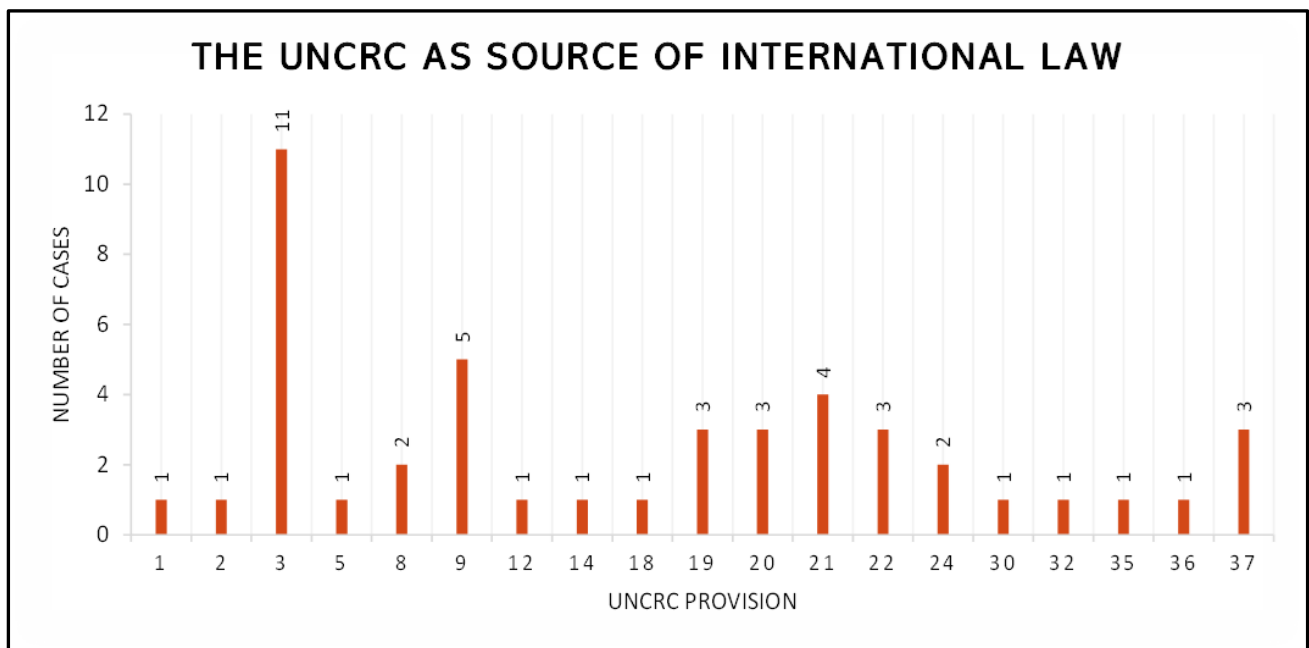
⁴¹ *Ibid*, para 33

providing timely notice on cases that concern ‘questions of principle’ and to provide clear and focused questions which support the engagement of a broad range of actors.⁴²

Section 3: Evaluating TPIs through a Children’s Rights Lens

3.1 To what extent do TPIs draw on and apply children’s rights principles?

TPIs have the potential to play an important role in prompting the ECtHR to engage directly with relevant children’s rights principles, provisions and processes, as expressed in the UNCRC and its accompanying guidance and jurisprudence. Within our sample, we could see this happening to varying degrees. Of the 27 cases in our sample involving TPIs, 15 judgments referred explicitly to children’s rights provisions, including the UNCRC, as indicated in the table below.



As can be seen, 19 UNCRC articles were cited across 15 of the sample cases with TPIs, ranging from simply being listed as a related source of law, to more detailed

⁴² Ibid, para 39. While intervention remains at the Court’s discretion, a lack of transparency concerning refusals means this is difficult to appraise. See further, Burli (n5).

treatment as a relevant aspect of the Court's discussion and decision. The provisions referenced in the judgments encompassed a broad range of children's rights protections, including the right to be free from all forms of violence (Article 19) and the right to protection for refugee and asylum-seeking children (Article 22). Article 3, which sets out the best interests principle, is (unsurprisingly perhaps) the most frequently cited provision – referred to in 11 of the cases.⁴³ By contrast, children's right to have their views heard (Article 12) is only mentioned once in our sample of cases. Given its prominence as one of the four "general principles" of the UNCRC⁴⁴ and the prevalence with which Article 12 is cited in other judicial contexts⁴⁵ this is surprising. However, as Kilkelly⁴⁶ notes, the ECtHR has tended to refer to alternative, more specialised UNCRC provisions (such as Article 9 or 37) to represent the views and wishes of children in legal proceedings, particularly in the context of family law and juvenile justice.

Other documents or instruments relevant to the UNCRC were also mentioned in our sample of judgments:

- One reference was made to Article 3 of the **Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography**;⁴⁷
- **Three cases** referred to particular concerns of State practice as raised in the **Concluding Observations** of the Committee on the Rights of the Child (the Committee).⁴⁸

⁴³ The best interests principle was also the most commonly cited UNCRC article in a sample of 132 national, regional and international cases which referred to children's CRC rights. See Patrick Geary, 'CRC in Court: The Case Law of the Convention on the Rights of the Child' (CRIN 2012), 13. CRIN <https://archive.crin.org/docs/CRC_in_Court_Report.pdf>

⁴⁴ UN Committee on the Rights of the Child, 'General Comment No. 12, The Right of the Child to be Heard' (2009) UN Doc. CRC/C/GC/12

⁴⁵ See for example Stephen Gilmore, 'Use of the UNCRC in Family Law Cases in England and Wales' (2017) 25 IJCR 500, which identifies Article 12 as the most often cited CRC provision in domestic family litigation.

⁴⁶ Ursula Kilkelly, 'The CRC in Litigation Under the ECHR' in Ton Liefaard, Japp E. Doek (eds) *Litigating the Rights of the Child* (Springer, Dordrecht 2015).

⁴⁷ UN General Assembly, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227, cited in *V.C.L. and A.N. v. The United Kingdom* App nos. 77587/12 and 74603/12 (ECHR, 16 February 2021).

⁴⁸ Concluding Observations are evaluative comments issued by the Committee on the Rights of the Child at the conclusion of the State reporting cycle. Reference to Concluding Observations was made in the following cases:

- **Nine cases** also drew on the Committee on the Rights of the Child's **General Comments** which provide guidance to States Parties regarding the UNCRC and its implementation, as summarised in the table below:

General Comment	No. of cases
General Comment No. 6 (2005) Treatment of unaccompanied and separated children outside their country of origin	1
General Comment No. 7 (2005) Implementing child rights in early childhood	1
General comment No. 13 (2011) The right of the child to freedom from all forms of violence	2
General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration	7
General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (Art. 24)	1
Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return	1

Importantly, **we observed a positive relationship between the ECtHR's inclination to engage with children's rights/the UNCRC and the quality and depth of the analysis of children's rights principles and guidance within the corresponding**

Abdi Ibrahim (n14) [76]; *Vavříčka & others v. The Czech Republic* App no. 47621/13 and 5 others (ECHR [GC], 8 April 2021) [134]; and *Khan v France*, App no. 12267/16 (ECHR, 28 May 2019) [52].

TPIs. Perhaps the best example from our sample is *Abdi Ibrahim v. Norway*⁴⁹ which concerned the decisions of the Norwegian authorities to place the child of a teenage Muslim Somali refugee (a child herself) with a Christian couple, first as a foster child but later as an adoptee, ending contact with his mother.

His mother's application to the Court relied on Articles 8 (Right to Respect for Family and Private Life) and 9 (Freedom of Thought, Conscience and Religion) ECHR. She did not ask for his return, acknowledging his bond with his foster family, but instead argued that her wishes for the child to retain his cultural and religious identity had been disrupted by a closed adoption and his placement with a Christian family. For the first time, the ECtHR was required to consider cross-cultural adoption through the lens of Article 9. Interventions were made by three States, the adoptive parents, and the Aire Centre.

Whilst the full intervention was not publicly available, the Court summarises its substance in some detail. The Aire Centre's submission draws on relevant UNCRC provisions and guidance to highlight the respective needs of the baby and the teenage parent, pointing to the requirement for States to appoint separate guardians both for the young parent and for the child to facilitate their participation, and highlighting the need for children's views to be heard by the ECtHR itself.⁵⁰ The Aire Centre also provided the Court with information concerning Islamic rules of religious inheritance for children and the challenges that adoption into a Christian family (rather than a Kafalah placement) would have posed for the parent and her religious views, as well as for her son.

Given the extensive reference by the Aire Centre and the Czech Government to children's rights provisions it is perhaps not surprising that the ECtHR acknowledges the UNCRC as an important source of international law. In its judgment the Court sets out in full Articles 3, 5, 8, 9, 14, 20, 21 and 30 of the UNCRC; four paragraphs of the Committee's General Comment no 14 (on best interests); sections from the Concluding Observation on Norway's reports to the Committee on the Rights of the

⁴⁹ *Abdi Ibrahim* (n14).

⁵⁰ *Ibid* [124-125].

Child;⁵¹ and several sections of the UN General Assembly 'Guidelines for the Alternative Care of Children'.⁵² These are all included under a heading "Relevant Domestic and International Law and Practice".⁵³

The ECtHR finds a violation of Article 8 ECHR (in the light of Article 9) due to the state's focus on the foster parents' wish for a closed adoption, without taking into account the wishes of the mother that her child be placed with a Somali or Muslim family and for on-going contact (which would have maintained cultural and religious identity). While the final paragraphs setting out the decision of the Court make no reference to the International sources set out earlier in its judgment, their influence is clear and profound: in a markedly child-centred judgment, the Court favours a model of open rather than closed adoption, and reminds States that their focus must be on the needs of any children in the case, including children who are parents.

By contrast, we observed that where the TPI has only glossed over or failed to engage with children's rights, the ECtHR is less likely to consider the rights, interests and needs of the children in its deliberations, even if the case has clear children's rights significance. In the case of ***X and Y v. North Macedonia***,⁵⁴ for example, the two applicants claimed police brutality during an arrest when they were aged 16 and 13 years old respectively, together with ineffective investigation of their complaints, and a correlative claim of discrimination on grounds of their Roma identity, in breach of Article 3, Article 14 and Article 1 of Protocol 12 ECHR. This case clearly raises children's rights issues but, while the age of the children is mentioned once in the court's summary of the facts, it makes no reference to the status of the applicants as children in determining whether there had been a breach of Article 3; while the Court found a procedural breach, it decided there was insufficient evidence to find a substantive breach. This is disappointing, given the long-

⁵¹ Ibid [73-79].

⁵² UN General Assembly, Res 64/142 (18 December 2009) in *Abdi Ibrahim* (n14) [73].

⁵³ *Abdi Ibrahim* (n14) [59].

⁵⁴ App no.173/17 (ECHR, 5 November 2020).

standing recognition of the ECtHR that the particular vulnerability of children should be taken into account in its decisions regarding Article 3.⁵⁵

There is no reference to the UNCRC at all in the judgment including the obligation it places on states to ‘protect the child from all forms of physical and mental violence’⁵⁶ and the fact that the Committee on the Rights of the Child has underlined the need for legislative and administrative procedures to protect children from all forms of harm, including that perpetrated by state actors (such as the police) in General Comment 13.⁵⁷

3.2 To what extent does the TPI draw on and present research to explain concepts, and theories of relevance to children?

Judges, including in the ECtHR, tend to confine their adjudication to a review of the facts and the established law. This can inhibit a more nuanced understanding of how that evidence might be interpreted in the light of established children’s rights norms and research concerning them.⁵⁸ Research relating to children and childhood can inform and enrich judicial decision-making in this regard. Indeed, we are living in an era in which thinking on the nature, scope and meaning of children’s rights is increasingly influenced by an abundance of studies on children’s cognitive, emotional, social, political and psychological capacities, and interdisciplinary, international knowledge exchange.⁵⁹ Drawing on these research insights can assist judges in unpacking key and contested concepts that permeate the law and legal reasoning, such as children’s best interests and evolving capacities. It can also help judges interrogate, through the latest empirical

⁵⁵ See for example, *A.B. and Others v. France*, App no. [11593/12](#) (ECHR, 12 July 2016) [109]; *Popov v. France*, App nos. [39472/07](#) and [39474/07](#) (ECHR, 19 January 2012) [91]; *R.R. and others v. Hungary*, App no. [36037/17](#), (ECHR, 5 July 2021) [49].

⁵⁶ UNCRC (n26), article 19.

⁵⁷ UN Committee on the Rights of the Child (CRC), ‘General comment No. 13 (2011): The right of the child to freedom from all forms of violence’ (18 April 2011) UN Doc. CRC/C/GC/13, para 3(i).

⁵⁸ *Stalford et al* (n24) 6.

⁵⁹ *Ibid*

evidence, some of the presumptions upon which parties' arguments and previous case law relating to children are premised.⁶⁰

Whilst the lines of communication between research and litigation remain somewhat fractured, patchy and, in many cases non-existent, our study reveals how TPIs can provide a vital bridge to knowledge exchange. The potential for TPIs to present the latest insights from research to the court is apparent in ***A.M and others v. Russia***.⁶¹ Violations of Article 14 (non-discrimination) in conjunction with Article 8 (right to respect for family life) were found by the Court in regard to procedures which resulted in the removal of the first applicant's parental rights on the basis of their gender transition. The second and third applicants to the case are the children of the first applicant. Three submissions were made by third-party intervenors: the first by Transgender Europe jointly with ILGA-Europe; (ILGA) the second by Human Rights Watch (HRW); and the third by the Human Rights Centre of Ghent University (HRC Ghent). The three full submissions were available online.⁶² While their approaches to intervention overlap, they represent a range of specialist human rights organisations, general human rights bodies and academic institutions. All three contribute significant value through sharing relevant international law, jurisprudence, and research concerning children with transgender families. Two of the full interventions (HRW and HRC Ghent) clearly outline the relationship between the ECHR and the UNCRC and draw on a number of relevant children's rights provisions. Academic research concerning children's best interests' determinations (Article 3 UNCRC) is presented by HRC Ghent. It notes that interpretations of children's best interests are often heteronormative and can therefore reinforce prejudice, but that reasoned arguments and effective training for professionals can help to identify and limit the exercise of bias.⁶³ HRC Ghent also provides analysis of research concerning children's right to be heard in all matters

⁶⁰ Ibid 59-60.

⁶¹ App no. [47220/19](#) (ECHR, 6 July 2021)

⁶² Michael Bochenek, Kyle Knight, Tanya Lokshina and Aisling Reidy, 'Third-Party Intervention to *A.M. and Others v Russia*' (Human Rights Watch, 12 March 2020)

<https://www.hrw.org/sites/default/files/media_2020/07/AM%20written%20submissions%20final.pdf>; Eva Brems, Pieter Cannoot, Argyro Chatzinikolaou, Ingrida Milkaite, Evelyn Merckx and Judith Vermeulen, 'Third-Party Intervention to *A.M. and Others v. Russia*' (Human Rights Centre of Ghent University, June 2020)

<<https://hrc.ugent.be/wp-content/uploads/2020/06/HRC-TPI-AM-and-Others-v-Russia-002.pdf>>

⁶³ Brems et al, Ibid, section 2.4

concerning them and in conformity with their age and maturity (Article 12 UNCRC). Central to the issue at hand, the intervention indicates that children’s views are frequently absent in situations where cisgender and transgender parents are in conflict, which can have a negative impact on their mental health. The research they cite outlines the importance of assuming children have the capability to participate in matters which affect them and highlights the nature and extent of States’ positive obligation to ensure that children are fully informed via educational measures which respect diverse identities.⁶⁴

Similarly, the intervention by HRW refers to children’s UNCRC rights to preserve relations with their family (Articles 7.1, 8.1, 9.3, 16, and 18 UNCRC), supported by guidance from the Committee on the Rights of the Child and international human rights jurisprudence. It also cites longitudinal empirical research involving transgender parents and children, pointing to positive relationships and outcomes for their children in line with those of cisgender parents. Citing extensive academic studies, HRW notes that there is no evidence that transgender people display inferior parenting skills, pointing instead to how social stigmatisation causes harm to them and their children. It also evidences how emotional distress and development and attachment disorders can occur as a result of parental conflict over child-rearing, or where contact with a parent is suddenly halted. Drawing specifically on research involving Russian families, HRW highlights how the legal prohibition on the “promotion” of non-traditional sexual relationships to children undermines children’s rights to information, education and health. This has resulted in isolation, exclusion, abuse and discrimination, as well as challenges in the provision of appropriate mental health services for children and a lack of support for LGBT parents to care for them.⁶⁵

The joint submission by Transgender Europe and ILGA⁶⁶ is summarised in the judgment as citing numerous studies.⁶⁷ It presents research to counter claims that

⁶⁴ Ibid, section 2.5

⁶⁵ Bochenek et al (n62) [19]-[35]

⁶⁶ Transgender Europe and ILGA Europe, ‘Third Party Intervention to *A.M. and Others v Russia*’ (TGEU, 9 July 2020) <<https://tgeu.org/wp-content/uploads/2020/07/20200709-am-v-russia-tpi.pdf>>

⁶⁷ *A.M* (n61) [47]

having transgender parents in and of itself negatively affects children's development, but points to other compounding factors such as social stigmatisation.⁶⁸ Another study cited outlines the correlation between discriminatory assumptions and assessing whether it is in children's best interests to maintain contact or residence with a parent. Such assessments, ILGA asserts, should not be based on unfounded fears of a 'contagion' of gender non-conformity, or view gender transition as a choice or as indicative of selfishness, parental instability or sexuality.⁶⁹

The Court engages closely with the TPIs, although it avoids any qualitative evaluation '..of the reliability and relevance of the existing scientific research on transgender parenting'.⁷⁰ The Court is also careful not to 'endorse' any measures and good practices they highlight.⁷¹ Despite this, their impact on the Court is evident in the Joint Concurring Opinion of Judges Ravarani and Elósegui.⁷² While in agreement with the judgment, she draws directly on the interventions to highlight the importance of expert engagement in best interests assessments and supportive measures by domestic courts to ensure continued relationships with estranged parents where these are restricted.⁷³

A further example of the potential for TPIs to bring research to bear on the Court's deliberations is ***Khan v. France***.⁷⁴ In this case the applicant, a twelve year old unaccompanied asylum-seeker, claimed that his treatment by the French authorities prior to and after the clearance of the "Calais Jungle" (an informal encampment in the Calais region occupied by asylum seeking people) amounted to inhuman or degrading treatment, in violation of Article 3 ECHR. Although the full

⁶⁸ Transgender Europe and ILGA Europe (n65) [6]

⁶⁹ Ibid [25]-[26]; A.M (n61) [47]

⁷⁰ A.M (n61) [55]

⁷¹ Ibid [60]

⁷² A.M (n61) see specifically the Opinion of Judge Elósegui, at [19]-[21] which refers directly to the TPIs of Ghent University and Transgender Europe jointly with ILGA Europe. Separate opinions of judges are permissible under article 45(2) ECHR and Rules 74(2) and 88 of the Rules of Court (n4) and are viewed as playing a critical role in the ECtHR. Reflecting the pluralist nature of the Court's membership, they support critical dialogue and scrutiny between judges and member states in light of their diverse social and legal positions on particular issues. For more information on the value of separate opinions see:

⁷³ A.M, Ibid, Concurring Opinion of Judge Elósegui [16]-[23]

⁷⁴ *Khan* (n48)

interventions are unavailable, they are referenced throughout the judgment and clearly provide the foundations for the Court's understanding of the facts and background to the case. Here, a previously published report by the expert intervenor, Défenseur des Droits (Défenseur), is used by the applicant, providing the ECtHR with a better understanding of how unaccompanied asylum-seeking children's rights were affected by staying in the Calais Jungle while they waited for their asylum claims to be processed or attempted to cross the to the UK. Other aspects of a report by Défenseur and observations by UNICEF are provided by the *Groupe d'information et de soutien des immigrés* (Migrant Information and Support group) providing evidence of the inaction of the French authorities to protect children living in inhumane conditions. The intervention by the NGO, Cabane Juridique, presents further empirical findings of violence and exploitation experienced by young people in the camp. Similarly, La Commission Nationale Consultative des Droits de l'Homme (the French National Advisory Commission on Human Rights) shares evidence from its fact-finding missions regarding the systemic failings of the French authorities to respond to the specific needs and interests of children, particularly those who were unaccompanied.⁷⁵

The Court acknowledges the consistency between the applicant's claims and the evidence provided in the TPIs, noting '...reports about the lack of provision for unaccompanied foreign minors'.⁷⁶ The Court draws on Défenseur's intervention to counter the French Government's claims that the applicant and unaccompanied children failed to access available services, concluding that their reluctance did not minimise the obligations on the State to protect children, but rather imposed a positive duty on the French authorities to facilitate access to State services and support in light of their distinct needs. The ECtHR concluded, therefore, that the risks posed to the child applicant in this context surpassed the threshold of degrading treatment and violated his rights under Article 3 ECHR.

⁷⁵ Ibid, [60]-[62]

⁷⁶ Ibid [75] and [86]

3.3 To what extent does the TPI support and promote children's participation in the proceedings?

Whilst the participation and involvement of children in decisions that affect them is a cornerstone of children's rights,⁷⁷ legal cases relating to children are generally pursued by adults on children's behalf with little or no direct participation of children in proceedings.⁷⁸ This is particularly so in the ECtHR, although **it is worth noting that in our sample of 27 cases, there were 6 cases in which children were applicants independent of parents or family members.**⁷⁹ The legal standing,⁸⁰ time,⁸¹ confidence, psychological, emotional and financial resources, as well as access to appropriately specialist advice and representation needed to bring a case at this level militate against the direct participation of children. In common with proceedings in many domestic courts, this means that, although children have standing,⁸² they are generally not parties to ECtHR proceedings, and at times breaches of their rights are litigated as an indirect breach of the rights of someone else, usually a parent or other close family member. Because the ECtHR itself has a backlog and is subject to delays, in many cases the child who experienced a harm or wrong will be an adult by the time the ECtHR adjudicates on their

⁷⁷ Aoife Daly, *Children, autonomy and the courts: beyond the right to be heard* (Brill Nijhoff 2018)

⁷⁸ Jane Fortin, 'Children's Rights – Flattering to Deceive' (2014) 26 *Child and Family Law Quarterly* 51, 53 – 54; Daly (n76)

⁷⁹ *Abdi Ibrahim* (n14); *Khan* (n48); *Shestopalov v. Russia*, App no. [46248/07](#) (ECHR, 28 June 2017); *Vavříčka* (n48); *V.C.L. and A.N.* (n47); *X. and Y* (n54).

⁸⁰ Applications concerning breaches of children's rights cannot usually be brought by a child, but instead by their parent (or someone else with sufficient *locus standi*. See further: ECtHR, 'Practical Guide on Admissibility Criteria (Updated 31 August 2022) <https://www.echr.coe.int/documents/admissibility_guide_eng.pdf>

⁸¹ Article 35(1) ECHR requires that, in general, all domestic remedies have to be exhausted before a case is admissible by the ECtHR. There are only limited exceptions to this rule where 'priority' cases can leapfrog national courts and be fast-tracked through the ECtHR – see further Article 41 of the [Rules of the Court \(n4\)](#). See for example, the case *Duarte Agostinho and Others v. Portugal and 32 Other States*, App no. 39371/20 (pending at the time of writing this report before the Grand Chamber of the ECtHR), brought by 6 Portuguese children and young people against 33 countries for failing to take sufficient action against climate change. The application can be accessed here: <https://youth4climatejustice.org/wp-content/uploads/2020/12/Application-form-annex.pdf>.

⁸² Natural persons with limited legal capacity can lodge a complaint. This includes those with mental illness (eg *Herczegfalvy v Austria*, App no. A/244, (ECHR, 24 September 1992) and (15 EHRR 437, 1993)); more generally persons lacking legal capacity under national law who have been granted standing by the ECtHR without their guardians' consent (eg *Zehentner v Austria*, App no. 20082/02 (ECHR, 16 October 2009) [37]-[41]); or children (eg *A. v United Kingdom*, Case no. 100/1997/884/1096 (ECHR, 23 September 1998)) who are entitled to act in their personal capacity without being represented by their guardians (eg *Nielsen v Denmark*, App no. 10929/84 (ECHR, 28 November 1988). See further Vassilis P Tzevelekos, 'Standing: European Court of Human Rights (ECtHR)' (December 2019) *Max Planck Encyclopedia of International Law [MPIL]* <<https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3674.013.3674/law-mpeipro-e3674>>

experiences. This is in spite of the Court's priority policy, which states that cases concerning the wellbeing of a child are to be classed as 'urgent' and expedited.⁸³

It is easy to see how such obstacles can distort the way in which children's interests are argued, adjudicated and, ultimately, protected.⁸⁴ TPIs, therefore, provide a possible avenue for children's voices to be presented to the Court without being direct participants. In our research sample, there was evidence of TPIs achieving this in two distinct ways: one was on a more empirical level, whereby the TPI presented children's views, experiences and interests. None had consulted children directly with the specific purpose of informing such interventions, but some TPIs relied directly on academic empirical research that had elicited the views and experiences of children on relevant issues. Such examples tended (unsurprisingly) to be those where the intervenor was from an academic institution or an NGO working with children 'on the ground' as part of its core research and outreach activities.⁸⁵

A joint TPI to *Bayev and Others*,⁸⁶ submitted by ILGA Europe, the organisation "Coming Out", and the Russian LGBT Network is a good example of an intervention containing direct accounts from children, gathered by NGOs working at grass roots level. The applicants are three adults claiming that their freedom of expression had been infringed because of legislation banning the sharing of information about LGBT+ relationships with children. The intervention presented the experiences of young people and their families impacted by these laws, including a summary of a report submitted to the UN Committee on the Rights of the Child in which LGBT+ young people recount their experiences of violence and discrimination.⁸⁷ The inclusion of young people's experiences also offers a compelling challenge to the 'traditionalist' arguments advanced by the Russian Government⁸⁸ and further

⁸³ See further ECtHR, 'The Court's Priority Policy' (amended 22 May 2017) <https://www.echr.coe.int/documents/priority_policy_eng.pdf>

⁸⁴ Helen Stalford and Kathryn Hollingsworth, 'Judging Children's Rights: Tendencies, Tensions, Constraints and Opportunities' in Stalford et al (n24), 37.

⁸⁵ See for example the interventions to *A.M. and Others* by Human Rights Watch and the Human Rights Centre of Ghent University (n62).

⁸⁶ App Nos. [67667/09](#), 44092/12 and others (ECHR, 20 June 2017)

⁸⁷ Ibid [28] and Appendix IV

⁸⁸ Ibid [45]-[46]

reinforced by another third party intervenor before the ECtHR, the Family and Demography Foundation.⁸⁹ Whilst the Court does not explicitly draw on this information in reaching its decision, its inclusion in the proceedings makes it more likely to have permeated the judges' deliberations and reasoning.

The other way in which TPIs promote children's participation is on a more procedural level, by drawing the Court's attention to the mechanisms, processes and support that need to be in place to enable children to express their views in relation to decisions that affect them at domestic level. A notable example is the Aire Centre's TPI in **Abdi Ibrahim v. Norway**⁹⁰ where the Court acknowledged, as a direct result of the TPI, the need for children's views to be heard in domestic proceedings: *"The AIRE Centre also emphasised issues relating to the child's participation in the decision-making process ... In order to meet the requirements of the United Nations Convention on the Rights of the Child, the child's views had to be heard by the European Court of Human Rights."*⁹¹

Lawyers and children's rights activists acknowledge that children's participation in strategic litigation is an area in need of further development. There are examples of good practice to draw on in this regard and which may help third party intervenors develop their own strategies to enhance child participation.⁹² Intervenors serious about children's participation could consult with children from the outset of proceedings (including on the decision whether or not to intervene), including communicating via appropriate gatekeepers who work directly with them, or setting up an advisory panel of children and young people to ensure children's direct participation in the drafting of the TPI. Evidence has also pointed to the power of presenting arguments to the courts in children's own words.⁹³ Such measures increase the probability of a TPI genuinely being shaped by children's

⁸⁹ Ibid [58]

⁹⁰ (n14)

⁹¹ Ibid [125]. A further example of a TPI highlighting the 'procedural' components of participation is contained in HRC Ghent's intervention to *A.M. and Others v. Russia* (n62) section 2.5.

⁹² See further Nolan et al, 'Advancing Child Rights-Consistent Strategic Litigation Practice' (n3) section 5.6.

⁹³ Ibid, at pp.56-57.

interests and concerns and may mean that the intervention is more persuasive as a result.

3.4 Are children's experiences and rights presented in a way that recognises them as distinct from those of other applicants' rights or interests?

A related consequence of the ECtHR's tendency to consider children's claims almost exclusively through the lens of other adult protagonists is to conflate children's rights and interests with those of adults (commonly their parents) rather than considering how the issues affect children as distinct rights-holders with distinct perspectives and experiences.

Some of the TPIs we reviewed reinforced this insofar as they supported the interests of the adults involved in the case but overlooked those of any children concerned. An example of this is seen in the case of ***Kurt v. Austria***.⁹⁴ Here, a woman brought a complaint alleging that the Austrian authorities, particularly the police, had failed to protect her and her children from her husband's violence. She contended that the police's domestic violence assessments and their subsequent actions were in breach of their positive obligations under Article 2 ECHR to prevent loss of life. Her contention was that the police should have identified that domestic violence was escalating and taken her husband's threats to kill both her and their children more seriously. In particular, the complainant contended that the police should have gone beyond simply initiating criminal proceedings and issuing a barring order restricting the father from the family home. Rather, they should have remanded her husband in pre-trial detention and informed the children's school of the risks. Instead, left at liberty, her husband murdered their son on the school premises, shooting him in the basement in front of his sister after persuading the school to allow him access to the children.

⁹⁴ App no. [62903/15](#) (ECHR [GC], 15 June 2021)

The Grand Chamber concluded that there was no breach of Article 2, as the risk that the applicant's husband would kill the children was not predictable. In a judgment that has been heavily criticised for blaming the victim and failing to acknowledge the complexities of domestic abuse,⁹⁵ the Court focused on the applicant's delay in reporting her husband's renewed violence and her failure to identify the escalating threat and the imminent risk to life he posed. The Court acknowledges that police records indicate that physical violence towards the children was reported. It does not, however, review police risk assessments and the safety of the children in light of escalating violence within the family, or numerous indicators of risk present (including the perpetrators' gambling addiction, deteriorating mental health and the threat of the end of the relationship), instead stating that the children 'had not been the main target of [the perpetrator's] violence' and that the mother and a domestic violence support worker 'did not themselves consider requesting a complete ban on contact between the father and the children.'⁹⁶ Moreover, the majority decision did not take into account the specific challenges facing migrant women (the complainant was of Turkish origin) and the likelihood that she faced additional difficulty trusting the police and the additional barriers to reporting domestic violence such as lack of fluency in German.⁹⁷

Significantly, neither the judgment nor the TPIs focused on the specific rights of the child who was murdered, nor of children who experience domestic violence.⁹⁸ The eight intervening organisations⁹⁹ chiefly focus on domestic violence from the perspective of women. While these organisations usefully draw the attention of the

⁹⁵ Lisa Maria Weinberger, 'Kurt v Austria: A missed chance to tackle intersectional discrimination and gender-based stereotyping in domestic violence cases' (*Strasbourg Observers*, 2021)

<<https://strasbourgobservers.com/2021/08/18/kurt-v-austria-a-missed-chance-to-tackle-intersectional-discrimination-and-gender-based-stereotyping-in-domestic-violence-cases/>>

⁹⁶ (n94) [206]

⁹⁷ *Kurt* – Dissenting Opinion of Judge Elósegui (n94) pp. 84–92

⁹⁸ A range of ECHR rights could easily have been invoked here from the children's perspective, including Articles 2, 3 and 8.

⁹⁹ The Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), Women Against Violence Europe (WAVE), Women's Network against Violence (Donne in Rete Contro la Violenza – D.i.Re), the Association of Autonomous Austrian Women's Shelters (Verein Autonome Österreichische Frauenhäuser – AÖF), the European Human Rights Advocacy Centre (EHRAC) and Equality Now (jointly), the Federal Association of Austrian Centres for Protection from Violence (Bundesverband der Gewaltschutzzentren Österreichs), and Women's Popular Initiative 2.0 (Frauenvolksbegehren 2.0).

Grand Chamber to relevant international law, guidance for states about how they should respond to domestic abuse, practices in other states and relevant research, only one appears to outline the risks that children face in situations of domestic violence and their particular vulnerability when an abused parent may try to leave.¹⁰⁰

There is cursory reference to Article 19 UNCRC and to the right of children to be free from all forms of physical and mental violence, but primarily it is the right of women in situations of domestic abuse which is considered by the Court. Any further consideration is confined to the joint dissenting opinion of eight judges, which notes that: *“the Austrian authorities failed to see the family as a unit, including the children, when it came to conducting an assessment of the risk of violence”*¹⁰¹, and recommends *“The family should be regarded as a unit, with a risk assessment conducted for each family member, including the children involved in each case of domestic violence, even if it is primarily directed against the woman”*.¹⁰² Had the TPIs been more focused on the rights of the child, a breach may well have been found.

Even where the Court engages with children’s rights in its judgment, these may overlook the particular complaints of children themselves, failing to acknowledge them as social actors with distinct concerns. ***Vavříčka v. The Czech Republic***¹⁰³ concerned the Czech Republic’s compulsory immunisation programme with applications from one adult, three sole child applicants and one joint application from two children. They objected, in particular, to financial penalties issued to parents for refusals to vaccinate children and to the exclusion of unvaccinated children from attendance at preschool settings. The applicants argued that these actions violated Article 8 (right to private life), Article 9 (freedom of thought, conscience and religion), Article 6.1 (the right to remedy) and Article 2 Protocol No.1 (the right to education) ECHR.

¹⁰⁰ GREVIO, ‘Third-Party Intervention to Kurt v. Austria’ (22 January 2020) <[16809987e9 \(coe.int\)](#)>

¹⁰¹ *Kurt* (n94) Dissenting Opinion of Judge Elósegui [4]

¹⁰² *Ibid* [21].

¹⁰³ (n48)

Four States parties intervened to provide information on comparative national laws and policies. Four NGOs also submitted comments: the Association of Patients Injured by Vaccines (Společnost pacientů s následky po očkování, z.s.) (APIV); the European Centre for Law and Justice (ECJL); the Group of Parents for Better Awareness and Free Choice with Regard to Vaccination (Rodiče za lepší informovanost a svobodnou volbu v očkování, z.s.) (ROZALIO); and the European Forum for Vaccine Vigilance (EFVV). The hearing took place in the context of the global COVID-19 pandemic, at a time of polarised and heated social and political debate on vaccination programmes and civil liberties. The full interventions (collated by the ECJL)¹⁰⁴ indicate that children’s rights arguments are absent from all interventions. Two TPIs do not acknowledge the needs of the child applicants at all, focusing instead on the protection of the moral convictions and beliefs of their parents to refuse vaccination (ECJL) and on medical research purported to challenge the efficacy and safety of vaccinations (EFVV).

The Court comprehensively addresses most points raised by the applicants and intervenors, countering criticisms of compulsory vaccine programmes by reference to a number of international provisions and sources. Despite the failure of the intervenors to engage children’s rights, the Court does draw on the UNCRC to support its reasoning. It cites Article 3.1 UNCRC and the best interests of children in decision making, and Article 24 UNCRC on the right of the child to the enjoyment of the highest attainable standard of health. It also cites related authoritative guidance from the Committee on the Rights of the Child as presented in General Comment 15 (on the right of the child to the enjoyment of the highest attainable standard of health) and the Committee’s positive response to high rates of vaccine uptake in the Czech Republic.¹⁰⁵ The nature of child vaccination, the Court notes, means that there is an interference with children’s physical integrity, therefore impairing the respect for their right to private life. The Court determines that such interference is in accordance with the law and justified through its legitimate aim

¹⁰⁴European Centre for Law and Justice, ‘Collection of written comments submitted by third parties in the case: *Vavříčka v. Czech Republic* (no.47621/13) and five other applications’ (ECLJ, July 2020) <http://media.acjl.org/pdf/Collection-of-written-comments-submitted-by-third-parties-in-Vavricka-v.-Czech-Republic-no.-47621.13-ECLJ-2020.pdf>.

¹⁰⁵ *Vavříčka* (n48) [132]-[134]

and as being necessary in a democratic society. It acknowledges that the nature of public health protection affords the State a wide margin of appreciation in determining particular policy measures to achieve its purpose of disease eradication, briefly explaining that children's individual and collective best interests are served by health policies based on such considerations.

Whilst the Court acknowledges that the corresponding exclusion of unvaccinated children from pre-school services entails the 'loss of an important opportunity for these young children to develop their personalities and to begin to acquire important social and learning skills in a formative pedagogical environment' it considers this to be a short-term measure, noting that subsequent admission to primary school is compulsory for all children regardless of vaccination status. The Court also concludes that for the applicants, pre-school exclusion was 'the direct consequence of the choice made by their respective parents to decline to comply with a legal duty.'¹⁰⁶ Finding no violation of Article 8, the Court foregoes examination of Article 2, Protocol No. 1 ECHR and the right to education, providing no further analysis of whether early childhood education is protected under this provision, and whether barriers to early education were necessary or proportionate to the objective of disease prevention. And so, despite the Court's acknowledgement of the wider children's rights framework, ultimately the case is determined as a conflict between parents' rights and the State, with both the Court and the TPIs failing to affirm the children status as distinct rights-holders and legal citizens.

In contrast, interventions which consider the issue at hand from the perspective of child applicants can have a significant influence on a case. In ***M. H. and Others v. Croatia***.¹⁰⁷ a family of 14 Afghan applicants - three adults (a father and his two wives) and their 11 children - raised concerns regarding the death of one of their children on railway lines after they were "pushed-back" from the Croatian border. They also challenged the lawfulness of their detention in an immigration centre, summary removals from the territory, and their inability to submit individual applications for asylum. The full TPI by the Hungarian Helsinki Committee outlines

¹⁰⁶ Ibid [306]

¹⁰⁷ App Nos. 15670/18 and 43115/18 (ECHR, 18 Nov 2021)

the legal obligations of States to undertake best interests assessments for children prior to the use of detention measures and draws on ECtHR case law to highlight the known traumatic and psychological impacts of detention on children.¹⁰⁸ The TPI highlights that children's distinct and specific needs and vulnerabilities, due to their age, dependence and asylum-seeker status, should limit the scope of State action, such that detention should be a measure of absolute "last resort" and for the minimum amount of time possible.

Another TPI submitted by the Centre for Peace Studies provides information from reports of the Croatian Ombudswoman for Children on the situation of asylum-seeking children and highlights the need for States to assess the specific type and degree of their vulnerability, the need to protect their life and dignity, and to ensure that they are protected from the actions of third parties, such as people smugglers and human traffickers.¹⁰⁹ Three additional interventions are summarised in the judgment and provide further information on the general conditions for asylum seekers at the Croatian border and in the wider region.¹¹⁰

In its judgment, the Court lists a number of relevant children's rights sources including: Articles 1, 3, 22, and 37 UNCRC; the views of the Committee on the Rights of the Child as expressed in related jurisprudence;¹¹¹ General Comment No. 14 of the Committee on the Rights of the Child to have their best interests taken as a primary consideration; General Comment No.6 on the treatment of unaccompanied or separated children; Joint General Comment No.23 on the general principles regarding the human rights of children in the context of international migration; and Council of Europe guidance and recommendations on children and families in detention. Documents from a number of bodies are also listed including information by the Croatian Children's Ombudswoman, the Council of Europe's

¹⁰⁸ Márta Pardavi, 'Third-Party Intervention to *M.H. and Others v. Croatia*' (Hungarian Helsinki Committee, 8 October 2018), section A, <[3rd-party-intervention-in-MH-v-Croatia.pdf \(helsinki.hu\)](#)>

¹⁰⁹ Centre for Peace Studies (CPS), 'Third-Party Intervention to *M.H. and Others v. Croatia*' (10 August 2020), [22]-[23] <[TPI_M.H._v._Croatia_CPS.pdf \(cms.hr\)](#)>

¹¹⁰ Submissions by The Belgrade Centre for Human Rights; Rigardu e.V; and The Asylum Protection Centre are summarised in *M.H.* (n107), [145]-[147].

¹¹¹ Relevant aspects of the Committee on the Rights of the Child's findings in Communication 4/2016 *D.D. v. Spain* (15 May 2019) are cited in *M.H.* (n107), [92].

Commissioner for Human Rights and the Special Representative of the Secretary General on Migration and Refugees.¹¹²

Assessing the claim of an Article 3 violation, the Court acknowledges that the material conditions of the detention centre are satisfactory but holds that these do not resolve the prison-like features of the institution which would have caused the children accumulated anxiety and further psychological disturbance. Directly citing the Hungarian Helsinki Committee's submission, the Court finds that the anxiety experienced by the parents meant that this 'situation caused additional anxiety and degradation of the parental image in the eyes of the child applicants.'¹¹³ The Court determined that such treatment reached the threshold of degrading treatment in relation to the child applicants alone, finding a violation of Article 3 ECHR. Further violations of Article 5.1, 5.4 and Article 4 of Protocol No. 4 were found in relation to all applicants.

Section 4. Moving Forward: Enhancing the Effectiveness of TPIs

This study has sought to shine a light on the potential for NGOs, academics and other groups to promote children's rights at ECtHR level through the mechanism of third-party interventions. **Our analysis reveals that only a small proportion of cases that come before the ECtHR of relevance to children are accompanied by TPIs (27 out of 677, i.e. less than 4% of our sample).** Whilst an in-depth reading of the cases that were not supported by TPIs was beyond the scope of this study, one can reasonably conclude that there are many untapped opportunities for children's rights advocates and researchers to explore TPIs as a way of informing court decisions on a range of children's rights-related matters.

Of the 27 cases that did involve TPIs, **a third¹¹⁴ advanced their arguments from a sufficiently detailed or explicit children's rights perspective when assessed**

¹¹² Ibid [89] – [115]

¹¹³ Ibid [202]; CPS (n109) [17]

¹¹⁴ The Aire Centre (*Strand Lobben and Others v. Norway*, App no. 37283/13 (ECHR [GC], 10 Sept 2019); *Abdi Ibrahim* (n14); *Valdís Fjölfnisdóttir and Others v. Iceland*, App no. 71552/17 (ECHR, 18 August 2021)); The Hungarian Helsinki Committee (*M.H and Others* (n106)); The Centre for Peace Studies (*M.H and Others*) Human Rights Watch (*A.M*

against our children’s rights evaluation framework. In other words, 9 of those 27 interventions made some attempt, to varying degrees, to: draw on children’s rights principles; present to the Court research and theories of relevance to children; support and promote children’s participation, at least indirectly, in proceedings; and acknowledge and present children’s experiences and rights as distinct from those of other [adult] parties.

4.1. Presenting TPIs in a child-centred way

None of the published TPIs to which we had access presented their intervention or a summary of it to relevant children in a way that children could understand. It is likely that the restricted length of interventions and the objective to share complex legal, procedural and contextual information with the Court inhibits the addition of a child-centred version of the text. But there is much scope on the part of intervenors to consider more creative ways of sharing their interventions with children or, perhaps more radically, to present an intervention to the Court in a manner and format that is decidedly child-focused. Such initiatives would go some way, first of all, towards acknowledging children as legal citizens in their own right, with an equal stake in ECtHR decisions and processes. Second, it would also highlight a commitment to ensuring that children can access information about the nature, extent and interpretation of their rights under the ECHR. Thirdly, we note that children are becoming increasingly visible in the landscape of strategic litigation as independent applicants and rights activists.¹¹⁵ As such, TPIs presented to children in a child-focused way could stimulate further awareness-raising and activism far beyond the specific confines of the case in question. Fourthly, a TPI adapted for a child audience might inspire the ECtHR to present its own judgments to children in a way that they can understand, share and act upon, building on a growing body of child-focused judgments at domestic level.¹¹⁶

and Others (n61) and The Human Rights Centre of Ghent University (*A.M and Others; Hudorovič and Others* (n21)); Anti-Slavery International (*V.C.L and A.N* (n47)); *Defenseur des Droits (Khan*(n48); ILGA Europe, “Coming Out” and the Russian Lesbian, Gay, Bisexual and Transgender Network (*Bayev and Others* (n86)); Article 19: The Global Campaign for Freedom of Expression and Interights (*Bayev and Others*)

¹¹⁵ *Duarte Agostinho and Others* (n81)

¹¹⁶ For a detailed discussion of the challenges, benefits and strategies of crafting judgments in a way that speaks more directly to children, see Helen Stalford and Kathryn Hollingsworth, ‘This Case is About Your and Your Future: Towards Judgments for Children’ (2020) 83 *The Modern Law Review* 929.

Beyond the children’s rights framework underpinning the evaluation presented above, our analysis points to three more practical strategies that can support and enhance children’s rights-based TPIs in the future. These are: forging strong strategic partnerships; engaging in routine horizon-scanning; and scrutinising post-ruling monitoring implementation.

4.2. Forging strong strategic partnerships

Our review of existing TPIs highlight the value of well-formed partnerships when preparing TPIs. Partnerships can take different forms: some are collaborative, involving two or more groups merging their expertise to produce a single, comprehensive intervention¹¹⁷ Collaborative interventions enable less experienced organisations to learn from more experienced intervenors, widening the pool and capacities of those who can intervene in future cases.¹¹⁸ Collaborators can also educate and exchange knowledge and expertise with one another from different perspectives, particularly on matters of intersectional relevance. For example, in the case of **Bayev v. Russia**¹¹⁹ the joint intervention by Article 19 (an NGO focused on the freedom of speech), and Interights (a human rights organisation), combines a robust analysis of the scope and limitations of freedom of expression on LGBTQ issues with a clear review of how the right to information impacts on the welfare and rights of children. Other TPIs are more complementary and involve different groups co-ordinating their separate interventions so that they can each speak to different elements of a case, commensurate with their expertise and interests.¹²⁰

¹¹⁷ For example, in *X. v. Poland*, App no. 20741/10 the Court received a *joint submission* by the Federation Internationale des ligues des Droits de l’Homme, International Commission of Jurists, ILGA-Europe, the Campaign against Homophobia, and the Network of European LGBTIQ+ Families Associations.

¹¹⁸ ILGA Europe (ILGA), an independent international NGO is an umbrella organisation with over 600 member groups from across Europe and Central Asia and a lead intervenor for joint interventions in three of the cases we reviewed. In such interventions, ILGA’s expertise on LGBTQI rights is combined effectively with the broader international expertise of organisations such as the International Commission of Jurists and with the more localised context provided by the national organisations.

¹¹⁹ (n86)

¹²⁰ For example *Hudorovič and Others* (n21) involved interventions by the Human Rights Centre of the University of Ghent and the European Roma Rights Centre which balance complementary information regarding academic analysis of the right to water and the distinct interests and needs of Roma communities.

Of course, strategic partnerships demand relationships of trust, and a confidence that one aspect of the collaboration does not dominate or undermine the integrity of the other. Specifically, partnerships need to be preceded by a careful assessment of the potential risks as well as the benefits of partnering on an intervention of distinct strategic significance to each. When developing the TPI, there needs to be clear consensus between the partners around the way in which their respective perspectives are balanced and fruitfully reconciled.

4.3. Routine horizon scanning

Preparing timely, sufficiently detailed interventions that can add real value to ECtHR proceedings demands close attention to developments in strategic litigation. An intervention can be adequately prepared and refined if organisations/academic researchers have been following or engaged in the earlier, domestic stages of proceedings. That said, routine scanning of other relevant cases scheduled to appear before the ECtHR can reveal fresh opportunities for interventions, including in cases relevant to children’s rights that arise from other jurisdictions.¹²¹ The ECtHR website (HUDOC) publishes updates on forthcoming (communicated) cases and recent/past rulings.¹²² When an application is made to the Court to hear a case, it is allocated to one of the five sections of the Court which then considers its merits, communicates to the relevant Government that an application has been submitted against it, and invites observations from that Government. The Court then publishes a Statement of Facts summarising the issues that have given rise to the application and the provisions of the ECHR that have been allegedly breached.

¹²¹ Above note 4. For practical guidance on identifying opportunities for TPIs, see European Network of National Human Rights Institutions (ENNHRI) ‘Third Party Interventions before the European Court of Human Rights: Guide for National Human Rights Institutions’ (October 2020), ENNHRI <<http://ennhri.org/wp-content/uploads/2020/10/Third-Party-Interventions-Before-the-European-Court-of-Human-Rights-Guide-for-NHRIs.pdf>>

¹²² (n18).

Intervenor can scan and filter cases relevant to a range of children's rights issues, and have 12 weeks to request leave to intervene.¹²³

4.4. Post-ruling monitoring and implementation

Although it is not strictly a third-party intervention, an often-overlooked avenue for pursuing children's rights in an ECtHR context is at the post-ruling implementation stage.¹²⁴ Children's rights advocates, NGOs and academic researchers can usefully contribute their views on a State's execution of a judgment, regardless of whether they have submitted TPIs to support the main proceedings. Specifically, under [Rule 9.2 of the Rules of the Committee of Ministers \(CoM\) for the supervision of the execution of judgments and of the terms of friendly settlements](#) the CoM can *'...consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights...'*¹²⁵ This allows for all manner of interested parties to raise concerns around the general measures of a Court judgment concerning children's rights.¹²⁶ The CoM's Department for Execution offers helpful guidance on how to draft a submission at this stage.¹²⁷

¹²³ The 12-week deadline runs from the date a case is communicated to the Government for observations, or from the date of the decision of the Chamber to accept a referral, or from the date of a decision to relinquish jurisdiction in favour of the Grand Chamber. See Rule 44(1)(b) and 44(4) of the Rules of Court (n4).

¹²⁴ For a broader discussion of the execution of ECtHR judgments, see Fiona de Londras and Kanstantin Dzehtsiarou, *Great Debates on the European Convention on Human Rights* (Palgrave, 2018), chapter 8.

¹²⁵ (Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies and amended on 18 January 2017 at the 1275th meeting of the Ministers' Deputies and on 6 July 2022 at the 1439th meeting of the Ministers' Deputies), CM/Del/Dec(2006)964/4.4-app4consolidated <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806dd2a5> >

¹²⁶ See: Ruth Brittle, 'Report on Research on the Execution of Judgments – European Court of Human Rights Cases on Child Migration', 31st July 2019, available at <<https://www.nottingham.ac.uk/hrlc/documents/ehri-unit/report-on-research-on-the-execution-of-judgments.pdf>>. Only applicants and their representatives can make submissions on individual measures relevant to a judgment (such as compensation etc – see further Rule 9.1).

¹²⁷ See for example Elif Erken, 'Non-Governmental Organisations and National Human Rights Institutions monitoring the execution of Strasbourg Judgments: An Empirical Perspective on Rule 9 Communications' (2021) 21 Human Rights Law Review 724; Elif Erken, 'Participation of Non-Governmental Organisations and National Human Rights Organisations in the Execution of Judgments of the Strasbourg Court: Exploring Rule 9 Communications at the Committee of Ministers' (2020) 1 European Convention on Human Rights Law Review 248, 261.

To facilitate the execution of ECtHR judgments, rulings on related breaches within a given jurisdiction are commonly grouped together to draw attention to particularly egregious or systematic breaches. In publishing the Court's rulings and monitoring compliance, the CoM also leaves the door open for existing intervenors to provide supplementary context and evidence to inform the monitoring process.

14 cases in our sample of 27 TPIs were the subject of ongoing monitoring by the CoM. Five of those 14 cases benefited from third party interventions at the post-decision and monitoring stage. For example, in ***Strand Lobben and Others v. Norway***¹²⁸ the Court had found Norway's child welfare and adoption proceedings to be in breach of Article 8 ECHR. In response, Norway had submitted a consolidated action plan to implement individual measures for the families involved in cases heard by the ECtHR. It also included general measures concerning improvements in child welfare practice, legislative amendments which improved safeguards for children's cultural and linguistic backgrounds, and the development of guidelines on contact between children in out-of-home care and their families, including research on best practice.¹²⁹ To date only a community based organisation has submitted observations relating to the execution of Norway's plans,¹³⁰ but there is clearly scope for other interventions to highlight the adequacy of proposed and ongoing changes, especially as similar complaints in the same jurisdiction have emerged; 12 cases have so far been added to the Strand Lobben monitoring group,¹³¹ including three from our original list of 27 cases.¹³²

Similarly, the ECtHR had ruled in ***Khan v. France*** that there had been systematic failings by France to protect the rights and welfare of unaccompanied asylum-

¹²⁸ (n114)

¹²⁹ Erik Bolstad Pettersen and Mette Kristin Solum, 'Strand Lobben and others v. Norway – European Court of Human Rights Case No. 37283/13 – Consolidated Action Plan' (30 September 2021) <[0900001680a4212d \(coe.int\)](#)>

¹³⁰ Yngve Nedrebo and Anita Skippervik, 'Communication after rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments from an NGO' (4 May 2020) <[Committee of Ministers \(coe.int\)](#)> and (14 December 2020) <[Committee of Ministers \(coe.int\)](#)>

¹³¹ Department for the Execution of Judgments of the European Court of Human Rights, 'Memorandum – *Strand Lobben and Others Group v. Norway* (Application No. 37283/13): Overview of Individual Measures' (15–22 September 2022) <[H/Exec \(2022\)15 – Memorandum – Strand Lobben and Others Group v. Norway \(application No. 37283/13\) \(coe.int\)](#)>

¹³² *Abdi Ibrahim* (n14).

the UNHCR from families with children forcibly returned across the border into Belarus without being able to apply for international protection.¹⁴⁰ The intervention also highlights a lack of medical and humanitarian assistance leading to the deaths of adults and children near the border crossing. Other TPIs at the monitoring stage include those of the Helsinki Foundation for Human Rights,¹⁴¹ and a joint submission from the Centre for Fundamental Rights at the Hertie School, Berlin, and the Human Rights Centre of the University of Ghent.¹⁴² The latter submission repeated calls for ongoing supervision by the CoM, and for the Polish government to provide an action plan and to evidence action called for in an earlier submission. The intervention also requested that the CoM urge Polish authorities to refrain from ‘harassing and intimidating human rights defenders.’¹⁴³ Given the fundamental problems for children and adults in the area, these interventions do not focus specifically on children’s rights, but do point to the sustained efforts taken by a number of NGOs to hold states to account for resolving declared children’s rights abuses.

Conclusion

This report has presented the first ever detailed assessment of the nature and scope of TPIs from a specifically children’s rights perspective. In an environment where international children’s rights obligations are commonly undermined or ignored at domestic level, and where children’s rights are only superficially considered in many judicial proceedings, we have sought to highlight TPIs as a creative means by which to bring children’s rights to bear on ECHR decision-making. This is especially opportune, given the ECHR’s openness to TPIs, whilst also recognising the practical, procedural and cultural barriers to engaging children and children’s rights more directly in proceedings at this level.

¹⁴⁰ Ibid, [25]

¹⁴¹ M Szuleka and P Kladoczny P, ‘Communication from the Helsinki Foundation for Human Rights Concerning the Execution of the Judgment in the Case M.K and Others against Poland (Application Nos.40503/17, 42902/17, 43643/17)’ (received 22 April 2022) <[Committee of Ministers \(coe.int\)](#)>

¹⁴² G Branowska and A Alpes, ‘Submission by the Centre for Fundamental Rights at the Hertie School, Berlin, and Human Rights Centre of the University of Ghent pursuant to Rule 9.2 of the Committee of Ministers’ Rules for the Supervision of the Execution of Judgments, on the implementation of M.K and other v. Poland (Application No 40503/17, 42902/17, 43643/17)’ (19 April 2022) <[Committee of Ministers \(coe.int\)](#)>

¹⁴³ Ibid, [5]

We have adopted a children's rights framework for our analysis both to evaluate the quality of existing TPIs and to indicate how TPIs could be developed in the future to advance children's rights more explicitly and effectively. We hope that this initial deep dive into a small sample of TPIs will provoke some further exploration of this as part of a growing armoury to support children's rights strategic litigation.

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10. T.I. v. the United Kingdom, App no. [43844/98](#) (ECHR, 7 March 2000)
11. Zehentner v. Austria, App no. [20082/02](#) (ECHR, 16 October 2009)

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Annex 1: Table of cases examined in the project, the Third-Party Intervenors in those cases, and weblinks to the full intervention where available¹⁴⁴

Case	Third Party Intervenors	Link to Full Text of the Intervention
<i>Abdi Ibrahim v. Norway</i> , App no. 15379/16 (ECHR [GC], 10 December 2021)	AIRE Centre	
<i>A.H. and Others v. Russia</i> , App nos. 6033/13 and 8927/13 and others (ECHR, 17 January 2017)	Harvard Law School Child Advocacy Clinic	https://cap.law.harvard.edu/wp-content/uploads/2015/07/russianamicussignedapr42014.pdf
<i>A.L. and Others v. Norway</i> , App no. 45889/18 (ECHR, 20 April 2022)	Ordo Iuris Institute for Legal Culture	
<i>A.M. and Others v Russia</i> , App no. 47220/19 (ECHR, 6 July 2021)	Transgender Europe and ILGA-Europe (jointly)	https://tgeu.org/wp-content/uploads/2020/07/20200709-am-v-russia-tpi.pdf
	Human Rights Watch	https://www.hrw.org/sites/default/files/media_2020/07/AM%20written%20submissions%20final.pdf
	Human Rights Centre of Ghent University	https://hrc.ugent.be/wp-content/uploads/2020/06/HRC-TPI-AM-and-Others-v-Russia-002.pdf

¹⁴⁴ See Section 2 of the report for details of the methodology adopted for case selection

<i>Bayev and Others v. Russia</i> , App Nos. <u>67667/09</u> , <u>44092/12</u> and others (ECHR, 20 June 2017)	Family and Demography Foundation	
	Article 19 and Interrights (jointly)	https://www.article19.org/data/files/Bayev_Amicus_Brief_FINAL_.pdf
	"Coming Out", the Russian LGBT Network and ILGA-Europe (jointly)	https://ilga-europe.org/files/uploads/2022/07/bayev_v_russia_-_third-party_intervention_by_coming_out_the_russian_lgbt_network_and_ilga-europe_-_28_2_2014_-_final.pdf
<i>Dimitrova and Others v Bulgaria</i> , App no. <u>39084/10</u> (ECHR, 11 July 2017)	European Roma Rights Centre	http://www.errc.org/uploads/upload_en/file/dimitrova-and-others-v-bulgaria-23-june-2015.pdf
<i>E.M. and Others v. Norway</i> , App no. <u>53471/17</u> (ECHR, 20 January 2022)	Ordo Iuris Institute for Legal Culture	
<i>Hudorovič and Others v. Slovenia</i> , App nos. <u>24816/14</u>	Human Rights Centre of Ghent University	https://hrc.ugent.be/wp-content/uploads/2019/10/Hudorovic-and-Novak-v.-Slovenia.pdf

and 25140/14 (ECHR, 10 March 2020)	European Roma Rights Centre	http://www.errc.org/uploads/upload_en/file/third-party-intervention-slovenia-hudorovic-v-slovenia-&-novak-and-others-v-slovenia-9-october-2015.pdf
<i>Khan v France</i> , App no. <u>12267/16</u> (ECHR, 28 February 2019)	Défenseur des droits (Defender of Rights)	
	Commission nationale consultative des droits de l'homme (National Advisory Commission on Human Rights)	
	Groupe d'information et de soutien des immigrés (Migrant Information and Support Group)	
	Cabane juridique	
<i>Koch v. Poland</i> , App no. <u>15005/11</u> (ECHR, 7 March 2017)	Ordo Iuris Institute for Legal Culture	
<i>Kurt v. Austria</i> , App no. <u>62903/15</u> (ECHR [GC], 15 June 2021)	Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)	https://rm.coe.int/grevio-inf-2020-3-third-party-intervention-kurt-v-austria/pdfa/16809987e9#:~:text=Third%20Party%20Intervention%20by%20the%20Group%20of%20Experts,of%20Human%20Rights%20on%2021%20January%202020%20GREVIO%2FInf%282020%293

	Women Against Violence Europe	
	Women's Network against Violence (Donne in Rete Contro la Violenza – D.i.Re),	
	Association of Autonomous Austrian Women's Shelters (Verein Autonome Österreichische Frauenhäuser – AÖF)	
	European Human Rights Advocacy Centre and Equality Now (jointly)	https://live-equality-now.pantheonsite.io/wp-content/uploads/2021/11/ECTHR_Third_Party_Submission_EN_EHRAC_KurtvAustria.pdf
	Federal Association of Austrian Centres for Protection from Violence (Bundesverband der Gewaltschutzzentren Österreichs)	
	Women's Popular Initiative 2.0 (Frauenvolksbegehren 2.0)	
<i>M.H. and Others v Croatia</i> , App no.15670/18 and 43115/18 (ECHR, 18 November 2021)	Hungarian Helsinki Committee	https://helsinki.hu/wp-content/uploads/3rd-party-intervention-in-MH-v-Croatia.pdf
	Centre for Peace Studies	https://www.cms.hr/system/article_document/doc/710/TP_I_M.H._v._Croatia_CPS.pdf

	Belgrade Centre for Human Rights,	
	Rigardu e.V.	
	Asylum Protection Center	
<i>M.K. and Others v. Poland</i> , App nos. <u>40503/17</u> , 42902/17 and others (ECHR, 23 July 2020)	Human Rights Centre of Ghent University	
	AIRE Centre with ECRE (joint)	
	Dutch Council for Refugees	
	International Commission of Jurists	
<i>M.L. v. Norway</i> , App no. <u>64639/16</u> (ECHR, 22 December 2020)	Ordo Iuris Institute for Legal Culture	
<i>R.R. and Others v. Hungary</i> , App no. <u>36037/17</u> (ECHR, 2 March 2021)	Office of the United Nations High Commissioner for Refugees	https://www.refworld.org/publisher.UNHCR,AMICUS,,5a460ca04,0.html
<i>S-H. v. Poland</i> , App nos. <u>56846/15</u> and 56849/15 (ECHR, 16 November 2021)	Helsinki Foundation for Human Rights (Poland)	

<i>Shestopalov v Russia</i> , App no. <u>46248/07</u> (ECHR, 28 March 2017)	Redress	
Stavropoulos and Others v. Greece, App no. <u>52484/18</u> (ECHR, 25 June 2020)	Greek Ombudsman	
<i>Strand Lobben and Others v. Norway</i> , App no. <u>37283/13</u> (ECHR [GC], 10 Sept 2019)	Alliance Defencing Freedom International	
	Associazione Italiana dei Magistrati per i Minorenni e per la Famiglia (Italian Association of Magistrates for Minors and for the Family)	
	AIRE Centre	
<i>Tlapak and Others v. Germany</i> , App no. <u>11308/16</u> and <u>11344/16</u> (ECHR, 22 March 2018)	Alliance Defencing Freedom International	-
<i>Valdís Fjólnisdóttir and Others v. Iceland</i> , App no. 71552/17 (ECHR, 18 August 2021)	Ordo Iuris Institute for Legal Culture	
	AIRE Centre	https://www.airecentre.org/Handlers/Download.ashx?IDM=F=5b54cdb2-d4fd-4041-9db0-8b94c79164e1

<i>Vavříčka and Others v. The Czech Republic</i> , App no. <u>47621/13</u> and 5 others (ECHR [GC], 8 April 2021)	European Centre for Law and Justice	http://media.aclj.org/pdf/Collection-of-written-comments-submitted-by-third-parties-in-Vavricka-v.-Czech-Republic-no.-47621.13-ECLJ-2020.pdf (all four interventions are collected together in this document)
	Společnost pacientů s následky po očkování, z.s. (Association of Patients Injured by Vaccines)	
	ROZALIO – Rodiče za lepší informovanost a svobodnou volbu v očkování, z.s. (Group of Parents for Better Awareness and Free Choice with Regard to Vaccination)	
	European Forum for Vaccine Vigilance	
<i>V.C.I and A.N v. The United Kingdom</i> , App nos. <u>77587/12</u> and <u>74603/12</u> (ECHR, 16 February 2021)	Group of Experts on Trafficking in Human Beings (GRETA)	
	Anti-Slavery International	
	Liberty	
<i>Wetjen and Others v. Germany</i> , App nos. <u>68125/14</u> and <u>72204/14</u> (ECHR 22 March 2018)	Alliance Defencing Freedom International	
	European Centre for Law and Justice	http://media.aclj.org/pdf/EN-Observations-ECLJ-Wunderlich-v-Germany.pdf

<p><i>Wunderlich v. Germany</i>, App no. <u>18925/15</u> (ECHR, 10 January 2019)</p>	<p>Ordo Iuris Institute for Legal Culture</p>	
<p><i>X. v. Poland</i>, App no. <u>20741/10</u> (ECHR, 16 September 2022)</p>	<p>Polish National Chamber of Legal Advisors (Krajowa Izba Radców Prawnych)</p>	
	<p>Institute of Psychology – Polish Academy of Sciences</p>	
	<p>Ordo Iuris Institute for Legal Culture</p>	
	<p>Federation Internationale des ligues des Droits de l'Homme, International Commission of Jurists, ILGA-Europe, Campaign Against Homophobia, Network of European LGBTIQ* Families Associations (jointly)</p>	<p>https://www.ilga-europe.org/sites/default/files/X%20v%20Poland_TPI_final.pdf</p>
<p><i>X and Y v North Macedonia</i>, App no. <u>173/17</u> (ECHR, 5 November 2020)</p>	<p>Helsinki Committee for Human Rights of the Republic of Macedonia</p>	