

## EU LAW ON THE PROTECTION OF CHILDREN

Article 3(3) of the Treaty on European Union establishes the objective for the EU to promote protection of the rights of the child.

The Charter of Fundamental Rights of the EU guarantees the protection of the rights of the child by the EU institutions and by EU countries when they implement EU law. Article 24 on the rights of the child and Article 32 on the prohibition of child labour specifically cover children's rights.

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Article 24(1) of the European Charter contains the right of a child to be provided with the care and protection necessary for his or her well-being. This reflects Article 3(2) of the United Nations Convention

on the Rights of the Child.

9 This right of the child must be respected and protected by the EU bodies and by Member States when implementing EU law and policy.

### Article 3 Directive 2000/43/EC

1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to...

(b) Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; ...

(e) Social protection, including social security and healthcare;

(f) Social advantages;

(g) Education;

(h) Access to and supply of goods and services which are available to the public, including housing.

### Direct complaint to the European Commission

Making a complaint can lead to a number of actions being taken by the Commission, information gathering, opening of an infringement procedure and referral to the European Court of Justice (ECJ). Making a complaint will not always lead to the opening of infringement procedures but where the Commission agrees that there is cause for complaint, it can start infringement proceedings against the Member State concerned.

Infringement proceedings involve the Commission giving a reasoned opinion on the actions of the state and requesting that it alters its behaviour.

If the State does not comply with the reasoned opinion the Commission can then refer the case to the Court of Justice and may also request a lump sum or penalty payment to be imposed upon the Member State in question.

Case to the national or domestic courts:

In Ireland, a parent or legal guardian must make the complaint to the national court on behalf of a child. National courts have two options:

1. If the national court feels that there has been a breach of rights, it can award redress.
2. If the judge is unclear on a particular point of EU law or is unsure how it should be interpreted and implemented, then he or she can refer the case to the ECJ for an opinion.

The ECJ will send the opinion on the point of law back to the national courts who will then decide the case in light of this.

Redress can take many different forms. The courts can:

- Reverse a decision taken by a national authority against you.
- They can grant an injunction to ensure that the offending action stops immediately.
- If you have suffered a loss through the failure of the national authority to implement EU law correctly, then the court can award compensation.

If you are not satisfied with the decision of the national court you can then make a complaint to the European Commission.

UN Convention:

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities,

particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

#### Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

#### Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

#### Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

#### Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

#### Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the

performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

#### Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

#### Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

#### Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

#### Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

#### Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.