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REPORT BY

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Children's rights and the European Convention on Human Rights

1. General considerations

Although several guarantees of the ECHR are similar to the rights that can be found in the Convention on the Rights of the Child (CRC), the ECHR does not mention children's rights explicitly. However, a few guarantees of the ECHR refer to children in general or to special situations they might be confronted with, such as Article 5 (1) (d), Article 5 of Protocol No. 7 or Article 2 of Protocol No. 1. Other guarantees have been explicitly applied to children by the jurisdiction of the ECtHR. This is especially true for Article 3, Article 6 and Article 8. Thus, children are obviously rights holders under the ECHR.

During last yeast decade the ECHR has gained increasing impact on the evolution of children's rights in Europe. One reason for this development is, that the ECHR is the international instrument in the field of human rights that has the most effective mechanism of enforcing the rights with a Court which is open to individual applications and which delivers legally binding decisions). When interpreting the rights of the Convention this Court takes more and more account of other international and European instruments in the field of a particular guarantee. Therefore, also the CRC enters the reasoning of the Court. Additionally, the ECHR is characterized by its dynamic nature. The European Court of Human Rights (ECtHR) has repeatedly stressed, that the ECHR is a living instrument, which must be interpreted in the light of present-day conditions.¹ Keeping in mind the significant changes of social and family structures in the last decades, the dynamic character of the ECHR is of special importance relating to children's issues.

2. Personal scope of the Convention

Article 1 determines the personal scope of application of the ECHR: the Member States shall secure to everyone within their jurisdiction the rights and freedoms defined in the Convention. Article 14 reinforces Article 1 by prohibiting discriminations on any ground such as race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The ECtHR considers discriminations based on the age of a person as falling under the scope of Article 14. The guarantees laid down in the ECHR apply to children in the same manner they do to adults. In the Convention case law, the notion of a minor or a child encompasses persons under the age of 18.²

Whether or not an embryo/fetus enjoys the protection of the right to life provided by Article 2, has not been answered by the ECtHR until today³ and is certainly one of the most disputed questions among the Member States. Other unanswered questions refer to the end of childhood and the applicability of Article 5 (1) (d) about the detention of minors, Article 6 (1) 2nd sentence about the exclusion of the press and public from trials, when it is required by the interest of juveniles, or Article 12, which provides the right to marry. In contrast to the CRC, the ECHR does not contain any provisions dealing with the end of childhood at a certain age limit. Rather, the Member States enjoy a wide margin of appreciation in this matter.⁴

¹ E.g. ECtHR, 25/4/1978, *Tyrer v UK*, No. 5856/72, § 30 et seq.

² ECtHR, 12/10/2000, *Koniarska v UK*, No. 33670/96.

³ Explicitly leaving the question unanswered ECtHR, 8/7/2004 (GC), *Vo v FRA*, No. 53924/00, § 79 et seq ; *Peukert*, Human Rights in International Law and the Protection of Unborn Beings, in: Matscher/Petzold (Hrsg), *Protecting Human Rights: The European Dimension*, Studies in Honour of Gérard J. Wiarda, 1988, 511 (515 et seq.).

⁴ *Kilkelly*, *The Child and the European Convention on Human Rights* (1999) 21 et seq.

In order to be able to file a complaint before the ECtHR, a person has to be a victim of violations of rights of the ECHR. There are no provisions of the ECHR that restrict children's access to the ECtHR. The parent's consent is not necessary for a child to be able to file a complaint. Nevertheless, most of the complaints concerning children's rights are filed by parents or other legal representatives on behalf of the child.⁵

3. Children's rights in various Convention guarantees

(a) *The right to liberty*

Article 5 ensures everyone's right to liberty and security and thus, its key purpose is to prevent arbitrary or unjustified deprivations of liberty. It protects the right to personal liberty of 'everyone', meaning that all natural persons⁶ irrespective of their age⁷ enjoy this right. Therefore, the right to liberty and security is guaranteed to children and adults equally.

Article 5 (1) contains a list of grounds for deprivation of liberty, such as the lawful detention of a person after conviction by a competent court (a) or the lawful detention of persons for the prevention of the spreading of infectious diseases (e). One of the deprivations of liberty listed in Article 5 (1) is only applicable to children and contains a specific, but not exhaustive example of circumstances in which minors might be detained: the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority (d). The provision provides for the deprivation of liberty in the interest of minors, regardless of whether they are suspected of having committed a criminal offence, or of whether they are simply children 'at risk'.⁸ 'Educational supervision' within the meaning of Article 5 (1) (d) includes measures of care and juvenile criminal law.⁹ The hospitalization of a minor solely at the request of a parent does not fall within the ambit of Article 5.¹⁰

In contrast to other human rights documents, Article 5 does not provide for any special regulations concerning the treatment of minors in cases of deprivation of liberty.¹¹ Nevertheless, the ECtHR has developed an extensive case law on children's increased need for protection especially concerning conditions of imprisonment.¹² For instance, pre-trial detention of minors should be used only as a measure of last resort and for the shortest possible period.¹³ Especially in case of the arrest or detention of foreigners, children are often affected as family members. Minors kept in detention pending expulsion are considered to be in a 'position of extreme vulnerability'. Thus, the conditions of their detention have to be adapted to their special situation.¹⁴ This applies even if the minor is accompanied by a parent.¹⁵

⁵ ECtHR, 13/6/1979, *Marckx v BEL*, No. 6833/74, § 1.

⁶ ECtHR, 2/3/1987, *Weeks v UK*, No. 9787/82, § 40.

⁷ ECtHR, 28/11/1988, *Nielsen v DEN*, No. 10929/84, § 58.

⁸ ECtHR, 29/11/2011, *A. a.o. v BUL*, No. 51776/08, § 66.

⁹ ECtHR, 29/2/1988, *Bouamar v BEL*, No. 9106/80, §§ 50, 52.

¹⁰ ECtHR, 28/11/1988, *Nielsen v DEN*, No. 10929/84, § 72.

¹¹ See Article 10 (2) (b), Art 14 (4) International Covenant on Civil and Political Rights; Article 37, Article 40 CRC.

¹² See ECtHR 28/10/1998, *Assenov v BUL*, No. 24760/94, § 137; ECtHR, 29/2/1988, *Bouamar v BEL*, No. 9106/80; ECtHR, 21/2/1996, *Hussain v UK*, No. 21928/93, § 52 – 54; ECtHR, 2/3/1987, *Weeks v. UK*, No. 9787/82; ECtHR, 21/2/1996, *Singh v UK*, No. 23389/94.

¹³ ECtHR, 10/1/2006, *Selçuk v TUR*, No. 21768/02, §§ 35 et seq, ECtHR, 6/5/2008, *Nart v TUR*, No. 20817/04, §§ 31, 33 and ECtHR, 19/1/2012, *Korneykova v UKR*, No. 39884/05, §§ 43 et seq.

¹⁴ ECtHR, 12/10/2006, *Mubilanzila Mayeke a. Kaniki Mitunga v BEL*, No. 13178/03, § 103; ECtHR, 19/1/2012, *Popov v FRA*, No. 39472/07, § 119.

¹⁵ ECtHR, 12/10/2006, *Mubilanzila Mayeke a. Kaniki Mitunga v BEL*, No. 13178/03, §§ 74 et seq; ECtHR, 19/1/2010, *Muskhadzhiyeva a.o. v BEL*, No. 41442/07, § 75; ECtHR, 13/12/2012, *Kanagaratnam a.o. v BEL*, No. 15297/09, §§ 86 et seq.

(b) Equality between spouses and the child's best interest

Article 5 of Protocol No. 7 settles that spouses should enjoy equality of rights and responsibilities of private law character between them, and in their relations with their children, as to marriage, during marriage and in events of its dissolution. First, the provision has to be understood as a particular principle of equal treatment for spouses. Second, the provision includes an explicit exclusion of the principle of parental equality in favor of a child's best interest. As a result, national measures that discriminate one parent from the other can be justified by the child's best interest; e.g., when one parent obtains sole custody or when one parent's participation in parental authority is denied after examination and conclusion that this would be in the child's best interest.

Regardless of the explicit notion of a "child's best interest" in Article 5 of Protocol No. 7, the Articles 8 and 14 – especially because of the ECtHR's extensive case law concerning children – have a much greater impact on children's situations. Therefore, until today the ECtHR has not found any violation of Article 5 Protocol No. 7.

(c) Right to education

According to Article 2 of Protocol No. 1, no person shall be denied the right to education. In the exercise of any functions, which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. In conclusion, Article 2 of Protocol No. 1 provides for a primary right to education and a secondary right to be educated in accordance with parental convictions. It therefore explicitly guarantees an individual children's right. The right is guaranteed equally to pupils in public schools and to pupils in independent schools.¹⁶

Article 2 of Protocol No. 1 establishes access to primary and secondary education. Although Article 2 of Protocol No. 1 does not impose a duty on the Member States to set up institutions of higher education, any Member State doing so will be under an obligation to afford an effective right of access to them.¹⁷ The Member States enjoy a wide margin of appreciation with regard to the legal organization of their system of education¹⁸, for instance, in matters of the entry age for primary school, the number of years of mandatory schooling, the curricula or restrictions on access to institutions of higher education.¹⁹ A university circular, stating the refusal of access to various lectures and examinations for wearing the Islamic headscarf has not been regarded as violating the very essence of the right to education under Article 2.²⁰

The right to education applies disabled children as well. However, here again, the State enjoys a margin of appreciation: "[...] there must be a wide measure of discretion left to the appropriate authorities as to how to make the best use possible of the resources available to them in the interests of disabled children generally"²¹. Therefore the ECtHR found that it was no denial of education when a girl in a wheelchair was restricted to access certain school facilities.²²

Article 2 of Protocol No. 1 does not only guarantee a children's right to education, but also – although in a subsidiary manner – a parental right. Hence, it can be necessary for the Member States to consider conflicting fundamental rights positions and strike a fair balance between them.²³

¹⁶ ECtHR, 25/3/1993, *Costello-Roberts v UK*, No. 13134/87, § 27.

¹⁷ ECtHR, 10/11/2005, *Leyla Şahin v TUR*, No. 44774/98, § 155.

¹⁸ *Kilkelly*, The Child 65.

¹⁹ ECtHR, 3/7/2006, *Mürsel Eren v TUR*, No. 60856/99, § 48; ECtHR, 25/5/2000, *Jimenez u Jimenez Merino v ESP*, No. 51188/99.

²⁰ ECtHR 10/11/2005, *Leyla Şahin v TUR*, No. 44774/98, § 155.

²¹ ECtHR, 17/1/97, *S.P. v UK*, No. 28915/95.

²² EComHR, 21/10/1998, *McIntyre v UK*, No. 29046/95.

²³ Vgl EComHR, 21/3/1975, *Kjeldsen, Busk Madsen & Petersen v DAN*, No. 5095/71, 5920/72, 5926/72.

(d) *Prohibition of torture*

Again, in contrast to the CRC²⁴, it is not explicitly laid down in the ECHR that the Member States have to protect children from any form of violence in all settings. Nevertheless, if a Member State fails to protect children from violent actions, this might constitute a breach of the guarantees under Article 3 or Article 8.

Article 3 prohibits torture, inhuman or degrading treatment or punishment. As Article 3 does not provide for exceptions or derogation, all interferences with Article 3 constitute a violation of the fundamental right. There is a breach of Article 3, if the physical or mental violation of a child attains a minimum level of severity and disrespects a person's humanity.²⁵ In any event it must exceed the usual element of humiliation inherent in any punishment; it depends on all the circumstances of the case, including the nature and context of the punishment, the age or the state of health of the victim.²⁶ Violations, which do not attain the minimum level of severity, might not constitute a breach of Article 3, but they might be relevant under the scope of Article 8.²⁷

In this regard, the ECtHR found a breach of Article 3 in the case of a fifteen-year-old who was sentenced to three strokes of the birch in accordance with the relevant legislation by the local juvenile court.²⁸ In contrast, according to the ECtHR there has been no violation of Article 3 in case of a seven-year-old who had received three "whacks" on the bottom through his shorts with a rubber-soled gym shoe by the headmaster of his school in private and in accordance with the disciplinary rules in force within the school in which he was a boarder.²⁹

Positive obligations can be derived from Article 3. The Member States are obliged to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment.³⁰ It is immaterial whether the real and immediate risk to physical or psychological integrity of an individual derives from the State or a third party.³¹ According to the ECtHR, the case of a nine-year-old boy who was physically punished by the headmaster of an independent school is a treatment that none the less may engage the responsibility of a Member State under the Convention if it proves to be incompatible with Article 3.³²

In the case of a nine-year-old who had been beaten with a garden cane and with considerable force by his stepfather on more than one occasion, the ECtHR found that not only Article 3 requires the Member States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment by private individuals, but that children and other vulnerable individuals in particular are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity.³³ The ECtHR held that there had been a violation of Article 3 because the national

²⁴ See Article 19 CRC.

²⁵ ECtHR, 18/1/1978, *IRL v UK*, No. 5310/71, § 162; ECtHR, 22/9/1993, *Klaas v GER*, No. 15473/89, §§ 23 et seq (alleged ill-treatment of a detainee in the presence of his minor daughter); ECtHR, 27/8/1992, *Tomasi v FRA*, No. 12850/87, § 114 (number and intensity of hits); ECtHR, 28/1/1994, *Hurtado v SUI*, No. 17549/90, § 12 (refusal of medical care and sanitation despite of injuries); ECtHR, 25/4/1978, *Tyrer v UK*, No. 5856/72; ECtHR, 25/3/1993, *Costello Roberts v UK*, No. 13134/87, § 31.

²⁶ ECtHR, 23/9/1998, *A. v UK*, No. 25599/94, § 20; ECtHR, 23/11/2009, *Cığırhun Öner (No. 2) v TUR*, No. 2858/07, §§ 89 et seq.

²⁷ ECtHR, 13/5/2000, *Juhnke v TUR*, No. 52515/99, § 69 et seq.

²⁸ ECtHR, 25/4/1978, *Tyrer v UK*, No. 5856/72, § 30 et seq.

²⁹ ECtHR, 25/3/1993, *Costello-Roberts v UK*, No. 13134/87, § 32.

³⁰ ECtHR, 23/9/1998, *A. v UK*, No. 25599/94, § 22; ECtHR, 10/10/2002, *D. P. a. J. C. v UK*, No. 38719/97, § 109.

³¹ ECtHR, 19/1/2010, *Muskhadzhiyeva a.o. v BEL*, No. 41442/07, §§ 55 et seq; ECtHR, 9/6/2009, *Opuz v TUR*, No. 33401/02, §159.

³² ECtHR, 25/3/1993, *Costello-Roberts v UK*, No. 13134/87, § 28.

³³ ECtHR, 23/9/1998, *A v UK*, No. 25599/94, § 23.

legal framework did not provide adequate protection of children from ill-treatment. It is shown that even the risk of violation of the physical or psychological integrity of an individual within the family can give rise to positive obligations of the Member States.

In another case involving positive obligations four children alleged that the local authority had failed to take adequate protective measures in respect of the severe neglect and abuse which they were known to be suffering due to their ill-treatment by their parents. The ECtHR considered that the Member States were under a statutory duty to protect the children and had a range of powers available to them, including the removal of children from their home. The ECtHR explicitly acknowledged the difficult and sensitive decisions facing social services and the important countervailing principle of respecting and preserving family life. Nevertheless, in this case the ECtHR found a failure of the system to protect the children from serious, long-term neglect and abuse and therefore a violation of Article 3.³⁴ Obviously, the ECtHR's approach is the following: a Member State must identify and respond to signs that children are suffering from abuse or mistreatment within their families.

In addition to the fact that children are vulnerable persons who need special protection under the scope of Article 3 the ECtHR held that *unaccompanied minors* seeking for *asylum* come within the class of highly vulnerable members of society. Therefore, state authorities are required to take adequate measures to provide them with care and protection.³⁵

(e) Right to privacy and family life

Article 8 is an important guarantee in the field of children's rights and the ECHR. Its case law already embraces many different situations, children are confronted with: e.g., family life in general, adoption, child abduction, decisions on custody, visiting rights or identity issues. Article 8 names four different spheres of protection: private life, family life, a person's home and correspondence. Generally, all of them are equally applicable to adults and children. There are many situations under the scope of Article 8 where not only children's rights are affected, but also the rights of other family members; this requires striking a fair balance between the different positions. Often children may require a greater amount of protection under Article 8 than adults.

Private life under Article 8 covers a person's moral and physical integrity, his privacy and the capacity of the individual to determine his identity. According to the ECtHR's case law, any medical intervention against the subject's will, or without the free, informed and express consent of the subject, constitutes an interference with his or her private life.³⁶ For instance, a compulsory test of tuberculosis for children,³⁷ or the administration of force-feeding or diamorphine to a seriously ill and handicapped child against the firm opposition of the mother to this form of treatment.³⁸ In this context it must also be mentioned that questions concerning medically assisted procreation can also be regarded to fall within the ambit of Article 8.³⁹

The right to family life is not only guaranteed to parents, but also to other family members and children. The scope of the right to family life was early extended by the ECtHR's case law from a marriage-based relationship with or without minor children to other *de facto* 'family' ties.⁴⁰ Cohabitation is therefore not a necessary requirement for the applicability of Article 8 under the

³⁴ ECtHR, 10/5/2001, *Z. a.o. v UK*, No. 29392/95, §§ 74 et seq

³⁵ ECtHR, 5/4/2011, *Rahimi v GRE*, No. 8687/08, §§ 87 et seq.

³⁶ Assumption of a situation of coercing due to the particularly vulnerable psychological state of a female prisoner, ECtHR, 13/5/2008, *Juhnke v TUR*, No. 52515/99, § 76 et seq.; ECtHR, 7/10/2008, *Bogumil v POR*, No. 35228/03, § 73.

³⁷ EComHR, 10/12/1984, *Acmanne*, DR 40, 251.

³⁸ ECtHR, 9/3/2004, *Glass v UK*, No. 61827/00, § 70 et seq.

³⁹ Vgl ECtHR, 10/4/2007, *Evans v UK*, Nr 6339/05, § 71; ECtHR, 1/4/2010, *S.H. a. o. v AUT*, No. 57813/00, § 60; ECtHR, 4/12/2007, *Dickson v UK*, No. 44362/04, § 66; *Gallus*, La procréation médicalement assistée et les droits de l'homme, RTDH 2008, 879 (887 et seq).

⁴⁰ EComHR, 6/4/1994, *M.B. v UK*, No. 22920/93; EComHR, 3/7/1992, *C. v UK*, No. 14247/88.

head of "family life" and the existence of a family tie between the parents and their child. The natural family relationship is not terminated by reason of the fact that the child is taken into public care;⁴¹ however, the relationship is terminated by adoption.⁴²

Interferences with the right to family life protected by Article 8 can be found in all measures that hinder the mutual enjoyment by parent and child of each other's company.⁴³ The Member States enjoy a wide margin of appreciation for decisions on rights of custody and rights of access, because the ECtHR considers, that the national authorities have the benefit of direct contact with all the persons concerned.⁴⁴ The national authorities have to strike a fair balance between the interests of the child and those of the parents.⁴⁵ Particular importance should be attached to the best interest of the child⁴⁶ which may override the interests of the parents. In particular, a parent is not entitled under Article 8 to have such measures taken as would harm the child's health and development.⁴⁷ With a view to adoption the ECtHR found, that the child's best interest should always build the focus of the national authority's decision and that the key purpose of adoption was "to provide a child with a family and not a family with a child".⁴⁸ It is also the child's opinion that should be taken into account concerning its adoption, once the child has attained the necessary maturity to express itself in that matter.⁴⁹

A number of positive obligations have been derived from Article 8 by the ECtHR. For instance, positive obligations have great importance for the protection against sexual assaults against children and persons unable to give their consent by creating criminal offences.⁵⁰ In particular, the ECtHR assumes a positive obligation deriving from Article 8 taken in conjunction with Article 14 to avoid discrimination between children born out of wedlock and children born in marriage.⁵¹

(f) Freedom of communication

Article 10 protects the freedom of communication. Although Article 10, together with Article 11 and Article 9, constitutes the core of the fundamental rights and freedoms of the ECHR does not refer to children explicitly. Nevertheless, Article 1 provides for an application of the guarantees laid down in Article 10 to children in the same manner as to adults.

⁴¹ ECtHR, 8/7/1987, *W. v UK*, No. 9749/82, § 59; ECtHR, 24/3/1988, *Olsson (No. 1) v SWE*, No. 10465/83, § 59; ECtHR, 22/6/1989, *Eriksson v SWE*, No. 11373/85, § 58; ECtHR, 13/7/2000 (GC), *Scozzari a. Giunta v ITA*, No. 39221/98 a. o., § 169.

⁴² EComHR, 11/7/1977, X., No. 7626/76, DR 11, 160 (162); see further ECtHR, 28/10/1998, *Söderbäck v SWE*, No. 24484/94, § 31; ECtHR, 7/8/1996, *Johansen v NOR*, No. 17383/90, § 78.

⁴³ ECtHR, 7/8/1996, *Johansen v NOR*, No. 17383/90, § 52; ECtHR, 9/6/1998, *Bronda v ITA*, No. 22430/93, § 51; ECtHR, 13/7/2000, *Elsholz v GER*, No. 25735/94, § 43.

⁴⁴ ECtHR, 13/7/2000, *Elsholz v GER*, No. 25735/94, § 49; ECtHR, 8/7/2003 (GC), *Sommerfeld v GER*, No. 31871/96, § 62.

⁴⁵ ECtHR, 27/11/1992, *Olsson (No. 2) v SWE*, No. 13441/87, § 90; ECtHR, 7/8/1996, *Johansen v NOR*, No. 17383/90, § 78; ECtHR, 13/7/2000, *Elsholz v GER*, No. 25735/94, § 50; ECtHR, 12/4/2011, *Gluhakovic v CRO*, No. 21188/09, §§ 56 et seq.

⁴⁶ ECtHR, 25/2/1992, *Margareta a. Roger Andersson v SWE*, No. 12963/87, § 95; ECtHR, 7/8/1996, *Johansen v NOR*, No. 17383/90, § 78; ECtHR, 13/7/2000, *Elsholz v GER*, No. 25735/94, § 48; ECtHR, 8/7/2003 (GC), *Sommerfeld v GER*, No. 31871/96, § 64.

⁴⁷ ECtHR, 7/8/1996, *Johansen v NOR*, No. 17383/90, § 78; ECtHR, 13/7/2000, *Elsholz v GER*, No. 25735/94, § 49; ECtHR, 13/7/2000 (GC), *Scozzari a. Giunta v ITA*, No. 39221/98 a. o., § 169; ECtHR, 8/7/2003 (GC), *Sommerfeld v GER*, No. 31871/96, § 64.

⁴⁸ ECtHR, 26/2/2002, *Fretté v FRA*, No. 36515/97, § 42.

⁴⁹ ECtHR, 22/6/2004, *Pini a. o. v ROM*, No. 78028/01 a. o., §§ 164 et seq; ECtHR, 25/11/2008, *Jucius a. Juciuciené v LTU*, No. 14414/03, § 31. See also *Berro-Lefèvre*, Adoption et filiation. Droit à l'enfant ou droits de l'enfant?, Mélanges en l'honneur de Jean-Paul Costa, 2011, p. 25 et seq.

⁵⁰ ECtHR, 22/10/1981, *Dudgeon v UK*, No. 7572/76, § 49; ECtHR, 26/3/1985, X. a Y. v NED, No. 8978/80, § 27 et seq.

⁵¹ See ECtHR, 13/6/1979, *Marckx v BEL*, No. 6833/74, § 45; ECtHR, 18/12/1986, *Johnston a.o. v IRL*, No. 9697/82, § 74; ECtHR, 8/7/2003 (GC), *Sommerfeld v GER*, No. 31871/96, § 86; ECtHR, 7/4/2009, *Turnali v TUR*, No. 4914/03, § 46.

Article 10 does not include any particular positive obligations for the State to provide especially children with access to information.⁵² Neither does Article 10 guarantee an absolute right to freedom of expression. According to the ECtHR, a wider margin of appreciation is generally available to the Member States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or religion.⁵³ In an early judgment the ECtHR found no violation of Article 10 in the seizure of a school book including a chapter about sexuality, because the Member State's measures were held necessary in a democratic society, especially to protect the morals of the young.⁵⁴ The Member States enjoy a wide margin of appreciation referring to interferences with the freedom of expression in the sphere of advertising. Therefore, under the scope Article 10, restrictions of advertisement in order to protect minors might be legitimate. Thus, the ECtHR only assesses whether the national courts have struck a fair balance between conflicting interests, but does not, by itself, carry out a proportionality test.

Article 10 does not provide for a children's right to be heard during legal proceedings regarding adoption⁵⁵, custody and access issues,⁵⁶ neither does Article 10 guarantee any right to a child to obtain information about its adoption or its medically assisted procreation. In fact such rights are all deriving from Article 8.⁵⁷ However, the ECtHR found a violation of Article 10 in case of a person who was convicted because she had voiced a suspicion of child abuse, formed in good faith.⁵⁸ The possibility to make such statements in context of an appropriate reporting procedure should be available to an individual without the potential "chilling effect" of a criminal conviction or an obligation to pay compensation for harm suffered or cost incurred.

4. Conclusion

In sixty years the ECHR has become an instrument of international human rights law which applies to many different fields of law and which covers all parts of society. It was only a question of time that the Convention was developed in a way that it covers also children and their specific human rights. Apart from the few rights mentioning the situation of children explicitly nearly every other Convention right has an impact on children. It is to be expected that the case law of the ECtHR will further develop "children's rights content" without a specific legal basis focused (only) on children.

⁵² *Kilkelly*, The Child 126.

⁵³ ECtHR, 10/7/2003, *Murphy v IRL*, No. 44179/98, § 67

⁵⁴ ECtHR, 17/12/1976, *Handyside v UK*, No. 5493/72.

⁵⁵ ECtHR, 22/6/2004, *Pini a. o. v ROM*, No. 78028/01, § 164 et seq.

⁵⁶ *Kilkelly*, The Child 127.

⁵⁷ Vgl ECtHR, 8/7/2003, *Sahin v GER*, No. 30943/96, § 73; ECtHR, 18/12/2008, *Saviny v UKR*, No. 39948/06, § 51; ECtHR, 13/10/2009, *Achim Bayerl v GER*, No. 37395/08; ECtHR, 22/6/2004, *Pini a. o. v ROM*, No. 78028/01, § 164 et seq.; ECtHR, 25/11/2008, *Jucius u. Juciucienė v LTU*, No. 14414/03, § 31. See *Berro-Lefèvre*, Adoption et filiation. Droit à l'enfant ou droits de l'enfant? Mélanges en l'honneur de Jean-Paul Costa, 2011, p. 25 et seq. ECtHR 7/7/1989, *Gaskin v UK*, No. 10454/83.

⁵⁸ ECtHR, 2/12/2008, *Juppala v FIN*, No. 18620/03, § 43.