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

**EXECUTIVE SUMMARY
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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. The study has three aims:

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 – otherwise referred to as *amicus curiae* – provide information and insights relating to particular issues (excluding the facts of the case) to assist the Court in reaching a decision. They 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. They can take the form of Member State interventions 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.

An initial sift of ECtHR decisions directly relating to children’s rights in a five-year period (January 2017–January 2022) yielded 187 cases, 27 of which included TPIs. Those 27 cases involved 197 applicants to the main proceedings, of whom 94 were adults and 87 were children (for the remainder the age of the applicants was not clear). Across all 27 cases, there was a total of 57 interventions by 53 different agencies, NGOs and academic experts.

The analysis explored the extent to which those interventions presented and advanced children’s rights by reference to five key questions:

1. To what extent does the TPI draw on and apply children’s rights principles?

- Of the 27 cases involving TPIs, only 15 judgments referred explicitly to children’s rights provisions, including the UNCRC.
- Article 3 (the best interests principle), is the most frequently cited provision – referred to in 11 of the cases. Article 12 (the right to be heard), is the least cited – referred to in only one case.
- Nine cases also drew on the UN Committee on the Rights of the Child’s General Comments.
- There is 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 TPIs.

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

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

- Some of the TPIs presented updated empirical and theoretical research of relevance to the case in hand and directly informed the Court's reasoning.
 - This included evidence on the value of hearing children's views in matters of parental responsibility where their parents are gender diverse (***A.M and others v. Russia***); and empirical evidence revealing the experiences of asylum seeking children in the Calais jungle (***Khan v. France***).
- 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)?**
- TPIs provide a possible avenue for children's voices to be presented to the Court without being direct participants. They did this primarily by directly citing academic empirical research that had elicited the views and experiences of children on relevant issues, such as in ***Bayev and Others***.
 - Other TPIs promote children's participation 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 (as in ***Abdi Ibrahim v. Norway***).
- 4. Are children's experiences and rights presented in a way that recognises them as distinct from those of other parties' rights or interests?**
- A number of the TPIs reinforced a tendency in litigation to conflate the interests of adults (primarily parents) with those of children. This is evident, for instance, in ***Vavricka v. The Czech Republic*** concerning the vaccination of children against Covid-19 (which focused primarily on the Article 8 rights of the parents rather on those of the children).
 - By contrast, interventions which consider the issue at hand from the perspective of child applicants can have a significant influence on a case, as ***M. H. and Others v. Croatia*** concerning the treatment of Afghan asylum seekers.
- 5. Is the content, aims and scope of the TPI communicated to relevant children in a way that they can understand?**
- 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 they could understand.
 - There is much scope for 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.

- Child-focused TPIs would also support a commitment to ensuring that children can access information about the nature, extent and interpretation of their rights under the ECHR. They could also stimulate awareness-raising and activism on the part of children far beyond the specific confines of the case in question.

Overall, 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).

Only one third (9 out of 27 TPIs) analysed made any attempt to present children's rights-related evidence and arguments in some form to the Court. This indicates 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.

For those considering TPIs as a strategy to promote children's rights in the future, the study points to the value of forging strong strategic partnerships, enabling collaborators from different sectors to combine their respective expertise on children's rights issues to present a comprehensive and forceful submission to the Court.